

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- Child and Family Services Agency announces funding availability for developing a program that provides legal and social work services for low-income families at risk of entering the abuse and neglect system
- Child and Family Services Agency announces funding availability for developing a home visiting model program for families with a history of trauma, partner violence, mental health, and substance abuse issues
- Department of Consumer and Regulatory Affairs solicits public comment on the proposal to remove a portion of Anacostia Avenue N.E and Eastern Avenue, N.E from the Plan of Permanent System of Highways
- Department of Health establishes regulations governing the operation of medical marijuana testing laboratories in the District
- Department of Health rescinds funding availability for providing facility based housing with supportive services

# 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](http://dcregs.dc.gov). Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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## DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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CONTENTS

ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA

D.C. ACTS

A23-109 Local Rent Supplement Program Contract No. 2018-LRSP-02A Approval and Payment Authorization Emergency Act of 2019 (B23-370).....010176 - 010177

A23-110 Appraisal Management Company Regulation Emergency Act of 2019 (B23-382).....010178 - 010187

A23-111 Standby Guardian Emergency Amendment Act of 2019 (B23-384).....010188 - 010190

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

Alcoholic Beverage Regulation Administration -

Duffy's Irish Pub - ANC 6A - Sports Wagering Substantial Change ..... 010191

Felicity Lounge - ANC 6C - Renewal..... 010192

Mythology & Lore/Dirty Water - ANC 6A - Sports Wagering Substantial Change ..... 010193

Stein's Cafe - ANC 4C - New ..... 010194

Swingers - ANC 2B - New..... 010195

TBD (Town2.0 LLC) - ANC 6C - New ..... 010196

The Brig - ANC 6B - Sports Wagering Substantial Change..... 010197

The Natural Wine Shoppe LLC - ANC 5E - New ..... 010198

Zoning Adjustment, Board of - October 9, 2019 - Public Hearing

20088 GPD, LLC - ANC 5D..... 010199 - 010202

20089 Owen Place Development, LLC - ANC 5D ..... 010199 - 010202

20114 3569 Warder LLC - ANC 1A..... 010199 - 010202

20119 Eric F. Goldstein Trustee and Katherine A. Douglass Trustee - ANC 1D..... 010199 - 010202

20123 Darius Arod - ANC 8A ..... 010199 - 010202

Zoning Commission - Cases -

15-20C TSBC Owner I, LLC (Rescheduled) ..... 010203 - 010205

19-10 Valor Development, LLC (Rescheduled)..... 010206 - 010209

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**FINAL RULEMAKING**

Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 62 (Nursing Home Administration),  
 Sec. 6206 (Continuing Education Requirements),  
 Sec. 6299 (Definitions), to update the public health  
 education requirements for nursing home administrators.....010210 - 010212

Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 78 (Audiology), Sec. 7808 (Continuing Education Requirements),  
 to update the public health education requirements for audiologists.....010213 - 010214

Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 101 (Audiology Assistants),  
 Sec. 10108 (Continuing Education Requirements),  
 Sec. 10199 (Definitions), to update the public health  
 education requirements for audiology assistants .....010215 - 010216

Health, Department of (DC Health) -  
 Amend 22 DCMR (Health),  
 Subtitle C (Medical Marijuana), to rename  
 Ch. 50 (Registration, Licensing, and Enforcement of  
 Cultivation Centers and Dispensaries) to  
 Ch. 50 (Registration, Licensing, and Enforcement of Cultivation  
 Centers, Dispensaries, and Testing Laboratories), and revise  
 Ch. 51 (Registration and Permit Categories),  
 Ch. 52 (Registration Limitations),  
 Ch. 53 (General Registration Requirements),  
 Ch. 54 (Registration Applications),  
 Ch. 55 (Registration Changes),  
 Ch. 56 (General Operating Requirements),  
 Ch. 57 (Prohibited and Restricted Activities),  
 Ch.59 (Records and Reports),  
 Ch. 99 (Definitions), and to add  
 Ch. 64 (Testing Laboratories), to implement  
 regulations governing the registration, regulation,  
 and operation of medical marijuana testing  
 laboratories in the District..... 010217 - 010275

Public Service Commission - RM27-2019-01 -  
 Amend 15 DCMR (Public Utilities and Cable Television),  
 Ch. 27 (Regulation of Telecommunications Service Providers),  
 Sec. 2799 (Definitions), to revise two definitions for their  
 corresponding applications .....010276 - 010277

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

**PROPOSED RULEMAKING**

Behavioral Health, Department of -  
 Amend 22 DCMR (Public Welfare),  
 Subtitle A (Mental Health),  
 Ch. 34 (Mental Health Rehabilitation Services  
 Provider Certification Standards),  
 Sections 3400 – 3428 and Sec. 3499 (Definitions),  
 to revise certification standards for mental health  
 rehabilitation services providers.....010278 - 010368

Employment Services, Department of -  
 Amend 7 DCMR (Employment Benefits), to add  
 Ch. 35 (Paid Leave Benefits),  
 Sections 3500 – 3516 and Sec. 3599 (Definitions),  
 to establish the procedures necessary to administer a  
 paid-leave program for eligible individuals employed  
 in the District of Columbia .....010369 - 010397

Zoning Commission, DC - Z.C. Case No. 18-18  
 Amend 11 DCMR (Zoning Regulations of 2016),  
 Subtitle K (Special Purpose Zones), to add  
 Ch. 10 (Northern Howard Road (NHR) Zone),  
 Sections 1000 – 1010, to establish a Northern Howard  
 Road (NHR) zone.....010398 - 010410

**NOTICES, OPINIONS, AND ORDERS**

**MAYOR’S ORDERS**

2019-071 Reappointment and Appointment – District of Columbia  
 Developmental Disabilities Fatality Review Committee  
 (Laura Hartmann-Villalta and Michaela Zajicke-Farber).....010411

**NOTICES, OPINIONS, AND ORDERS CONT'D**

**BOARDS, COMMISSIONS, AND AGENCIES**

Alcoholic Beverage Regulation Administration -  
 ABC Board's Calendar for August 14, 2019 .....010412 - 010413  
 ABC Board's Cancellation Agenda for August 14, 2019 .....010414  
 ABC Board's Investigative Agenda for August 14, 2019 .....010415 - 010416  
 ABC Board's Licensing Agenda for August 14, 2019 .....010417 - 010418

Carlos Rosario International Public Charter School -  
 Request for Proposals - Student Information System .....010419

Child and Family Services Agency -  
 Notice of Funding Availability -  
 FY 2020 Family Preservation Project .....010420 - 010421  
 FY 2020 Matched Savings Program .....010422 - 010423

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D**

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

Consumer and Regulatory Affairs, Department of -

- Substantial Undo Economic Hardship Determination -
  - 4609 8th St, NW - FY18 ..... 010424
  - 4609 8th St, NW - FY19 ..... 010425
  - 726 Webster St, NW ..... 010426
- Vacant Building Enforcement - 4829 Astor Pl, SE.....010427
- Notice to Submit Comments - Modification of the  
Plan of the Permanent System of Highways .....010428

Elections, Board of -

- Certification of ANC/SMD Vacancy in ANC/SMD 1C04 ..... 010429
- Certification of Filling ANC/SMD Vacancies -
  - 1B05 - Christopher Ede-Calton .....010430
  - 3D10 - Jeremy L. Del Moral ..... 010430

Energy and Environment, Department of -

- Notice of Intent to Issue a Facility-Wide Title V Air Quality Permit -
  - #052 Architect of the Capitol, House Office Buildings  
Jurisdiction, Located at House Office Buildings,  
Washington DC 20515 ..... 010431 - 010433

Friendship Public Charter School -

- Request for Proposals - Business Intelligence and Data  
Warehousing Solution & Educational Curriculum, Resource  
Materials, and Subscriptions ..... 010434

Health Care Finance, Department of -

- Department of Health Care Finance Pharmacy and  
Therapeutics Committee Meeting - September 5, 2019..... 010435

Health, Department of (DC Health) -

- Notice of Funding Availability (NOFA) - HIV/AIDS,  
Hepatitis, STD & TB Administration (HAHSTA) -  
HAHSTA\_FBH\_07.26.19 (RFA) Facility Based  
Housing (Transitional and Emergency) - Rescinded .....010436 - 010437

Kingsman Academy Public Charter School -

- Request for Proposals-IT(Construction,Design,  
Design Build) and Psychological Services..... 010438

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Public Employee Relations Board - Opinions -

1714 PERB Case No. 19-CU-01 Local 1199, Service  
Employees International Union v. District of Columbia  
Department of Behavioral Health.....010439 - 010442

1715 PERB Case No. 19-A-05 District of Columbia Department  
of Corrections v. Fraternal Order of Police/Department  
of Corrections Labor Committee.....010443 - 010447

Public Service Commission -

Notice of Final Tariff - ET 2019-02 - Pepco's Amendment  
to Section 10(e)(1) of the General Terms and Conditions .....010448 - 010449

Two Rivers Public Charter School -

Request for Proposals - Special Education  
Comprehensive Assessments and Interventions .....010450

Zoning Adjustment, Board of - Cases -

19982 Montello 1723 LLC - ANC 5D - Order .....010451 - 010463

20006 T-Mobile Northeast LLC - ANC 7F - Order.....010464 - 010466

20036 Mariela Licha Salomon - ANC 3D - Order.....010467 - 010469

20051-A Kevin & Laura McDermott - ANC 6C & ANC 6A -  
Corrected Order .....010470 - 010472

20063 Siri Fiske -ANC 1B - Order .....010473 - 010475

20071 Charles Weil & Leigh McCue-Weil -  
ANC 3D - Order .....010476 - 010478

20073 Oxbridge Development QOZB at Fourth  
Street NE LLC - ANC 5E - Order .....010479 - 010481

20074 Stanton Rd SE LLC - ANC 8A & 8C - Order .....010482 - 010485

20075 CTF Georgetown Hotel LLC - ANC 2E - Order .....010486 - 010490

20076 Athos Pashiardis - ANC 5E - Order.....010491 - 010493

20080 Anna-Louisa Yon & Edwin Darilek - ANC 6B - Order .....010494 - 010496

Zoning Commission - Cases -

01-17E George Washington University - 1959 E Street, N.W. -  
Notice of Filing ..... 010497

06-12Q George Washington University - Thurston Hall,  
1900 F St., N.W. - Notice of Filing ..... 010498

Zoning Commission -

Notice of Closed Meetings - September 9<sup>th</sup>, 2019 and  
September 23<sup>rd</sup>, 2019 .....010499

ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-109**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 31, 2019**

To approve, on an emergency basis, the award of an Agreement to Enter into a Long Term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2018-LRSP-02A with Randle Hill, LLC for program units at the Randle Hill Apartments, located at 3300-3368 6th Street, S.E.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Local Rent Supplement Program Contract No. 2018-LRSP-02A Approval and Payment Authorization Emergency Act of 2019".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves the ALTSC with Randle Hill, LLC to provide an operating subsidy in support of 20 affordable housing units in an initial amount not to exceed \$305,472 annually.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

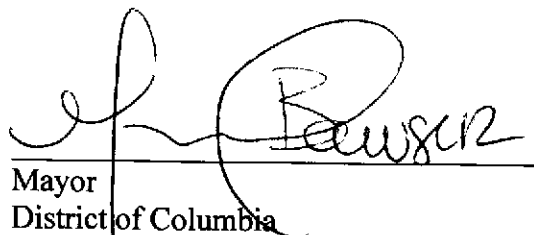


ENROLLED ORIGINAL

412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
July 31, 2019

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-110**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 31, 2019**

To require, on an emergency basis, the Department of Insurance, Securities, and Banking to provide for the licensing of certain entities providing appraisal management services in the District of Columbia and to require an annual registration fee to be paid by those entities.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Appraisal Management Company Regulation Emergency Act of 2019".

**TITLE I. APPRAISAL MANAGEMENT COMPANY REGULATIONS**

Sec. 101. Definitions.

For purposes of this act, the term:

(1) "Affiliate" means any company that controls, is controlled by, or is under common control of another company.

(2) "AMC National Registry" means the registry of state-registered appraisal management companies and federally regulated appraisal management companies maintained by the Appraisal Subcommittee.

(3) "Appraisal Foundation" means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(4) "Appraisal management company" means a person, not including a department or division of an entity that provides appraisal management services only to that entity, that:

(A)(i) Provides appraisal management services to creditors or to secondary mortgage market participants, including affiliates; or

(ii) Provides appraisal management services in connection with valuing a consumer's principal dwelling as security for a consumer credit transaction or incorporating such transactions into securitizations; and

(B) At any time in a 12-calendar month period oversees an appraiser panel of more than 15 state-certified or state-licensed appraisers in a state or 25 or more state-certified or state-licensed appraisers in 2 or more states, as described in section 103.

(5) "Appraisal management services" means one or more of the following:

(A) Recruiting, selecting, and retaining appraisers;

## ENROLLED ORIGINAL

(B) Contracting with state-certified or state-licensed appraisers to perform appraisal assignments;

(C) Managing the process of having an appraisal performed, including providing administrative services such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and secondary market participants, collecting fees from creditors and secondary market participants for services provided, and paying appraisers for services performed; and

(D) Reviewing and verifying the work of appraisers.

(6) "Appraisal panel" means a network, list, or roster of licensed or certified appraisers approved by an appraisal management company to perform appraisals as independent contractors for the appraisal management company. Appraisers on an appraiser panel include both appraisers accepted by the appraisal management company for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions, and appraisers engaged by the appraisal management company to perform one or more appraisals in covered transactions or for secondary mortgage market participants in connection with covered transactions. An appraiser is an independent contractor if the appraiser is treated as an independent contractor by the appraisal management company for purposes of federal income taxation.

(7) "Appraisal review" means the act or process of developing and communicating an opinion about the quality of another appraiser's work that was performed as part of an appraisal assignment and is related to the appraiser's data collection, analysis, opinions, conclusions, estimate of value, or compliance with the uniform standards of professional appraisal practice. This term does not include:

(A) A general examination for grammatical, typographical, or other similar errors;

(B) A general examination for completeness, including regulatory or client requirements as specified in the agreement process that does not communicate an opinion of value.

(8) "Appraisal Subcommittee" means the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(9) "Consumer credit" means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(10) "Controlling person" means:

(A) An officer, director, or owner of greater than a 10% interest of a corporation, partnership, or other business entity seeking to act as an appraisal management company;

(B) An individual employed, appointed, or authorized by an appraisal management company that has the authority to enter a contractual relationship with other persons for the performance of services requiring registration as an appraisal management company and has the authority to enter agreements with appraisers for the performance of appraisals; or

## ENROLLED ORIGINAL

(C) An individual who possesses, directly or indirectly, the power to direct or cause the direction of the management of policies of an appraisal management company.

(11) "Covered transaction" means any consumer credit transaction secured by the consumer's principal dwelling.

(12) "Creditor" means a person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than 4 installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension for transactions secured by a dwelling.

(13) "Department" means the Department of Insurance, Securities, and Banking.

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

(15) "Dwelling" means a residential structure that contains one to 4 units, regardless of whether that structure is attached to real property. The term includes an individual condominium unit, cooperative unit, mobile home, and trailer, if it is used as a residence.

(16) "Federal financial institutions regulatory agency" includes the Consumer Financial Protection Bureau, the Federal Housing Finance Agency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the National Credit Union Administration.

(17) "Federally regulated appraisal management company" means an appraisal management company that is owned and controlled by an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act, approved September 21, 1950 (64 Stat. 873; 12 U.S.C. § 1813(c)(2)), and regulated by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration.

(18) "Federally regulated transaction regulations" means regulations established by the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the National Credit Union Administration, pursuant to sections 1112, 1113, and 1114 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, approved August 9, 1989 (103 Stat. 183; 12 U.S.C. §§ 3341-3343).

(19) "Federally related transaction" means any real-estate-related financial transaction that involves an insured depository institution regulated by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, or National Credit Union Administration and that requires the services of an appraiser under the interagency appraisal rules.

(20) "Person" means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(21) "Principal dwelling" means the primary residence of a consumer. For purposes of this act, a consumer may only have one principal dwelling. A vacation or other

## ENROLLED ORIGINAL

second home shall not be considered a principal dwelling. However, if a consumer buys or builds a new dwelling that will become the consumer's primary residence within one year or upon completion of the construction, the new residence shall be considered the principal dwelling for purposes of this act.

(22) "Real-estate-related financial transaction" means any transaction involving the sale, lease, purchase, investment in, or exchange of real property, including interests in property or the financing thereof; the refinancing of real property or interests in real property; or the use of real property or interests in property as security for a loan or investment, including mortgage-backed securities.

(23) "Secondary mortgage market participant" means a guarantor or insurer of mortgage-backed securities, or an underwriter or issuer of mortgage-backed securities. The term includes an individual investor in a mortgage-backed security only if that investor also serves in the capacity of a guarantor, insurer, underwriter, or issuer for the mortgage-backed security.

(24) "State" includes the District of Columbia.

(25) "Uniform Standards of Professional Appraisal Practice" or "USPAP" means the appraisal standards as promulgated by the Appraisal Standards Board of the Appraisal Foundation.

#### Sec. 102. Administration.

(a) The Department shall have the authority to adopt rules that are reasonably necessary to establish an appraisal management company licensing program and implement, administer, and enforce the provisions set forth under this act.

(b) The Department shall charge appraisal management companies operating in the District reasonable fees to administer this act. The Department's fees shall be established by rule.

(c) The Department shall perform the following functions:

(1) Review and approve or deny an appraisal management company's application for initial registration in the District;

(2) Periodically review and renew or review and deny an appraisal management company's registration;

(3) Examine the books and records of an appraisal management company operating in the District and require the appraisal management company to submit reports, information, and documents;

(4) Verify that the appraisers on the appraiser panel of an appraisal management company operating in the District hold valid District certifications or licenses, as applicable;

(5) Conduct investigations of appraisal management companies operating in the District to assess potential violations of applicable appraisal-related laws, regulations, or orders; and

(6) Report an appraisal management company's violation of applicable appraisal-related laws, regulations, or orders, as well as disciplinary and enforcement actions and other

## ENROLLED ORIGINAL

relevant information about the operations of an appraisal management company operating in the District.

(d) The Department shall impose requirements on appraisal management companies operating in the District that are not owned and controlled by an insured depository institution and not regulated by a federal financial institutions regulatory agency to:

- (1) Register with and be subject to supervision by the Department;
- (2) Engage only state-certified or state-licensed appraisers for federally related transactions in conformity with any federally regulated transaction regulations;
- (3) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company, in engaging an appraiser, selects an appraiser who is independent of the transaction and who has the requisite education, expertise, and experience necessary to competently complete the appraisal assignment for the particular market and property type;
- (4) Direct appraisers to perform assignments in accordance with Uniform Standards of Professional Appraisal Practice; and
- (5) Establish and comply with processes and controls reasonably designed to ensure that the appraisal management company conducts its appraisal management services in accordance with the requirements of section 129E(a)-(i) of the Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e(a)-(i)), and regulations thereunder.

(e) The Department shall maintain a list of the appraisal management companies that are registered in the District.

(f) The Department shall issue a unique registration number to each appraisal management company that is registered in the District pursuant to regulations or guidance promulgated by the Department.

(g) The Department shall require an appraisal management company registered in the District to place its registration number on engagement documents utilized by the appraisal management company to procure appraisal services in the District.

Sec. 103. Appraisal panel size and calculation.

(a) For purposes of determining whether a person is an appraisal management company within the meaning of section 101(4), an appraiser is deemed part of an appraiser panel as of the earliest date on which the person overseeing the appraisal panel:

- (1) Accepts the appraiser for consideration for future appraisal assignments in covered transactions or for secondary mortgage market participants in connection with covered transactions; or
- (2) Engages the appraiser to perform one or more appraisals on behalf of a creditor for covered transactions or secondary mortgage market participant in connection with covered transactions.

## ENROLLED ORIGINAL

(b) An appraiser who is deemed part of an appraiser panel pursuant to subsection (a) of this section is deemed to remain on the panel until the date on which the person overseeing the appraisal panel:

(1) Sends written notice to the appraiser removing the appraiser from the appraiser panel, with an explanation of its action; or

(2) Receives written notice from the appraiser asking to be removed from the appraiser panel or notice of the death or incapacity of the appraiser.

(c) If an appraiser is removed from an appraiser panel pursuant to subsection (b)(2) of this section, but the person overseeing the appraisal panel subsequently accepts the appraiser for consideration for future assignments or engages the appraiser at any time during the 12 months after the appraiser's removal, the removal will be deemed not to have occurred, and the appraiser will be deemed to have been part of the appraiser panel without interruption.

#### Sec. 104. Registration.

(a) It shall be unlawful for a person to directly or indirectly engage or to attempt to engage in business as an appraisal management company in the District, or to advertise or hold itself out as engaging in or conducting business as an appraisal management company in the District without first obtaining a registration issued by the Department.

(b) An applicant for registration as an appraisal management company in the District shall submit to the Department an application on forms prescribed by the Department and pay a fee established by the Department. The forms shall require information necessary to determine eligibility for registration.

(c) Upon registration of an appraisal management company in the District, the Department may require a surety bond of not more than \$25,000.

#### Sec. 105. Reporting requirements.

(a) The Department shall collect from each appraisal management company registered or seeking to be registered in the District the information and fees that the Department requires to be submitted to it pursuant to regulations or guidance promulgated by the Department.

(b) A federally regulated appraisal management company operating in the District must report to the Department the information required to be submitted by the District to the Appraisal Subcommittee, pursuant to the Appraisal Subcommittee's policies regarding the determination of the appraisal management company National Registry fee. These reporting requirements will be set forth by the Department by rule, and will include:

(1) A report to the Department on a form prescribed by the Department of intent to operate in the District of Columbia;

(2) Information related to whether the appraisal management company is owned in whole or in part, directly or indirectly, by any person who has had an appraiser license or certificate refused, denied, canceled, surrendered in lieu of revocation, or revoked in any state for a substantive cause, as determined by the Appraisal Subcommittee; and

## ENROLLED ORIGINAL

(3) If such a person has had such action taken on his or her appraisal license, information related to whether the license was revoked for a substantive cause and whether it has been reinstated by the state or states in which the appraiser was licensed or certified.

Sec. 106. Appraisal management company requirements.

(a) An appraisal management company operating in the District shall meet the following requirements at all times:

(1) At the time of applying for registration or renewing registration in the District, the appraisal management company shall designate one of its controlling persons to serve as the main contact for all communication between the Department and the company. The designated controlling person shall:

(A) Remain in good standing in the District and in any other state that has issued the controlling person an appraiser license or certification; however, nothing in this act shall require that a designated controlling person hold or continue to hold an appraiser license or certification in any jurisdiction;

(B) Never have had an appraiser license or certification in the District or any other state refused, denied, canceled, revoked, or surrendered in lieu of a pending disciplinary proceeding in any jurisdiction and not subsequently reinstated or granted; and

(C) Be of good moral character;

(2) Before or at the time of placing an assignment to appraise real property in the District with an appraiser on the appraiser panel of the appraisal management company, the appraisal management company shall verify that the appraiser receiving the assignment holds an appraiser license or certification in good standing in the District;

(3) Any employee of or independent contractor to the appraisal management company who performs an appraisal review for a property located in the District must be a certified or licensed appraiser in good standing in the District; and

(4) An appraisal management company registered in the District shall place its registration number on engagement documents utilized by the appraisal management company to procure appraisal services in the District of Columbia.

(b) An appraisal management company that has a reasonable basis to believe an appraiser has materially failed to comply with applicable laws or rules or has materially violated the USPAP shall refer the matter to the Department in conformance with applicable federal laws and regulations.

Sec. 107. Verification of licensure or certification.

(a) An appraisal management company registered in the District may not enter into any contract or agreement with an appraiser for the performance of appraisals in the District unless the company verifies that the appraiser is licensed or certified in good standing in the District.

(b) An appraisal management company seeking to be registered or to renew a registration in the District shall certify to the Department on a form prescribed by the Department that the



**ENROLLED ORIGINAL**

company has a system and process in place to verify that an individual being added to the appraiser panel of the company for appraisal services holds an appraiser license or certification in good standing in the District.

**Sec. 108. Retention of records.**

(a) Each appraisal management company seeking to be registered or to renew an existing registration in the District shall certify to the Department on a form prescribed by the Department that the company maintains a detailed record of each service request that the company receives for appraisals of real property located in the District.

(b) An appraisal management company registered in the District shall retain all records required to be maintained under this act for at least 5 years after the file is submitted to the appraisal management company or for at least 2 years after final disposition of any related judicial proceeding of which the appraisal management company is provided notice, whichever period expires later.

(c) All records required to be maintained by the registered appraisal management company shall be made available for inspection by the Department on reasonable notice to the appraisal management company.

**Sec. 109. Payment to appraisers.**

(a) An appraisal management company shall, except in bona fide cases of breach of contract or substandard performance of services, make payment to an independent appraiser for the completion of an appraisal or valuation assignment no later than 45 days after the date on which the appraiser transmits or otherwise provides the completed appraisal or valuation assignment to the company or its assignee unless a mutually agreed-upon alternate arrangement previously has been established.

(b) An appraisal management company seeking to be registered or to renew an existing registration in the District shall certify that the company will require appraisals to be conducted independently as required by the appraisal independence standards under section 129E of the Truth in Lending Act, approved July 21, 2010 (124 Stat. 2187; 15 U.S.C. § 1639e), including the requirement that a customary and reasonable fee be paid to an independent appraiser who completes an appraisal in connection with a consumer credit transaction secured by a principal dwelling.

**Sec. 110. Prohibited conduct.**

A violation of this section may constitute grounds for discipline against an appraisal management company registered in the District. However, nothing in this act shall prevent an appraisal management company from requesting that an appraiser provide additional information about the basis for a valuation, correct objective factual errors in an appraisal report, or consider additional appropriate property information. No employee, director, officer, agent, independent

## ENROLLED ORIGINAL

contractor, or other third party acting on behalf of an appraisal management company may do any of the following:

(a) Procure or attempt to procure a registration or renewal by knowingly making a false statement, submitting false information or refusing to provide complete information in response to a question in an application for registration or renewal;

(b) Willfully violate this act or rules of the Department pertaining to this act;

(c) Improperly influence or attempt to improperly influence the development, reporting, result, or review of an appraisal through intimidation, coercion, extortion, bribery, or any other manner, including:

(1) Withholding payment for appraisal services;

(2) Threatening to exclude an appraiser from future work or threatening to demote or terminate the appraiser in order to improperly obtain a desired result;

(3) Conditioning payment of an appraisal fee upon the opinion, conclusion, or valuation to be reached by the appraiser; or

(4) Requesting that an appraiser report a predetermined opinion, conclusion, or valuation, or the desired valuation of any person or entity;

(d) Alter, amend, or change an appraisal report submitted by an appraiser without the appraiser's knowledge and written consent;

(e) Except within the first 90 days after an independent appraiser is added to an appraiser panel, remove an independent appraiser from an appraiser panel without prior written notice to the appraiser, with the prior written notice including evidence of the following, if applicable:

(1) The appraiser's illegal conduct;

(2) A violation of USPAP, this act, or the rules adopted by the Department pursuant to this act;

(3) Improper or unprofessional conduct; or

(4) Substandard performance or other substantive deficiencies;

(f) Require an appraiser to sign any indemnification agreement that would require the appraiser to defend and hold harmless the appraisal management company or any of its agents or employees for any liability, damage, losses, or claims arising out of the services performed by the appraisal management company or its agents, employees, or independent contractors and not the services performed by the appraiser;

(g) Prohibit lawful communications between the appraiser and any other person whom the appraiser, in the appraiser's professional judgment, believes possesses information that would be relevant;

(h) Fail to timely respond to any subpoena or any other request for information;

(i) Fail to timely obey an administrative order of the Department; or

(j) Fail to fully cooperate in any investigation.

**ENROLLED ORIGINAL**

**Sec. 111. Disciplinary proceedings.**

The Department may deny, suspend, or revoke the registration of an appraisal management company; impose a monetary penalty of an amount not to exceed \$5,000 per violation; issue a letter of reprimand; refuse to issue or renew the registration of an appraisal management company; or take other disciplinary action against an appraisal management company when an appraisal management company engages in conduct prohibited under section 110.

**Sec. 112. Criminal history checks.**

The Department shall require any controlling person or persons to submit to a criminal history record check. All costs associated with obtaining a background check shall be the responsibility of the appraisal management company.

**TITLE II. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.**

**Sec. 201. Fiscal impact statement.**

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

**Sec. 202. Effective date.**

This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
July 31, 2019

ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-111**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**JULY 31, 2019**

To amend, on an emergency basis, Chapter 48 of Title 16 of the District of Columbia Official Code to expand the standby guardianship law to enable a parent, legal guardian, or legal custodian who is, or may be subject to an adverse immigration action, to make short-term plans for a child without terminating or limiting that person’s parental or custodial rights.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Standby Guardian Emergency Amendment Act of 2019”.

Sec. 2. Chapter 48 of Title 16 of the District of Columbia Official Code is amended as follows:

(a) Section 16-4801 is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “or who is periodically incapable of caring for the needs of a child due to the parent’s incapacity or debilitation resulting from illness,” and inserting the phrase “who is periodically incapable of caring for the needs of a child due to the parent’s incapacity or debilitation resulting from illness, or who may be subject to an adverse immigration action,” in its place.

(2) Paragraph (2) is amended by striking “ill parents” and inserting “parents who may be ill or subject to an adverse immigration action” in its place.

(b) Section 16-4802 is amended as follows:

(1) Paragraph (1) is redesignated as Paragraph (1A).

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

“(1) “Adverse immigration action” includes any of the following:

“(A) Arrest or apprehension by any local, state, or federal law enforcement officer for an alleged violation of federal immigration law;

“(B) Arrest, detention, or custody by the Department of Homeland Security or a federal, state, or local agency authorized or acting on behalf of the Department of Homeland Security;

“(C) Departure from the United States under an order of removal, deportation, exclusion, voluntary departure, or expedited removal, or a stipulation of voluntary departure;

## ENROLLED ORIGINAL

“(D) The denial, revocation, or delay of the issuance of a visa or transportation letter by the Department of State;

“(E) The denial, revocation, or delay of the issuance of a parole document or reentry permit by the Department of Homeland Security; or

“(F) The denial of admission or entry into the United States by the Department of Homeland Security or other local or state officer acting on behalf of the Department of Homeland Security.”.

(2) Paragraph (8) is amended by striking the phrase “, who has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover.” and inserting a period in its place.

(3) Paragraph (13) is amended to read as follows:

“(13) “Triggering event” means any of the following events:

“(A) The designator is subject to an adverse immigration action; or

“(B) The designator has been diagnosed, in writing, by a licensed clinician to suffer from a chronic condition caused by injury, disease, or illness from which, to a reasonable degree of probability, the designator may not recover and the designator:

“(i) Becomes debilitated, with the designator's written acknowledgement of debilitation and consent to commencement of the standby guardianship;

“(ii) Becomes incapacitated as determined by an attending clinician; or

“(iii) Dies.”.

(c) Section 16-4804(a) is amended by striking the phrase “the designator’s health” and inserting the phrase “the designator’s health or immigration status” in its place.

(d) Section 16-4805(b) is amended as follows:

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

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

(B) Subparagraph (C) is amended by striking the semicolon and inserting the phrase “; or” in its place; and

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

“(D) An adverse immigration action against the designator;”.

(2) Paragraph (4) is amended by striking the phrase “that the designator suffers” and inserting the phrase “that the designator experienced an adverse immigration action or suffers”.

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

“(7A) If an adverse immigration action is the triggering event, documentation demonstrating that an adverse immigration action occurred;”.

(e) Section 16-4806 is amended as follows:

ENROLLED ORIGINAL

(1) Subsection (b) is amended by striking the phrase "or dies." and inserting the phrase "dies, or is subject to an adverse immigration action." in its place.

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

(A) Paragraph (2) is amended by striking the phrase "; or" and inserting a semicolon in its place.

(B) Paragraph (3) is amended by striking the period and inserting the phrase "; or" in its place.

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

"(4) The documentation demonstrating that an adverse immigration action occurred against the designator."

(3) Subsection (l) is amended by striking the phrase "medically unable to appear" and inserting the phrase "unable to appear for medical reasons or due to an adverse immigration action" in its place.

Sec. 3. Fiscal impact statement.


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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of a veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
July 31, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: August 9, 2019
Protest Petition Deadline: September 23, 2019
Roll Call Hearing Date: October 7, 2019

License No.: ABRA-111076
Licensee: Callister Technology and Entertainment, LLC
Trade Name: Duffy's Irish Pub
License Class: Retailer's Class "C" Tavern
Address: 1016 H Street, N.E.
Contact: Casey Callister, Managing Member: (202) 341-0183

WARD 6 ANC 6A SMD 6A01

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 October 7, 2019 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 OPERATION

Licensee is applying to add Sports Wagering to their operations. Establishment will have four kiosks and mobile geo fenced applications inside the premises.

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

Sunday - Thursday 8am - 2am
Friday and Saturday 8am - 3am

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SUMMER GARDEN AND SIDEWALK CAFE)

Sunday - Thursday 8:30am - 11:30pm
Friday and Saturday 8:30am - 12:30am

HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)

Sunday - Saturday 9am - 1am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
8/9/2019

Notice is hereby given that:

License Number: ABRA-112502

License Class/Type: C Restaurant

Applicant: Brothers Burger Bar, LLC

Trade Name: Felicity Lounge

ANC: 6C05

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

707 H ST NE, WASHINGTON, DC 20002

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
9/23/2019

A HEARING WILL BE  
10/7/2019

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

ENDORSEMENT(S): Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 1 am	11 am - 1 am	11 am - 1 am
Monday:	11 am - 1 am	11 am - 1 am	11 am - 1 am
Tuesday:	11 am - 1 am	11 am - 1 am	11 am - 1 am
Wednesday:	11 am - 1 am	11 am - 1 am	11 am - 1 am
Thursday:	11 am - 1 am	11 am - 1 am	11 am - 1 am
Friday:	11 am - 2 am	11 am - 2 am	11 am - 2 am
Saturday:	11 am - 2 am	11 am - 2 am	11 am - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Placard Posting Date: August 9, 2019  
Protest Petition Deadline: September 23, 2019  
Roll Call Hearing Date: October 7, 2019

License No.: ABRA-095033  
Licensee: Mythology, LLC  
Trade Name: Mythology & Lore/Dirty Water  
License Class: Retailer's Class "C" Tavern  
Address: 816 H Street, N.E.  
Contact: Todd Luongo, Managing Member: (703) 625-6983

WARD 6

ANC 6A

SMD 6A01

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 October 7, 2019 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 OPERATION**

Licensee is applying to add Sports Wagering to their operations. Establishment will have three sports wagering machines in the third floor bar space.

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

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

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

Sunday – Thursday 11am – 11pm  
Friday and Saturday 11am – 12am

**HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)**

Sunday – Thursday 6pm – 2am  
Friday and Saturday 6pm – 3am

**HOURS OF LIVE ENTERTAINMENT (SUMMER GARDEN)**

Sunday – Thursday 6pm – 11pm  
Friday and Saturday 6pm – 12am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: August 9, 2019  
 Protest Petition Deadline: September 23, 2019  
 Roll Call Hearing Date: October 7, 2019  
 Protest Hearing Date: December 4, 2019

License No.: ABRA-114522  
 Licensee: Bars by Breedlove, LLC  
 Trade Name: Stein’s Cafe  
 License Class: Retailer’s Class “C” Restaurant  
 Address: 4630 14<sup>th</sup> Street, N.W.  
 Contact: Nyha Nadeem: (703) 507-0701

WARD 4

ANC 4C

SMD 4C03

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 7, 2019 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **December 4, 2019 at 1:30 p.m.**

**NATURE OF OPERATION**

A new Retailer’s Class C Restaurant with a seating capacity of 20 and Total Occupancy Load of 20. Licensee is requesting an Entertainment Endorsement.

**HOURS OF OPERATION**

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

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

Sunday through Saturday 11am – 2am

**HOURS OF LIVE ENTERTAINMENT**

Friday through Sunday 8pm – 2am (No Entertainment Monday-Thursday)

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

Placard Posting Date: August 9, 2019  
Protest Petition Deadline: September 23, 2019  
Roll Call Hearing Date: October 7, 2019  
Protest Hearing Date: December 4, 2019

License No.: ABRA-114545  
Licensee: S (WDC), LLC  
Trade Name: Swingers  
License Class: Retailer's Class "C" Restaurant  
Address: 1330 19<sup>th</sup> Street, N.W.  
Contact: Sidon Yohannes, Esq.: (202) 686-7600

WARD 2

ANC 2B

SMD 2B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 7, 2019 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **December 4, 2019 at 4:30 p.m.**

**NATURE OF OPERATION**

New Retailer's Class "C" Restaurant serving sandwiches and salads with a mini-golf course on premises. Applicant is applying for two Summer Garden Endorsements. The first Summer Garden will have 16 seats. The second Summer Garden will have 48 seats. Total Occupancy Load of 499 with seating for 435 inside premises.

**HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES AND FOR SUMMER GARDENS)**

Sunday through Thursday 8am – 2am

Friday and Saturday 8am – 3am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION****NOTICE OF PUBLIC HEARING**

Placard Posting Date: August 9, 2019  
Protest Petition Deadline: September 23, 2019  
Roll Call Hearing Date: October 7, 2019  
Protest Hearing Date: December 4, 2019

License No.: ABRA-114559  
Licensee: Town2.0, LLC  
Trade Name: TBD  
License Class: Retailer's Class "C" Nightclub  
Address: 1001 North Capitol Street, N.E.  
Contact: Michael D. Fonseca, Esq.: (202) 625-7700

WARD 6

ANC 6C

SMD 6C06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 7, 2019 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **December 4, 2019 at 1:30 p.m.**

**NATURE OF OPERATION**

New Class "C" Nightclub offering entertainment, DJ, and dancing with snack offerings. Sidewalk Cafe Endorsement with 125 seats. Total Occupancy Load of 524 with seating for 40 patrons inside premises. Entertainment will occur inside the premises only.

**HOURS OF OPERATION (INSIDE PREMISES AND FOR SIDEWALK CAFE)**

Sunday through Thursday 12pm – 4am

Friday and Saturday 12pm – 5am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES AND FOR SIDEWALK CAFÉ)**

Sunday through Thursday 12pm – 2am

Friday and Saturday 12pm – 3am

**HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES ONLY)**

Sunday through Thursday 12pm – 4am

Friday and Saturday 12pm – 5am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: August 9, 2019
Protest Petition Deadline: September 23, 2019
Roll Call Hearing Date: October 7, 2019

License No.: ABRA- 085710
Licensee: Canal 5, LLC
Trade Name: The Brig
License Class: Retailer’s Class “C” Tavern
Address: 1007 8th Street, S.E.
Contact: Mark Brody, Managing Member: (202) 316-9850

WARD 6 ANC 6B SMD 6B04

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 October 7, 2019 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 OPERATION

Licensee is applying to add Sports Wagering to their operations. Establishment will have one teller, two self-service kiosks, and 9 geo-fenced applications for phones while on the premises.

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

Sunday – Thursday 8am – 1am
Friday and Saturday 8am – 3am

HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)

Sunday 12pm – 11pm
Monday – Thursday 6pm – 11pm
Friday and Saturday 12pm – 12:30am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: August 9, 2019  
Protest Petition Deadline: September 23, 2019  
Roll Call Hearing Date: October 7, 2019  
Protest Hearing Date: December 4, 2019

License No.: ABRA-114571  
Licensee: The Natural Wine Shoppe, LLC  
Trade Name: The Natural Wine Shoppe, LLC  
License Class: Retailer’s Class “B” Internet  
Address: 2800 8<sup>th</sup> Street, N.E.  
Contact: Gregory Edsall, Managing Member: (703) 863-7430

WARD 5

ANC 5E

SMD 5E01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on October 7, 2019 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **December 4, 2019 at 4:30 p.m.**

**NATURE OF OPERATION**

New Class “B” Internet Retailer selling wine online only for off-premises consumption. This location will not be open to the public.

**HOURS OF OPERATION**

Sunday – Saturday 12am – 11:59pm (24-hour operations)

**HOURS OF ALCOHOLIC BEVERAGE SALES**

Sunday – Saturday 7am – 12am

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, OCTOBER 9, 2019  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**WARD FIVE**

20088            **Application of GPD, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the rear yard requirements of Subtitle E § 306.1 to construct a two-story rear addition and to convert an existing attached dwelling unit into a flat in the RF-1 Zone at premises 1261 Owen Place N.E. (Square 4060, Lot 197).  
ANC 5D

**WARD FIVE**

20089            **Application of Owen Place Development, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the rear yard requirements of Subtitle E § 306.1 to construct a two-story rear addition and to convert an existing attached dwelling unit into a flat in the RF-1 Zone at premises 1263 Owen Place N.E. (Square 4060, Lot 198).  
ANC 5D

**WARD ONE**

20114            **Application of 3569 Warder LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion provisions of Subtitle U § 320.2, with waivers from the chimney and external vent requirement of Subtitle U § 320.2(f) and the rooftop architectural element requirement of Subtitle U § 320.2(h), and under Subtitle C § 703.2 from the from the minimum parking requirements of Subtitle C § 701.5, to convert an existing two-story, semi-detached principal dwelling unit into a five-unit semi-detached apartment building in the RF-1 Zone at premises 3569 Warder Street N.W. (Square 3035, Lot 820).  
ANC 1A

BZA PUBLIC HEARING NOTICE  
OCTOBER 9, 2019  
PAGE NO. 2

**WARD ONE**

20119            **Application of Eric F. Goldstein Trustee and Katherine A. ANC 1D            Douglass Trustee**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1, to construct a new roof deck and access stair on an existing, detached accessory garage building in the RF-1 Zone at 1800 Kenyon Street N.W. (Square 2598, Lot 46).

**WARD EIGHT**

20123            **Application of Darius Arod**, pursuant to 11 DCMR Subtitle X, ANC 8A            Chapter 9, for special exception under Subtitle D § 5201 from the side yard requirements of Subtitle D 206.2, and the rear yard requirements of Subtitle D § 306.2, to construct a rear deck addition and a rear porch addition in the R-3 Zone at premises 1440 T Street S.E. (Square 5605, Lot 835).

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



BZA PUBLIC HEARING NOTICE  
OCTOBER 9, 2019  
PAGE NO. 3

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](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> 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

ለሙከራ ቅርፅ ላይ ለመሳተፍ ስራዎች ስለሚፈልጉዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ)

ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-

0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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French

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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](mailto: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

BZA PUBLIC HEARING NOTICE

OCTOBER 9, 2019

PAGE NO. 4

[Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) cinco días antes de la sesión. Estos servicios serán proporcionados sin costo alguno.

Vietnamese

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

Nếu quý vị cần thu xếp đặc biệt hoặc trợ giúp về ngôn ngữ (biên dịch hoặc thông dịch) xin vui lòng liên hệ với Zee Hill tại (202) 727-0312 hoặc [Zelalem.Hill@dc.gov](mailto: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**



**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](mailto: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.

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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](mailto:donna.hanousek@dc.gov)), or by calling (202) 727-0789.

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to [zcsubmissions@dc.gov](mailto: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 G. MAY, PETER A. SHAPIRO, 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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**ለማተፍ ዕርዳታ ያስፈልግዎታል?** የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ) ካስፈለገዎት እባክዎን ከስብሰባው አጭነት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኚህ አገልግሎቶች የሚጠቅሙ በነጻ ነው።

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF RESCHEDULED<sup>1</sup> PUBLIC HEARING**

**TIME AND PLACE:** **Monday, October 7, 2019, @ 6:30 p.m.**  
**Jerrily R. Kress Memorial Hearing Room**  
**441 4<sup>th</sup> Street, N.W., Suite 220**  
**Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

**CASE NO. 19-10 (Valor Development, LLC - Consolidated Planned Unit Development @ Square 1499, Lots 802, 803, 806 and 807 [bounded by Yuma Street, Massachusetts Avenue, 48<sup>th</sup> Street, and the Spring Valley Exxon])**

**THIS CASE IS OF INTEREST TO ANC 3E and ANC 3D**

On May 6, 2019, Valor Development, LLC (the "Applicant"), on behalf of Apex Real Estate Company, American University, and FW DC-Spring Valley Shopping Center LLC, submitted an application to the Office of Zoning for a consolidated planned unit development ("PUD") for a new mixed-use development project (the "Project") located on property consisting of Lots 802, 803, 806, and 807 in Square 1499 (the "Project Site"). The application was submitted in accordance with Subtitle X, Chapter 3 and Subtitle Z of Title 11 DCMR (the "Zoning Regulations" to which all references herein are made unless otherwise specified).

The Office of Planning provided its report in support of setting the application down for a public hearing on May 31, 2019. On June 10, 2019, the Commission voted to set down the application for a public hearing. The Applicant provided its prehearing statement on June 17, 2019.

The Project Site, comprising approximately 160,788 square feet of land area, is bounded by Yuma Street on the north; Massachusetts Avenue on the south; 48<sup>th</sup> Street on the east; and the Spring Valley Exxon station on the west. The lots comprising the Project Site are existing assessment and taxation ("A&T") lots. A&T Lots 802 and 803, currently owned by FW DC-Spring Valley Shopping Center, LLC, are improved with the historic Massachusetts Avenue Parking Shops (the "MAPS") building. A&T Lot 806, currently owned by American University, is improved with the former American University Law School (the "AU Building"). Finally, A&T Lot 807, currently owned by Apex Real Estate Company, is improved with a vacant grocery store building, other retail and service uses, and above and below-grade parking. The Project Site is zoned MU-4, a zone district in which residential and retail uses are permitted as a matter of right.

The Project proposes to retain the existing MAPS and AU Building on Lots 802, 803, and 806, and to construct a new apartment building ("Building 1") and five attached row dwellings ("Townhomes 1-5") on Lot 807. The Project proposes that Building 1 have a maximum height of approximately 43 feet and 6 inches, plus a penthouse with a maximum height above the roof level of 12 feet above the habitable portion and 15 feet above the mechanical portion. The lower-

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<sup>1</sup> This case was previously scheduled for hearing on Thursday, September 19, 2019.

level of Building 1 would contain a residential lobby and dwelling units, retail, amenity space, and access to loading and below-grade parking. The remainder of Building 1, including the penthouse, would contain residential dwelling units and amenity space. Townhomes 1-5 would be located to the south of Building 1 and would have a maximum height ranging between approximately 36 feet, 8 inches and 37 feet, plus a 10-foot penthouse providing access to a roof deck. The proposed PUD would total approximately 430,853 square feet of gross floor area ("GFA") (2.68 floor area ratio ("FAR")), including the existing MAPS and AU Building, with approximately 214,094 square feet of GFA (1.33 FAR) of new residential use and approximately 216,759 square feet of GFA (1.35 FAR) of new and existing nonresidential use. The total amount of new GFA proposed in the PUD is approximately 234,629 square feet (214,094 square feet of residential GFA, 20,535 square feet of nonresidential GFA).

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

### **How to participate as a witness.**

Interested persons or representatives of organizations may be heard at the public hearings. The Commission 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.

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ለመተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the action to amend Chapter 62 (Nursing Home Administration) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend the continuing education requirements for nursing home administrators to include continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on March 8, 2019 at 66 DCR 2762. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on April 10, 2019 and will be effective upon publication in the *D.C. Register*.

**Chapter 62, NURSING HOME ADMINISTRATION, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 6206, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:**

**Subsection 6206.4 is amended to read as follows:**

6206.4 To qualify for the renewal of a license, an applicant shall have completed, during the two (2)-year period preceding the date the license expires, forty (40) hours of approved continuing education credit, which shall include:

- (a) At least ten (10) hours of the required forty (40) hours shall have been in one (1) or more of the following areas:
  - (1) Staff management;
  - (2) Continuity in assigning the same nursing staff to the same residents as often as practicable;
  - (3) Creating a resident-centered environment;
  - (4) Activities of daily living and instrumental activities of daily living;
  - (5) Wound care;
  - (6) Pain management;

- (7) Prevention and treatment of depression;
  - (8) Prevention of pressure ulcers;
  - (9) Urinary incontinence management;
  - (10) Discharge planning and community transitioning;
  - (11) Fall prevention;
  - (12) Geriatric social services and individual competency; or
  - (13) Behavior management;
- (b) An applicant seeking to renew his or her license on or after June 30, 2018 shall also have completed two (2) hours of LGBTQ continuing education; and
- (c) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Subsection 6206.5 is amended to read as follows:**

6206.5 To qualify for a license, a person in inactive status within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11) (2016 Repl.) who submits an application to reactivate a license shall submit proof of having completed twenty (20) hours of approved continuing education credit for each year after June 30, 2003 that the applicant was not actively licensed, up to a maximum of one hundred (100) hours. At least twenty (20) hours of approved continuing education credit shall have been completed in the one (1)-year period prior to the application date and ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Subsection 6206.6 is amended to read as follows:**

6206.6 To qualify for a license, an applicant for reinstatement of a license shall submit proof of having completed twenty (20) hours of approved continuing education credit for each year after June 30, 2003 that the applicant was not licensed, up to a maximum of one hundred (100) hours. At least twenty (20) hours of approved continuing education credit shall have been completed in the one (1)-year period prior to the application date and ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health

priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Subsection 6206.9 is amended to read as follows:**

6206.9 A licensee who is selected to participate in the Board's continuing education audit shall, within thirty (30) days after being deemed served notice of the selection, submit proof pursuant to § 6206.7 of having completed the required approved continuing education credits during the two (2)-year period immediately preceding the date the license expires.

**Section 6299, DEFINITIONS, is amended as follows:**

**Subsection 6299.1 is amended as follows:**

**The following definition is added before the definition of "LGBTQ continuing education":**

**Director** – The Director of the Department of Health, or the Director's designee.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the action to amend Chapter 78 (Audiology) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend the continuing education requirements for audiologists to include continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on February 1, 2019 at 66 DCR 1502. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on April 10, 2019 and will be effective upon publication in the *D.C. Register*.

**Chapter 78, AUDIOLOGY, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 7808, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:**

**Subsection 7808.2 is amended to read as follows:**

- 7808.2 To qualify for the renewal of a license, an applicant shall have completed, during the two (2)-year period preceding the date the license expires, twenty (20) hours of approved continuing education, which shall include the following:
- (a) One (1) hour of ethics;
  - (b) Two (2) hours of LGBTQ continuing education; and
  - (c) Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Subsection 7808.3 is amended to read as follows:**

- 7808.3 Notwithstanding the requirement of §§ 7808.2 and 7906.2 of chapter 79 of this title, an applicant for dual licensure renewal may qualify for the renewal of both licenses by completing thirty (30) hours of approved continuing education during

the two (2) year-period preceding the date the licenses expire, which shall include:

- (a) One (1) hour of ethics;
- (b) Two (2) hours of LGBTQ continuing education;
- (c) Five (5) hours of each of the audiology and speech-language pathology disciplines; and
- (d) Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

## DEPARTMENT OF HEALTH

**NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the final action to amend Chapter 101 (Audiology Assistants) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend the continuing education requirements for audiology assistants to include continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published in the *D.C. Register* as a proposed rulemaking on February 22, 2019 at 66 DCR 2374. No comments were received and there has been no change to the rule as proposed. This rule will be effective upon publication in the *D.C. Register*.

**Chapter 101, AUDIOLOGY ASSISTANTS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 10108, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:**

**Subsection 10108.2 is amended to read as follows:**

10108.2 To be eligible for the renewal of a registration, an applicant shall have completed, during the two (2)-year period preceding the date the registration expires, ten (10) hours of approved continuing education, which shall include the following:

- (a) One (1) hour of ethics;
- (b) Two (2) hours of LGBTQ continuing education; and
- (c) Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Section 10199, DEFINITIONS, is amended as follows:**

**Subsection 10199.1 is amended as follows:**

**The following definitions are added before the definition of “Registration Cycle”:**

**Director** – The Director of the Department of Health, or the Director’s

designee.

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



**DEPARTMENT OF HEALTH****NOTICE OF FINAL RULEMAKING**

The Director of the Department of Health, pursuant to Sections 6 and 14 of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.05 & 7-1671.13 (2018 Repl.)); Section 4902(d) of the Department of Health Functions Clarifications Act of 2001, effective October 3, 2001 (D.C. Law 14-28; D.C. Official Code § 7-731(d) (2018 Repl.)); and Mayor's Order 2011-71, dated April 13, 2011, hereby gives notice of the adoption of the following amendments to Chapters 50 (Registration, Licensing, and Enforcement of Cultivation Centers and Dispensaries), 51 (Registration and Permit Categories), 52 (Registration Limitations), 53 (General Registration Requirements), 54 (Registration Applications), 55 (Registration Changes), 56 (General Operating Requirements), 57 (Prohibited and Restricted Activities), 59 (Records and Reports), and 99 (Definitions), and the addition of a new Chapter 64 (Testing Laboratories), to Subtitle C (Medical Marijuana) of Title 22 (Health) of District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to implement regulations governing the registration, regulation, and operation of medical marijuana testing laboratories in the District of Columbia.

This rulemaking was published in the *D.C. Register* on February 8, 2019 at 66 DCR 001848. No comments were received during the allotted thirty (30) day time period. No changes have been made to the document. Following the required period of Council review, the rules were deemed approved by the D.C. Council on March 7, 2019. These final rules were adopted April 24, 2019 and will be effective upon publication of this notice in the *D.C. Register*.

**Chapter 50, REGISTRATION, LICENSING, AND ENFORCEMENT OF CULTIVATION CENTERS AND DISPENSARIES, of Title 22-C DCMR, MEDICAL MARIJUANA, is amended as follows:**

**The title of Chapter 50 is amended to read as follows:**

**CHAPTER 50            REGISTRATION, LICENSING, AND ENFORCEMENT OF  
CULTIVATION CENTERS, DISPENSARIES, AND TESTING LABORATORIES**

**Section 5000, MEASURING DISTANCES, is amended by amending § 5000.1 to read as follows:**

5000.1            In establishing the distance between one (1) or more places, (such as the actual distance of a cultivation center, dispensary, or testing laboratory from a school or recreation center, as defined in the Act), the distance shall be measured linearly by the Department and shall be the shortest distance between the property lines of the places.

**Section 5002, PERMISSIBLE ACTIVITIES AND LIMITATIONS ON CULTIVATION CENTERS AND DISPENSARIES, is amended as follows:**

**The title of § 5002 is amended to read as follows:**

**5002 PERMISSIBLE ACTIVITIES AND LIMITATIONS ON CULTIVATION CENTERS, DISPENSARIES, AND TESTING LABORATORIES**

A new § 5002.3 is added to read as follows:

- 5002.3 A testing laboratory registered to operate in the District may:
  - (a) Possess medical marijuana and medical marijuana products for the purpose of testing the contents; and
  - (b) Collect samples of medical marijuana and medical marijuana products from a cultivation center, and transport the samples from the cultivation center to the testing laboratory for the purpose of testing the samples.

**Section 5003, NON-TRANSFERABILITY OF LOCATIONS AND OWNERSHIP, is amended to read as follows:**

**5003 LOCATIONS AND OWNERSHIP**

- 5003.1 An application for a dispensary, cultivation center, or testing laboratory registration shall identify the proposed location of the dispensary, cultivation center, or testing laboratory by street mailing address, including suite or unit number if applicable. No post office box numbers shall be permitted. An applicant shall not be permitted to alter, change, or substitute the proposed location of the dispensary, cultivation center, or testing laboratory after the application has been submitted.
- 5003.2 A registration for a dispensary, cultivation center, or testing laboratory shall be issued for the specific location identified on the application, and is valid only for the owner, premises, and name designated on the registration and the location for which it is issued.
- 5003.3 [Repealed].
- 5003.4 An application for a dispensary, cultivation center, or testing laboratory registration shall clearly identify the individual applicant, partnership or limited liability company applicant, or corporate applicant as required under this subtitle. An applicant shall not be permitted to change the proposed ownership or controlling interest of the entity after the application has been submitted.

- 5003.5 A registration for a dispensary, cultivation center, or testing laboratory and the authorization to apply for the registration upon approval by the Department, shall be issued for the specific individual applicant, partnership or limited liability company applicant, or corporate applicant as identified in the application.
- 5003.6 [Repealed].
- 5003.7 A dispensary, cultivation center, or testing laboratory registration shall not be leased, or subcontracted, in whole or in part.

**Chapter 51, REGISTRATION AND PERMIT CATEGORIES, is amended as follows:**

**Section 5101, RENEWAL PERIODS, is amended by amending §§ 5101.3 and 5101.4 to read as follows:**

- 5101.3 In addition to the initial application, the Mayor shall provide all Advisory Neighborhood Commissions (ANCs) located in the affected ward thirty (30) days for public comment once every three (3) years on an applicant for a dispensary, cultivation center, or testing laboratory's renewal, beginning with the third renewal.
- 5101.4 The notice to the ANCs set forth in § 5101.3 of this chapter on a third year renewal application shall be provided to the ANCs not later than ninety (90) days before a registration is renewed. The Department shall renew the registration or inform the applicant in writing of his intent not to renew the registration within sixty (60) days following the conclusion of the ANC thirty (30) day comment period.

**Section 5102, EXTENSION OF EXPIRATION DATES OF PROTESTED REGISTRATIONS, is amended by amending § 5102.1 to read as follows:**

- 5102.1 Unless a registration is otherwise summarily suspended under this subtitle, the registration of a cultivation center, dispensary, or testing laboratory that has received written notice of the Department's intent not to renew the registration shall continue in effect until such time as the Department has taken final action on the registration.

**Section 5107, NOTICE TO ADVISORY NEIGHBORHOOD COMMISSIONS, is amended by amending §§ 5107.1 and 5107.2 to read as follows:**

- 5107.1 Upon the initial selection of a completed application by the panel, a third year renewal, or an application to transfer the location of a dispensary, cultivation center, or testing laboratory to a new location, the Director shall give written notice through the mail of the registration application to all ANCs in the affected ward. Notice shall be given by the Director to all ANCs in the affected ward at least ninety (90) days prior to the approval of a location for a dispensary,

cultivation center, or testing laboratory, and shall state that the ANCs must submit their comments to the Director not later than thirty (30) days after receiving the notice.

5107 .2 The written notice shall contain the legal and trade name of the applicant, the street address of the establishment for which registration is sought, the type of registration sought, and a description of the nature of the operation the applicant has proposed, including the proposed hours of operation.

**Section 5108, POSTED NOTICE TO PUBLIC, is amended by changing the title to read as follows:**

**5108 POSTED NOTICE TO THE PUBLIC**

**And by amending § 5108.1 to read as follows:**

5108.1 The Director shall post two (2) notices indicating that an application for a cultivation center, dispensary, or testing laboratory registration has been filed in conspicuous places on the outside of the establishment’s proposed location for the duration of the ANCs thirty (30) day comment period.

**Section 5109, COMMENTS FROM ANCS LOCATED IN THE AFFECTED WARD, is amended by amending § 5109.1 to read as follows:**

5109.1 Comments submitted by an ANC located in the affected ward for consideration shall relate to the ANC’s concerns or support regarding the proposed location including but not limited to:

- (a) The potential adverse impact of the proposed location to the neighborhood;
- (b) An overconcentration or lack of cultivation centers, dispensaries, or testing laboratories in the affected ward; and
- (c) Its proximity to substance abuse treatment centers, day care centers, and halfway houses.

**Section 5110, NON-TRANSFERABLE REGISTRATION CARDS, is amended by amending §§ 5110.1 and 5110.2 to read as follows:**

5110.1 All persons required to register with the Department shall receive and wear on their person, while working in a restricted access area at a cultivation center, dispensary, or testing laboratory, a non-transferable uniform registration identification card from the Department. It shall be a violation of this subtitle for a person to not wear their non-transferable registration identification card while

working in a restricted access area of a cultivation center, dispensary, or testing laboratory.

5110.2 The non-transferable registration card shall be presented by a manager, director, officer, member, incorporator, agent and employee of a cultivation center, dispensary, or testing laboratory to law enforcement or a Department investigator to confirm that the person is authorized to cultivate, dispense, distribute, possess, test, or transport medical marijuana, or manufacture, possess, or distribute paraphernalia.

**Chapter 52, REGISTRATION LIMITATIONS, is amended as follows:**

**Section 5200, LIMITATION ON THE NUMBER OF DISPENSARIES AND CULTIVATION CENTERS, is amended as follows:**

**The title of § 5200 is amended to read as follows:**

**5200 LIMITATION ON THE NUMBER OF DISPENSARIES, CULTIVATION CENTERS, AND TESTING LABORATORIES**

**Subsections 5200.3 and 5200.4 are amended to read as follows:**

5200.3 The number of testing laboratories registered to operate in the District of Columbia shall not exceed two (2).

5200.4 Nothing in this subtitle shall require the Department to issue all of the available registrations to operate a dispensary, cultivation center, or testing laboratory.

**Section 5201, REGISTRATION APPLICATIONS NEAR SCHOOLS AND RECREATION CENTERS, is amended by amending § 5201.1 to read as follows:**

5201.1 A dispensary, cultivation center, or testing laboratory shall not locate within three hundred feet (300 ft.) of a preschool, primary or secondary school, or recreation center.

**Chapter 53, GENERAL REGISTRATION REQUIREMENTS, is amended as follows:**

**Section 5300, DENIAL OF REGISTRATION FOR VIOLATIONS OF LAW, is amended by amending § 5300.1 to read as follows:**

5300.1 The Director may deny registration to an applicant if evidence shows that the applicant has permitted conduct at the cultivation center, dispensary, or testing laboratory which is in violation of this subtitle.

**Section 5301, CERTIFICATE OF OCCUPANCY AND PERMITS, is amended by amending § 5301.1 to read as follows:**

5301.1 A registration may not be issued for a cultivation center, dispensary, or testing laboratory unless the applicant obtains a valid certificate of occupancy for the premises in which the business for which the registration is sought is located, and is also the holder of all other licenses and permits required by law or regulation for that business. A registration for a cultivation center, dispensary, or testing laboratory shall not be issued for any premises located within a residentially zoned district.

**Section 5302, REGISTRATION APPROVAL BEFORE ISSUANCE OF CERTIFICATE OF OCCUPANCY, is amended by amending § 5302.1 to read as follows:**

5302.1 The Director is authorized, in its discretion, to approve the granting of a registration for a cultivation center, dispensary, or testing laboratory, subject to all other requirements of the Act or this subtitle, to an applicant prior to the issuance of a certificate of occupancy for the building in which the registered premises shall be located, if the Director finds to his or her satisfaction the following:

- (a) That an applicant for registration has entered into a *bona fide* agreement with the owner of a building proposed to be constructed or remodeled;
- (b) That, under the *bona fide* agreement, the applicant has agreed to lease, purchase, or otherwise occupy all or a portion of the building for the applicant's use in carrying on the business which would be authorized by the registration;
- (c) That the agreement provides that all or the portion of the proposed building to be occupied for business purposes registered under this chapter is to be constructed or remodeled in accordance with specifications set forth in the agreement;
- (d) That the agreement describes the quarters as reasonably adequate and appropriate for the business to be carried on under the authority of the registration;
- (e) A zoning determination letter issued by DCRA, which reflects that the zoning of the premises to be registered will allow the issuance of the registration; and
- (f) That the applicant shall not engage in the purchase, sale, possession, or testing of medical marijuana unless and until a certificate of occupancy and all other business licenses have been issued for the business.

**Section 5303, FAILURE TO OPEN OR OPERATE, is amended to read as follows:**

**5303 FAILURE TO OPEN OR OPERATE**

- 5303.1 A registration for a dispensary, cultivation center, or testing laboratory shall be returned to the Director if the dispensary, cultivation center, or testing laboratory fails to open for business within one hundred twenty (120) days after the registration has been issued, except that the Director may grant an extension at his or her discretion for good cause shown.
- 5303.2 A registration for a dispensary, cultivation center, or testing laboratory shall be returned to the Director if the dispensary, cultivation center, or testing laboratory fails to operate for any reason for more than one hundred twenty (120) consecutive days after it has opened for business.

**Chapter 54, REGISTRATION APPLICATIONS, is amended as follows:**

**Section 5401, OPEN APPLICATION PERIOD AND REQUIRED LETTER OF INTENT, is amended to read as follows:**

**5401 OPEN APPLICATION PERIOD AND REQUIRED LETTER OF INTENT**

- 5401.1 Applications for a new cultivation center, dispensary, or testing laboratory registration shall only be accepted by the Director during the open application period as specified by the Director by publishing a Notice in the *D.C. Register*; such period shall not be extended.
- 5401.2 Prior to the submission of a formal application for a new cultivation center, dispensary, or testing laboratory registration, the prospective applicant shall submit a Letter of Intent to the Director or a designee. The Director shall only accept Letters of Intent during the time period specified by the Director by Notice in the *D.C. Register*; such period shall not be extended.
- 5401.3 The purpose of the Letter of Intent is to formally notify the Director that an application for a cultivation center, dispensary, or testing laboratory registration will be forthcoming.
- 5401.4 The Letter of Intent shall include at least the following:
- (a) The individual's name, or the organization, corporation, company name of the prospective applicant, and if the applicant is an organization, the full name and title of the primary contact;
  - (b) The mailing address, which shall not be a post office box number, daytime telephone number, and email address of the applicant or primary contact person if not the same person;

- (c) The type of registration the prospective applicant may apply for;
- (d) A statement, not to exceed one hundred (100) words, defining the prospective applicant's intent to submit an application for a cultivation center, dispensary, or testing laboratory; and
- (e) The dated signature of the prospective applicant.

5401.5 At the start of each open application period for new cultivation center, dispensary, or testing laboratory registrations, the Director shall publish a notice in the *D.C. Register* setting forth the process for submission of the applications, which shall include:

- (a) The opening and ending dates for the submission of Letters of Intent to the Director by all individuals and entities who intend to apply for cultivation center, dispensary, or testing laboratory registrations;
- (b) The opening and ending dates for the submission of applications for a cultivation center, dispensary, or testing laboratory registration by those individuals and entities that have timely submitted Letters of Intent to the Director, meeting the requirements set forth in § 5401.4 of this chapter;
- (c) A statement that only the individuals and entities that timely submit Letters of Intent to the Director, meeting the requirements set forth in § 5401.4 of this chapter, shall be permitted to submit an application for a cultivation center, dispensary, or testing laboratory registration;
- (d) The address for submission to the Director; and
- (e) The process for obtaining application materials from the Director.

5401.6 The Notice required in § 5401.5 of this chapter shall appear, at a minimum, in the *D.C Register* and on the Department's website.

5401.7 Applicants shall file a separate Letter of Intent and a separate application for each registration sought.

5401.8 An applicant may apply for more than one (1) cultivation center registration or testing laboratory registration, but may apply for only one (1) dispensary registration.

5401.9 An applicant for a testing laboratory shall not apply for or have a cultivation center or dispensary registration.



5401.10 Only the individuals and entities that timely submitted Letters of Intent to the Director, and received a letter of acceptance from the Department, shall be permitted to submit an application for a cultivation center, dispensary, or testing laboratory registration.

**Section 5402, SELECTION PROCESS, is amended to read as follows:**

**5402 SELECTION PROCESS**

5402.1 For cultivation center and dispensary registration applicants, a six (6) member panel shall be convened consisting of one (1) representative from the Department, District Department of the Environment (DDOE), Office of the Attorney General (OAG), Department of General Services Protective Services Division (PSD), DCRA, and a consumer representative or patient advocate, selected by the Director, to evaluate and score each application.

5402.2 For testing laboratory applicants, a seven (7) member panel shall be convened consisting of one (1) representative from the Department, DDOE, OAG, PSD, DCRA, Department of Forensic Science (DFS), and a consumer representative or patient advocate, selected by the Director, to evaluate and score each application.

5402.3 For cultivation center and dispensary registration applicants, each panel member shall score each application on a two hundred and fifty (250) point base scale. An applicant's overall score is based upon the quality of the applicant's submission, and the ANC comments submitted in accordance with § 5109 of this subtitle, by discarding the highest and lowest panel member scores, adding up the four (4) remaining scores, and dividing that total by four (4).

5402.4 For testing laboratory applicants, each panel member shall score each application on a two hundred and fifty (250) point base scale. An applicant's overall score is based upon the quality of the applicant's submission, and the ANC comments, by discarding the highest and lowest panel member scores, adding up the five (5) remaining scores, and dividing that total by five (5).

5402.5 Each applicant may also be considered to receive bonus points as follows:

- (a) An applicant for a cultivation center, dispensary, or testing laboratory registration shall receive twenty (20) bonus points if the applicant submits proof of being a certified business enterprise at the time of submission of its application for a registration;
- (b) A dispensary applicant may also submit an educational materials plan, which shall be worth up to twenty (20) additional bonus points;
- (c) A cultivation center applicant may also submit an environmental plan, which shall be worth up to twenty (20) additional bonus points; and

- (d) A testing laboratory applicant may also submit an environmental plan, which shall be worth up to twenty (20) additional bonus points.

5402.6 The maximum points for each criterion are indicated in § 5403 of this subtitle. To be considered eligible for further review, an application must have at least one hundred and fifty (150) points prior to the ANC review. The panel shall set forth through consensus comments the basis of the scoring decision for each criterion.

5402.7 Prior to seeking ANC review, the panel shall calculate a provisional score based upon the then available points and bonus points. Each applicant's provisional score shall be calculated by discarding the highest and lowest panel member scores, adding up the remaining scores, and dividing that total by the number of scores that remain. The provisional scores shall be ranked from highest to lowest and the Panel shall provisionally select not more than the twenty (20) highest ranking cultivation center applicants, and not more than the ten (10) highest ranking dispensary applicants, for ANC review. The provisional selection decision shall be made in writing to the successful applicants. Notice shall also be provided by the Director to applicants that are not selected. The Notice shall advise the applicants of the following:

- (a) The applicant's total score;
- (b) Whether or not the applicant achieved the requisite one hundred and fifty (150) points needed to move forward in the selection process;
- (c) The summary of the panel's consensus comments that formed the basis for the applicant's score;
- (d) Whether the panel's consensus comments were adopted by the Director and are the findings of fact which are the basis of and support the Director's rationale for the decision. If the application was denied, the Notice shall also address whether the consensus comments were adopted by the Director and are the findings of fact which are the basis of and support the Director's rationale for the decision to deny the applicant's registration application, or whether the denial was based upon other reasoning. If based upon another reason, that reason shall be clearly articulated in the notice letter; and
- (e) The applicant's right to judicial review in the D.C. Superior Court.

5402.8 The applications provisionally selected by the panel shall be placarded by the Director with notice given to each ANC in the affected Ward, and shall state that the ANCs must submit their comments to the Director not later than thirty (30) days after receiving the notice.

- 5402.9 The ANC comments received during the comment period shall then be forwarded to the panel, which shall have thirty (30) days to evaluate and score the ANC comments. Only the official comments of the ANC that were voted upon and approved by the ANC as a whole shall be accepted by the panel for scoring. All affected ANCs that do not timely submit comments shall be scored by the panel as if the ANCs submitted neutral comments. The ANC comments shall be worth up to fifty (50) points of the total scoring for each provisionally selected applicant.
- 5402.10 The panel shall prepare a report of the final proposed selections based upon the applicant scores, and then submit it to the Director. The report shall assign a numerical rank for each applicant based on the application's final score, include a narrative of the basis for each of the panel's final proposed selections that includes the consensus comments that formed the basis of the scoring decision for each criterion, and shall include not more than the ten (10) highest scoring cultivation center applicants, not more than the five (5) highest scoring dispensary applicants, and not more than the five (5) highest scoring testing laboratory applicants.
- 5402.11 In the event that two (2) or more applicants for a cultivation center registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants receive the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the cultivation plan category.
- 5402.12 In the event that two (2) or more applicants for a dispensary registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the security plan category. In the event that the same two (2) applicants receive the same score in the security plan category, the panel shall give priority in rank to the applicant that received the highest score in the product safety and labeling plan category.
- 5402.13 In the event that two (2) or more applicants for a testing laboratory registration receive the same total score, the panel shall give priority in rank to the applicant that received the highest score in the laboratory testing plan category. In the event that the same two (2) applicants receive the same score in the laboratory testing plan, the panel shall give priority rank to the applicant that received the highest score in the security plan category.
- 5402.14 Except as provided by § 6000 of this subtitle, the Director shall adopt the panel's report and findings and select the highest scoring applicant for a cultivation center, dispensary, or testing laboratory registration. The selection decision shall be made in writing to the successful applicants. Notice shall also be provided by the Director to applicants that are not selected. The Notice shall advise the applicants of the following:

- (a) The applicant's total score;
- (b) Whether or not the applicant was selected and deemed eligible for registration;
- (c) Whether the applicant(s) that was selected and deemed eligible for registration was the highest scoring applicant(s) or otherwise set forth the ranking of the selected applicant(s);
- (d) The summary consensus comments that formed the basis for the applicant's score;
- (e) Whether the panel's consensus comments were adopted by the Director and are the findings of fact which are the basis of and support the Director's rationale for the decision. If the application was denied, the Notice shall also address whether the consensus comments and final ranking were adopted by the Director and are the findings of fact which are the basis of and support the Director's rationale for the decision to deny the applicant's registration application, or whether the denial was based upon other reasoning. If based upon another reason, that reason shall be clearly articulated in the notice letter; and
- (f) The applicant's right to judicial review in the D.C. Superior Court.

5402.15 In the event that a selected cultivation center, dispensary, or testing laboratory application is subsequently denied by the Director pursuant to § 6000.2 of this subtitle, the applicant who received the next highest score from the panel who was not initially accepted shall be selected.

5402.16 An applicant submitting a cultivation center or dispensary registration application shall be required to submit the eight thousand dollar (\$8,000) nonrefundable application fee at the time the cultivation center or dispensary application is filed with the Director.

5402.17 An applicant submitting a testing laboratory registration application shall be required to submit the three thousand five hundred dollar (\$3,500) nonrefundable application fee at the time the testing laboratory application is filed with the Director.

**Section 5403, SELECTION CRITERIA, is amended as follows:**

**Subparagraph 5403.1(a)(2)(B) is amended to read as follows:**

5403.1

...

(a) Dispensary Criteria:

...

(2) Proposed Staffing Plan and Knowledge of District and federal law relating to marijuana (Up to twenty (20) points):

...

(B) Measure 2: The applicant shall provide an operations manual that demonstrates compliance with the District’s medical marijuana rules. The operations manual shall also contain information demonstrating the applicant’s knowledge of the District and federal laws and regulations relating to medical marijuana. The applicant shall also submit a notarized written statement on a form provided by the Mayor indicating that they have read the Act and this subtitle and have knowledge of District and federal law relating to marijuana. (up to ten (10) points);

**A new Subparagraph 5403.1(a)(9) is added to read as follows:**

5403.1

...

(a) Dispensary Criteria:

...

(9) Certified Business Enterprise (twenty (20) bonus points):

(A) Measure 1: The applicant shall provide documentation, at the time the application is submitted, that it is registered as a certified business enterprise (CBE) by the Department of Small and Local Business Development.

**Subparagraph 5403.1(b)(2)(B) is amended to read as follows:**

5403.1

...

(b) Cultivation Center Criteria:

...

(2) Proposed Staffing Plan and Knowledge of District and federal law relating to marijuana (Up to twenty (20) points):

...

- (B) Measure 2: The applicant shall provide an operations manual that demonstrates compliance with the District’s medical marijuana rules. The operations manual shall also contain information demonstrating the applicant’s knowledge of the District and federal laws and regulations relating to medical marijuana. The applicant shall also submit a notarized written statement on a form provided by the Mayor indicating that they have read the Act and this subtitle and have knowledge of District and federal law relating to marijuana. (up to ten (10) points);

**A new Subparagraph 5403.1(b)(9) is added to read as follows:**

5403.1

...

- (b) Cultivation Center Criteria:
  - (9) Certified Business Enterprise (twenty (20) bonus points)
    - (A) Measure 1: The applicant shall provide documentation, at the time the application is submitted, that it is registered as a certified business enterprise (CBE) by the Department of Small and Local Business Development.

**A new Paragraph 5403.1(c) is added to read follows:**

5403.1

...

- (c) Testing Laboratory Criteria:
  - (1) Suitability of the Proposed facility (Up to fifty (50) points)
    - (A) Measure 1: The applicant demonstrates that the proposed facility is suitable for testing medical marijuana in an environmentally safe manner, and is adequate in size to accommodate testing and sample retention. (up to twenty-five (25) points); and
    - (B) Measure 2: The applicant demonstrates that the proposed facility is suitable to meet the cultivation centers’ needs for testing a variety of medical marijuana products in a timely manner, and maintaining documented chain of custody (up to twenty-five (25) points);
  - (2) Proposed Staffing Plan (Up to forty (40) points):

- (A) Measure 1: The applicant fully describes a staffing plan that will provide and ensure that personnel meets the requisite qualifications set forth in the regulations, and has demonstrated knowledge, experience, training, and certification to perform in the designated positions and roles and to conduct the required analytical processes, operations, and testing; ensure quality control and quality assurance, adequate staffing and experience during business hours, and adequate security and theft prevention; and maintain chain of custody, and confidential information. (up to twenty (20) points); and
  - (B) Measure 2: The applicant shall provide an operations manual that demonstrates compliance with the District's medical marijuana rules. The operations manual shall also fully describe a plan to provide and ensure that a system is in place to evaluate and document personnel's competency in performing authorized tests, and to evaluate and document that personnel demonstrate acceptable performance on precision, accuracy, specificity, reportable ranges, blanks, and unknown challenge samples. (up to twenty (20) points).
- (3) Laboratory testing plan (Up to fifty (50) points)
- (A) Measure 1: Applicant demonstrates knowledge, experience, training, and applicable certifications in laboratory testing techniques. (up to twenty (20) points);
  - (B) Measure 2: Applicant demonstrates knowledge of and fully describes plan to provide and ensure quality assurance, quality control, proficiency testing, analytical processes, chain of custody, sample retention, space, recordkeeping, results reporting, and corrective action protocols (up to twenty (20) points); and
  - (C) Measure 3: Applicant fully describe the method(s) used to test medical marijuana and medical marijuana products, and report testing results; this includes but is not limited to SOPS (up to ten (10) points);
- (4) Security Plan (Up to thirty (30) points): The applicant shall submit a security plan which shall include the following:
- (A) Measure 1: The applicant's security plan fully demonstrates the applicant's ability to prevent the theft or diversion of

- medical marijuana and how the plan will assist with MPD and Department enforcement. Specifically, it shall evidence compliance with all items and include all submittals required in § 5405.2 and § 5610 of this subtitle. (up to ten (10) points);
- (B) Measure 2: The applicant demonstrates that its plan for record keeping, tracking and monitoring inventory, and security and other policies and procedures will discourage unlawful activity (up to ten (10) points);
  - (C) Measure 3: The applicant's security plan shall describe the enclosed, locked facility that will be used to secure or store medical marijuana, including when the location is closed for business, and its security measures, and the steps taken to ensure that medical marijuana is not visible to the public. (up to five (5) points); and
  - (D) Measure 4: The security plan describes how it intends to prevent the diversion of medical marijuana and includes the applicant's after action plan for any incidents that may trigger enforcement under District of Columbia law or regulations. The plan shall also describe the applicant's plan to coordinate with and dispose of unused or surplus medical marijuana with MPD. (up to five (5) points);
- (5) Knowledge of District and federal law relating to marijuana. (Up to ten (10) points):
- (A) Measure 1: The applicant shall demonstrate knowledge of the District and federal laws and regulations relating to medical marijuana. The applicant shall also submit a notarized written statement on a form provided by the Mayor indicating that they have read the Act and this title and have knowledge of District and federal law relating to marijuana. (up to ten (10) points);
- (6) Applicant's business plan and services to be offered (Up to twenty (20) points):
- (A) Measure 1: The applicant shall provide a business plan that describes how the testing laboratory will operate on a long-term basis. This shall include the applicant providing a detailed description about the amount and source of the equity and debt commitment for the proposed testing laboratory that demonstrates the immediate and long-term



- financial feasibility of the proposed financing plan, the relative availability of funds for capital and operating needs, and the financial capability to undertake the project. (up to five (5) points);
- (B) Measure 2: The applicant or its directors, officers, members, or incorporators demonstrate experience in business management and/or having medical industry or laboratory experience. (up to ten (10) points); and
  - (C) Measure 3: The business plan demonstrates a start-up timetable which provides an estimated time from registration of the testing laboratory to full operation, and the assumptions used for the basis of those estimates. (up to five (5) points);
- (7) Advisory Neighborhood Commission comments (Up to fifty (50) points);
- (A) Measure 1: The ANCs' concerns or support regarding the potential adverse impact of the proposed location to the neighborhood. (up to twenty (20) points);
  - (B) Measure 2: The ANCs' concerns or support regarding an overconcentration or lack of testing laboratories and the number of cultivation centers in the affected ward. (up to ten (10) points); and
  - (C) Measure 3: The ANCs' concerns or support regarding the proposed location's proximity to substance abuse treatment centers, day care centers, and halfway houses. (up to twenty (20) points);
- (8) Environmental Plan (Up to twenty (20) bonus points):
- (A) Measure 1: The applicant demonstrates an environmental plan of action to minimize the carbon footprint, environmental impact, and resource needs for the testing of medical marijuana. (up to ten (10) bonus points); and
  - (B) Measure 2: The applicant describes any plans for: (1) the use of alternative energy; (2) the treatment of waste water and runoff; (3) scrubbing or treatment of exchanged air; and (4) the co-location of testing laboratories. (Up to ten (10) bonus points)

- (9) Certified Business Enterprise (up to twenty (20) bonus points)
  - (A) Measure 1: The applicant provides documentation that they are registered as a certified business enterprise (CBE) by the Department of Small and Local Business development, at the time they submit an application. (Twenty (20) bonus points).

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

**5404 APPLICATION FORMAT AND CONTENTS**

5404.1 The business application of a person or entity applying for a cultivation center, dispensary, or testing laboratory registration shall include:

- (a) In the case of an individual applicant, the trade name of the business, if applicable, and the name and address of the individual; in the case of a partnership or limited liability company applicant, the trade name of the business, if applicable, and the names and addresses of each member of the partnership or limited liability company; and in the case of a corporate applicant, the legal name, trade name, place of incorporation, principal place of business, and the names and addresses of each of the corporation's principal officers, directors, and shareholders holding, directly or beneficially, one percent (1%) or more of its common stock;
- (b) The name and address of the owner of the establishment for which the registration is sought and the premises where it is located;
- (c) Whether registration is sought for a cultivation center, dispensary, or testing laboratory;
- (d) A certified surveyor's report setting forth the proximity of the cultivation center, dispensary, or testing laboratory to the nearest public or private, preschool, primary or secondary school or recreation center, and the name of the school or recreation center;
- (e) The size and design of the cultivation center, dispensary, or testing laboratory;
- (f) A detailed description of the nature of the proposed operation, including the following:
  - (1) The location of all restricted access areas; and

- (2) The hours during which the cultivation center, dispensary, or testing laboratory plans to operate;
- (g) An affidavit that complies with D.C. Official Code § 47-2863;
- (h) Documents or other written statements or evidence establishing to the satisfaction of the Director that the person applying for the registration meets all of the qualifications set forth in § 5400.1 of this subsection;
- (i) The applicant shall sign a written statement on a form provided by the Director attesting that the applicant assumes any and all risk or liability that may result under District of Columbia and federal laws from the operation of a medical marijuana cultivation center, dispensary, or testing laboratory. The applicant shall further acknowledge that it understands that the medical marijuana laws and enforcement thereof by the District of Columbia and the Federal government are subject to change at any time and that the District of Columbia shall not be liable as a result of these changes;
- (j) A notarized affidavit attesting to the fact that the applicant is the true and actual owner of the business for which the registration is sought; the applicant intends to carry on the business for the entity identified in the application and not as the agent of any other individual, partnership, association, or corporation not identified in the application; and the registered establishment will be managed by the applicant in person or by a registered manager approved by the Director;
- (k) The applicant shall sign a written statement on a form provided by the Director attesting that the applicant understands and is aware that a cultivation center's, dispensary's, or testing laboratory's registration may be revoked at any time for the convenience of the District pursuant to § 6002 of this subtitle; and
- (l) The applicant shall submit a written and detailed plan for closure of its cultivation center, dispensary, or testing laboratory.

## 5404.2

The applicant shall sign a notarized statement certifying that the application is complete and accurate. Any person who knowingly makes a false statement on an application, or in any accompanying statement under oath that the Department may require, shall be guilty of the offense of making false statements. The making of a false statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Director, constitute sufficient cause for denial of the application or revocation of the registration. The making of false statements shall also constitute the basis for a criminal offense under D.C. Official Code § 22-2405.

- 5404.3 An applicant for a dispensary, cultivation center, or testing laboratory registration shall advise the Department, in the application, as to the source of the funds used to acquire or develop the business for which the registration is sought, and shall provide documentation concerning the source of such funds and copies of closing documents in connection with the purchase of a registered business upon request of the Department.
- 5404.4 [Repealed].
- 5404.5 An applicant for a cultivation center, dispensary, or testing laboratory registration shall also file with the Department plans and specifications for the interior of the building if the building to be occupied is in existence at the time of the application. If the building is not in existence, the applicant shall file a plot plan and a detailed sketch for the interior and the architect's drawing of the building to be constructed.
- 5404.6 The application for an operator of a cultivation center, dispensary, or testing laboratory registration shall specifically recite verbatim each of the following notices:
- (a) **Limitation of Liability** – The District of Columbia shall not be liable to registrant, its employees, agents, business invitees, licensees, customers, clients, family members or guests for any damage, injury, accident, loss, compensation or claim, based on, arising out of or resulting from registrant's participation in the District of Columbia's medical marijuana program, including but not limited to the following: arrest and seizure of persons and/or property, prosecution pursuant to federal laws by federal prosecutors, interruption in registrant's ability to operate its medical marijuana cultivation center, dispensary and/or testing laboratory; any fire, robbery, theft, mysterious disappearance or any other casualty; the actions of any other registrants or persons within the cultivation center, dispensary, or testing laboratory. This Limitation of Liability provision shall survive expiration or the earlier termination of this registration if such registration is granted;
  - (b) **Indemnification, Hold Harmless and Defense Obligations** – Registrant hereby indemnifies and holds the District of Columbia, its officers, directors, employees, affiliates and agents ("Indemnified Parties") harmless and shall defend the Indemnified Parties (with counsel satisfactory to District of Columbia) from and against any and all losses, costs, damages, liabilities, expenses, claims and judgments (including, without limitation, attorney's fees and court costs) suffered by or claimed against the Indemnified Parties, directly or indirectly, based on, arising out of or resulting from:

- (1) Registrant's establishment and operation of a cultivation center, dispensary, or testing laboratory in the District's medical marijuana program;
  - (2) The negligence or willful misconduct of registrant or its employees, contractors, agents, licensees, guests or invitees;
  - (3) Any breach or default by registrant in the performance or observance of its covenants or obligations under this registration; or
  - (4) Any violations of law by of registrant or its employees, contractors, agents, licensees, guests or invitees; and
- (c) **Federal Prosecution** - The United States Congress has determined that marijuana is a controlled substance and has placed marijuana in Schedule I of the Controlled Substance Act. Growing, distributing, and possessing marijuana in any capacity, other than as a part of a federally authorized research program, is a violation of federal laws. The District of Columbia's law authorizing the District's medical marijuana program will not excuse any registrant from any violation of the federal laws governing marijuana or authorize any registrant to violate federal laws.

5404.7

As part of the registration process, every applicant for a cultivation center, dispensary, or testing laboratory registration shall sign a written statement attesting to the following:

- (a) The applicant acknowledges receipt and advisement of the notices set forth in § 5404.6 of this subtitle;
- (b) The applicant agrees to and accepts the limitation of liability against the District, and the requirement to indemnify, hold harmless, and defend the District, as set forth in § 5404.6 of this subtitle;
- (c) The applicant assumes any and all risk or liability that may result under District of Columbia or federal laws arising from the possession, use, cultivation, administration, dispensing, or testing of medical marijuana;
- (d) The applicant understands that the medical marijuana laws and enforcement thereof by the District of Columbia and the Federal government are subject to change at any time; and
- (e) The applicant chooses to sign this attestation willingly and without reservation and is fully aware of its meaning and effect.

- 5404.8 Execution of the attestation set forth in § 5404.7 of this subtitle shall be a required element of each application for a cultivation center, dispensary, or testing laboratory registration.
- 5404.9 The Director shall not permit any applicant for a cultivation center, dispensary, or testing laboratory to make any additions, changes, alterations, amendments, modifications, corrections, or deletions to the application package once it has been submitted to the Department; however, an applicant may be permitted to modify the location of the premises identified on the application pursuant to § 6001.9 of this subtitle.

**Section 5407, CULTIVATION CENTER AND DISPENSARY REGISTRATION ISSUANCE, is amended to read as follows:**

**5407 CULTIVATION CENTER, DISPENSARY, AND TESTING LABORATORY REGISTRATION ISSUANCE**

- 5407.1 A registration for a cultivation center, dispensary, or testing laboratory shall not be issued by the Department until all approvals or assessments required under this subtitle have been obtained from MPD or its designee, DCRA, and the Department.

**Section 5408, DIRECTOR, OFFICER, MEMBER, INCORPORATOR, AND AGENT REGISTRATION REQUIREMENTS, is amended by amending § 5408.2 to read as follows:**

- 5408.2 An applicant for a non-profit or for-profit corporation, partnership, or limited liability company shall identify all of its directors, officers, members, or incorporators on its registration application. An applicant for a dispensary, cultivation center, or testing laboratory may submit simultaneously registration applications for individual directors, officers, members, incorporators and agents at the time its dispensary, cultivation center, or testing laboratory registration application is filed.

**Section 5411, CRIMINAL BACKGROUND CHECKS, is amended by amending § 5411.2 to read as follows:**

- 5411.2 No director, officer, member, incorporator, agent, manager, or employee of a dispensary, cultivation center, or testing laboratory who has access to the medical marijuana at the dispensary, cultivation center, or testing laboratory shall have a felony conviction. However, an individual shall not be disqualified solely for a felony conviction of possession with intent to distribute marijuana that occurred before July 17, 2014.

**Section 5412, REGISTRATION PROHIBITED IN RESIDENTIAL USE DISTRICT, is amended by amending § 5412.1 to read as follows:**

5412.1 No registration shall be issued to a cultivation center, dispensary, or testing laboratory located in a residential-use district as defined in the Zoning Regulations and shown in the official atlases of the Zoning Commission for the District.

**Section 5414, RENEWAL PROCESS, is amended by amending § 5414.1 to read as follows:**

5414.1 The Director shall provide all ANCs in the affected ward with a thirty (30) day comment period prior to renewing a cultivation center, dispensary, or testing laboratory application for a third time. If proper notice has been given to all ANCs in the affected ward, and no objection to the renewal is filed, the Director shall approve the registration application unless the Director finds the applicant’s record of compliance warrants denying the renewal application or there is another legal basis for denial.

**Section 5417, DENIED OR WITHDRAWN APPLICATIONS, is repealed.**

**Section 5418, LIMITATIONS ON SUCCESSIVE APPLICATIONS AFTER DENIAL, is amended by amending § 5418.1 to read as follows:**

5418.1 A second and each subsequent registration application for a cultivation center, dispensary, or testing laboratory that has had its registration revoked by the Director shall not be considered for the same person or persons within five (5) years of the Director’s revocation.

**Chapter 55, REGISTRATION CHANGES, is amended as follows:**

**Section 5500, TRADE NAMES AND CORPORATE NAMES, is amended to read as follows:**

**5500 TRADE NAMES AND CORPORATE NAMES**

5500.1 No dispensary, cultivation center, or testing laboratory registered under the Act shall utilize any name other than that of an individual, including a corporate or trade name, without first obtaining approval from the Department for use of the corporate or trade name.

5500.2 A dispensary, cultivation center, or testing laboratory registered under the Act may file a written request with the Department to add an additional trade name at a location currently authorized for the sale or testing of medical marijuana. The Department, in its discretion, may approve the use of an additional trade name. Any additional trade name approved by the Department shall appear on the establishment's written registration.

- 5500.3 A dispensary, cultivation center, or testing laboratory registered under the Act shall not use or display a trade name, corporate name, or sign bearing the words “pharmacy”, “apothecary”, “drug store”, or other phrase that implies that the practice of any health profession occurs on the premises.
- 5500.4 Any trade name requested by an applicant shall not be identical or confusingly similar to one currently used under a previously issued or existing registration.
- 5500.5 The Mayor shall provide written notice to MPD of any Department approved trade name changes. Such notice shall contain both the previous and current Department approved trade name.
- 5500.6 [Repealed].

**Chapter 56, GENERAL OPERATING REQUIREMENTS, is amended as follows:**

**Section 5600, INSTRUCTION TO REGISTRANTS, is amended by amending § 5600.1 to read as follows:**

- 5600.1 The Department shall develop and furnish to registrants, at the time of issuance of registration, written information describing the laws and regulations applicable to the dispensary, cultivation center, or testing laboratory’s day-to-day operations.

**Section 5602, HOURS OF OPERATION AND SALE, is amended by amending §§ 5602.2 and 5602.3 to read as follows:**

- 5602.2 A registered cultivation center or testing laboratory shall not be open to the public.
- 5602.3 In the event that a registered cultivation center and registered dispensary are located in the same building, the portion of the building occupied by the cultivation center shall be closed to the public.

**New §§ 5602.4 through 5602.9 are added to read as follows:**

- 5602.4 A cultivation center may operate its business twenty-four (24) hours a day.
- 5602.5 A testing laboratory may operate on any day and at any time except between the hours of 9:00 p.m. and 5:00 a.m.
- 5602.6 A registered cultivation center or its contracted agent may deliver to medical marijuana dispensaries on any day and at any time except between the hours of 9:00 p.m. and 7:00 a.m.



- 5602.7 A registered testing laboratory or its contracted agent may collect medical marijuana samples from a cultivation center on any day and at any time except between the hours of 9:00 p.m. and 5:00 a.m.
- 5602.8 A registered cultivation center or testing laboratory shall permit only a registered director, officer, member, incorporator, agent, manager, employee, or government or law enforcement official on the registered premises.
- 5602.9 The Department may further limit the hours of operation for a cultivation center, dispensary, or testing laboratory on a case-by-case basis as a condition of registration in response to written comments received from an ANC in the affected ward, or as the result of the dispensary, cultivation center, or testing laboratory's failure to comply with the Act, or this subtitle.

**Section 5603, LOCKING AND SECURING OF MEDICAL MARIJUANA DURING NON-OPERATING HOURS, is amended by amending §§ 5603.1 and 5603.2 to read as follows:**

- 5603.1 A registered dispensary, cultivation center, or testing laboratory shall keep all medical marijuana located on the premises in a separate storage area which is securely closed and locked during all hours when the establishment is prohibited from operating or is closed. The storage area shall have a volumetric intrusion detection device(s) installed and connected to the facility intrusion detection system.
- 5603.2 A cultivation center, dispensary, or testing laboratory shall be required to install and use a safe for overnight storage of any processed marijuana, transaction records, and cash on the registered premises. The safe shall be a UL listed burglar-proof safe with a minimum rating of TL-30. Safes weighing less than seven hundred fifty pounds (750 lb.) shall be installed in a steel clad concrete block or otherwise securely anchored to a fixed part of the facility structure.

**Section 5605, DESTRUCTION AND DISPOSAL OF UNUSED OR SURPLUS MEDICAL MARIJUANA AND REPORTING THEFT, is amended to read as follows:**

**5605 DESTRUCTION AND DISPOSAL OF UNUSED OR SURPLUS MEDICAL MARIJUANA AND REPORTING THEFT**

- 5605.1 A cultivation center, dispensary, or testing laboratory shall destroy or dispose of unused or surplus medical marijuana and its by-products by providing it to MPD for destruction.
- 5605.2 All unused or surplus medical marijuana and its by-products shall be weighed and documented and submitted to MPD on a form provided by MPD prior to being delivered to MPD by the cultivation center, dispensary, or testing laboratory for destruction.

- 5605.3 A cultivation center or dispensary that has had its registration renewal denied, or revoked, or is going out of business may obtain approval from the Department by submitting a written request to sell and transport medical marijuana to another cultivation center or dispensary. The Department shall notify MPD of such approval prior to any medical marijuana being transported to another cultivation center or dispensary.
- 5605.4 A cultivation center, dispensary, or testing laboratory shall report any stolen or lost medical marijuana by filing a police report, by calling 911, or in person with the Police District where the registered business resides either in person or in writing within twenty-four (24) hours of becoming aware of the theft or loss.
- 5605.5 For purposes of this section, “unused or surplus medical marijuana” shall be defined as any harvested or unharvested marijuana, both processed and unprocessed, which is possessed by a cultivation center, dispensary, or testing laboratory and includes:
- (a) Any marijuana plants possessed by a cultivation center in excess of the authorized plant limitation;
  - (b) Any marijuana that has spoiled or is unusable for medical purposes;
  - (c) Any marijuana possessed by a dispensary in excess of the amount needed to supply all of the dispensary’s qualified patients for a one (1) month period;
  - (d) Any marijuana that has or appears to have been tampered with; and
  - (e) Any marijuana that has completed testing at a testing laboratory, or unused sample materials.
- 5605.6 The Department, in its discretion, may allow a dispensary to possess a surplus of medical marijuana for a period of time, if it is shown that the surplus is needed to adequately serve the patient population.

**Section 5606, NOTICE OF CRIMINAL CONVICTION OF DIRECTOR, OFFICER, MEMBER, INCORPORATOR, AGENT OR EMPLOYEE, is amended by amending § 5606.1 to read as follows:**

- 5606.1 A registered dispensary, cultivation center, or testing laboratory shall immediately notify the Department in writing if the registration holder discovers that any director, officer, member, incorporator, agent, or employee has at any time prior to or during his or her employment been convicted of a felony. For purposes of this section, "immediately" shall mean notifying the Department within seven (7) days of discovering the criminal conviction.

**Section 5610, ELECTRONIC RECORDING SECURITY AND ALARM SYSTEM, is amended to read as follows:**

**5610 ELECTRONIC RECORDING SECURITY AND ALARM SYSTEM**

5610.1 A dispensary, cultivation center, or testing laboratory shall be required to operate and maintain in good working order a twenty-four (24) hour, seven (7) days a week, a closed circuit television (CCTV) surveillance system on the premises that complies with the following minimum standards:

- (a) Visually records and monitors all building entrances and exits, all parking lot areas, rear alley areas immediately adjacent to the building, and covers the entire inside of the facility, including all limited access areas, and including all areas where medical marijuana is cultivated, stored, dispensed, tested, or destroyed. Fixed cameras shall be installed to provide a consistent recorded image of these areas. The cultivation center, dispensary, or testing laboratory shall instruct the company or individuals installing the surveillance cameras to maximize the quality of facial and body images and to avoid backlighting and physical obstructions;
- (b) Cameras installed outdoors and in low-light interior areas shall be day/night cameras with a minimum resolution of six hundred (600) lines per inch (analog) or D1 (IP) and a minimum light factor requirement of seven tenths (0.7) LUX. The installation of additional lighting may be required to increase picture clarity and brightness. Cameras shall be calibrated and focused to maximize the quality of the recorded image;
- (c) The recording device shall be a digital video recorder that meets the following minimum standards:
  - (1) Displays a date and time stamp on all recorded video; and
  - (2) Can produce a video disc (CD/DVD) directly from the DVR unit using an installed media recording drive. The video on the disc shall be viewable on any Windows PC, and include any required player software on the disc;
- (d) A display monitor with a minimum screen size of twelve inches (12 in.) shall be connected to the electronic recording security system at all times;
- (e) Electronic recording security systems are required to be maintained in good working order at all times. The owner of a cultivation center, dispensary, or testing laboratory shall instruct each manager, employee, or agent overseeing the functioning of the video recording security system to immediately report any malfunctioning or technical problems with the system;

- (f) Security recordings shall meet the following minimum requirements:
  - (1) The recorded image resolution shall be at least D1; and
  - (2) The recorded image frame rate shall be at least three (3) frames per second during alarm or motion based recording.
- (g) Security recordings shall be retained by the cultivation center, dispensary, or testing laboratory for a minimum of thirty (30) days. The recording system for the security cameras must be located in a locked, tamper-proof compartment. A cultivation center, dispensary, or testing laboratory shall be prohibited from taping over existing security video from the last thirty (30) days; and
- (h) Upon request, the recording shall be turned over to MPD or the Department.

5610.2 A dispensary, cultivation center, or testing laboratory shall install, maintain, and use a professionally monitored robbery and burglary alarm system; which meets the following requirements:

- (a) The control panel shall be a UL listed burglar alarm control panel;
- (b) The system shall report to a UL listed central monitoring station;
- (c) A test signal shall be transmitted to the central station every twenty-four (24) hours;
- (d) At a minimum, the system shall provide coverage of all facility entrances and exits, rooms with exterior windows, rooms with exterior walls or walls shared with other facility tenants, roof hatches, skylights, and storage room(s) that contain safe(s);
- (e) The system shall include at least one (1) holdup alarm for staff use; and
- (f) The system shall be inspected, and all devices tested annually by a qualified alarm vendor.

5610.3 A dispensary, cultivation center, or testing laboratory shall maintain for a period of three (3) years reports of incidents that triggered an alarm. Such reports shall be made available to the Department during any inspection of the facility. A dispensary, cultivation center, or testing laboratory shall notify the Department by electronic means within twenty-four (24) hours of any incident in which a theft, burglary, robbery, or break in occurred, whether or not items were actually removed from the facility. The facility manager shall follow up the initial notice

with a written report describing in detail the factual circumstances surrounding the incident and include an inventory of all stolen items, if applicable.

**Section 5613, TEMPORARY SURRENDER OF REGISTRATION— SAFEKEEPING, is amended by amending §§ 5613.1, 5613.3, and 5613.4 to read as follows:**

5613.1 A registered cultivation center, dispensary, or testing laboratory that discontinues its operations for any reason shall surrender its registration to the Department for safekeeping within three (3) calendar days of discontinuing its operations. The Department shall hold the registration for one hundred twenty (120) days or until the establishment resumes business whichever occurs first. If the registrant has not initiated proceedings to resume operations within one hundred twenty (120) days, the Department shall deem the registration abandoned and cancel the registration.

...

5613.3 This section shall not relieve a registered cultivation center, dispensary, or testing laboratory from the responsibility for renewing the registration upon its expiration.

5613.4 If a cultivation center, dispensary, or testing laboratory notifies the Department that the establishment has ceased to do business under the registration or if the Department cancels the registration under this section, the registration shall be marked as "cancelled."

**Section 5614, CO-LOCATION AND INTEGRATION, is amended to add new §§ 5614.3 and 5614.4 to read as follows:**

5614.3 Nothing in this title shall preclude two (2) or more testing laboratories from locating in the same building, provided that they maintain:

- (a) Separate books, equipment, staff, and records; and
- (b) Their own secure and distinct registered premises that is separated, at minimum, by a fixed boundary.

5614.4 A testing laboratory shall not be located in the same building as a cultivation center or dispensary.

**Section 5615, POINT-OF-SALE SYSTEM, is amended to read as follows:**

**5615 SEED-TO-SALE TRACKING SYSTEM**

5615.1 The Department may require a dispensary, cultivation center, and testing laboratory to purchase and participate in a seed-to-sale tracking system as determined by the Department for purposes of:

- (a) Tracking, in real-time, all medical marijuana plants and products from cloning or seed through cultivation, testing, transportation, and sale or destruction;
- (b) Tracking and verifying all purchases and sales; and
- (c) Tracking and verifying all District of Columbia and non-resident patient purchases to confirm and ensure the identity of the patients, the validity of the patient's authorization to purchase, and ensuring that the patients do not purchase more than four ounces within a thirty day period.

**Section 5617, OUTDOOR LIGHTING REQUIREMENTS, is amended by amending § 5617.1 to read as follows:**

5617.1 A cultivation center, dispensary, or testing laboratory shall be required for security purposes to have sufficient lighting outside of the registered business each day between sunset and sunrise that adequately illuminates the cultivation center, dispensary, or testing laboratory and its immediate surrounding area, including storage areas, parking lots, entry areas such as the front façade, and any adjoining public sidewalk.

**Section 5618, MINIMUM STAFFING LEVELS, is amended by adding a new § 5618.3 to read as follows:**

5618.3 A testing laboratory shall be staffed with at least two (2) persons when employees are present inside of the testing laboratory.

**Section 5619, LIMITED ACCESS AREAS, is amended by amending §§ 5619.1 through 5619.3 to read as follows:**

5619.1 Medical marijuana shall only be grown, cultivated, stored, weighed, displayed, packaged, sold, possessed for sale, or tested only in a limited access area under the control of the cultivation center, dispensary, or testing laboratory. A cultivation center, dispensary, or testing laboratory shall permit only those persons registered with the Department to enter the limited access area.

5619.2 A limited access area, including all areas of ingress and egress, shall be designated by the cultivation center, dispensary, or testing laboratory on its application. The limited access area shall be either a building, room, or other contiguous area upon the registered premises.

5619.3 A cultivation center, dispensary, or testing laboratory shall post a sign provided by the Department at all areas of ingress and egress identifying the limited access area.

**Section 5621, TRANSPORT OF MEDICAL MARIJUANA, is amended to read as follows:**

**5621 TRANSPORT OF MEDICAL MARIJUANA**

- 5621.1 A cultivation center shall obtain from the Department a transport permit to transport medical marijuana within the District of Columbia to registered dispensaries. An original transport permit shall be required for each vehicle being designated by the cultivation center or its contracted agent to be authorized to deliver medical marijuana to registered dispensaries.
- 5621.2 A testing laboratory shall obtain from the Department a transport permit to transport medical marijuana within the District of Columbia from a cultivation center to the testing laboratory. An original transport permit shall be required for each vehicle being designated by the testing laboratory or its contracted agent to be authorized to transport medical marijuana from a cultivation center to a testing laboratory.
- 5621.3 A cultivation center, testing laboratory, or its contracted agent shall not transport medical marijuana within the District of Columbia without an original transport permit. A cultivation center or testing laboratory shall permit only an employee, director, officer, member, incorporator, or agent registered with the Department or its contracted agent to transport medical marijuana to a registered dispensary.
- 5621.4 Upon demand by an MPD officer or Department investigator, the registered person in charge of the transportation for the cultivation center or testing laboratory, or its contracted agent shall exhibit to the MPD officer or Department investigator an original transport permit.

**Chapter 57, PROHIBITED AND RESTRICTED ACTIVITIES, is amended as follows:**

**Section 5704, PLANT LIMITATIONS, is amended by amending § 5704.1 to read as follows:**

- 5704.1 A cultivation center shall be permitted to possess and cultivate up to one thousand (1,000) living marijuana plants at any one (1) time for the sole purpose of producing medical marijuana in a form permitted under this subtitle. A dispensary shall not be permitted to possess or sell marijuana plants. It shall be a violation of this subtitle for a dispensary to possess or sell marijuana plants or for a cultivation center to sell marijuana plants to a dispensary.

**Chapter 59, RECORDS AND REPORTS, is amended as follows:**

**Section 5900, CULTIVATION CENTER BOOKS AND RECORDS, is amended by amending paragraphs 5900.1(e) and (f), and adding a new paragraph 5900.1(g) to read as follows:**

5900.1 Each registered cultivation center shall keep and maintain upon the registered premises true, complete, legible, and current books and records, including the following:

...

- (e) The quantity and form of medical marijuana maintained at the cultivation center on a daily basis;
- (f) The amount of plants being grown at the cultivation center on a daily basis; and
- (g) The results of the testing laboratory analysis for five (5) years from the date of the test.

**A new Chapter 64, TESTING LABORATORIES, is added to read as follows:**

**CHAPTER 64 TESTING LABORATORIES**

**6400 APPLICABILITY**

6400.1 The provisions of this chapter shall apply to an individual or entity that is registered by the Department, or applying for a registration, to test medical marijuana and medical marijuana products.

6400.2 The provisions of this chapter do not apply to the in-house testing by a cultivation center of its own cultivated crop or products. However, a cultivation center shall not sell any of its cultivated crop or products until the crop or products have been tested and certified by an independent testing laboratory registered by the Department to test medical marijuana and medical marijuana products.

**6401 GENERAL PROVISIONS**

6401.1 A testing laboratory shall not be owned or operated, in whole or in part, by a director, officer, member, incorporator, agent, or employee of a cultivation center or dispensary.

6401.2 No owner, member, manager, employee, or agent of a testing laboratory shall have an ownership interest in, or a direct or indirect financial interest in, a dispensary or cultivation center.



- 6401.3 A testing laboratory registration shall be valid for one (1) year, and may be renewed as set forth in § 5101.1 of this subtitle.
- 6401.4 A testing laboratory shall not handle, test, or analyze medical marijuana in the District of Columbia unless the laboratory has been issued a medical marijuana registration by the Department.
- 6401.5 Medical marijuana products shall be sold only after a representative sample has been tested by a registered testing laboratory and the test results have been uploaded to the District of Columbia's electronic tracking system, which verify the medical marijuana sample has received passing results.
- 6401.6 No testing laboratory shall operate without a registration issued by the Department.
- 6401.7 A testing laboratory shall not cultivate, process, manufacture, distribute, provide, or sell medical marijuana in any form.
- 6401.8 A testing laboratory shall not permit the consumption of medical marijuana in any form on the premises.
- 6401.9 A testing laboratory shall not share a facility with a cultivation center or dispensary.
- 6401.10 A testing laboratory shall not falsify, change, modify, or otherwise alter in any way the results of quantitative or other analyses performed on medical marijuana samples or the corresponding certificates of analysis.
- 6401.11 A testing laboratory shall not employ any sampling methods that do not ensure that a random sample is collected for analysis, or that could provide results that are not representative of a batch or lot from which a sample is taken.
- 6401.12 A testing laboratory shall not prepare medical marijuana samples in such a manner as to provide results that are not representative of a batch or lot from which a sample is taken.
- 6401.13 A testing laboratory shall not store medical marijuana in quantities greater than that which is necessary to perform required analysis.
- 6401.14 A testing laboratory shall not transport medical marijuana in quantities greater than that which is necessary to perform required analysis.
- 6401.15 A testing laboratory shall not perform analysis on any medical marijuana that has not been obtained from a cultivation center or dispensary registered by the Department.

- 6401.16 A testing laboratory shall not perform analysis on any medical marijuana that has not been identified in the inventory tracking system.
- 6401.17 A testing laboratory shall not endorse, advertise, or make claims on behalf of any cultivation center, dispensary, brand or strain of medical marijuana, or brand or type of medical marijuana product.
- 6401.18 A testing laboratory shall not publish or otherwise release to the public the results of any tests performed pursuant to this subtitle, except aggregated data obtained as part of a research plan that has been approved by the Department.
- 6401.19 A testing laboratory shall comply with all applicable public health, fire, safety laws and regulations.

**6402 TESTING LABORATORY REGISTRATION APPLICATION REQUIREMENTS AND SELECTION PROCESS**

- 6402.1 An applicant for a testing laboratory registration shall meet the general qualifications set forth in § 5400 of this subtitle.
- 6402.2 An applicant for a testing laboratory registration shall be independent from all other persons and entities involved in the medical marijuana industry in the District of Columbia, including but not limited to:
- (a) A medical marijuana dispensary;
  - (b) A medical marijuana cultivation center;
  - (c) A provider of health care who currently provides or has provided medical marijuana recommendations within the most recent five (5) years; or
  - (d) Any other person or entity that may benefit from the cultivation, manufacture, dispensing, sale, purchase, or use of medical marijuana.
- 6402.3 Applications for a new testing laboratory registration shall only be accepted by the Director during the open application period as specified by the Director by publishing a Notice in the *D.C. Register*; such period shall not be extended.
- 6402.4 Prior to the submission of a formal application for a new testing laboratory registration, the prospective applicant shall submit a Letter of Intent to the Director or a designee, following the process set forth in § 5401 of this subtitle. The Director shall only accept Letters of Intent during the time period specified by the Director by Notice in the *D.C. Register*, such period shall not be extended.
- 6402.5 Applications for a new testing laboratory registration shall be selected pursuant to the selection process and selection criteria set forth in Chapter 54 of this subtitle.

6402.6 In addition to the requirements in § 5404 of this subtitle, an application for a testing laboratory shall also contain the following:

- (a) A proposed staffing plan;
- (b) A proposed security plan containing the criteria set forth in § 6402.7;
- (c) A written statement regarding the suitability of the proposed facility;
- (d) A laboratory testing plan that demonstrates the applicant's knowledge, experience, training, and applicable certifications in laboratory testing techniques, and ability to provide and ensure quality assurance, quality control, proficiency testing, analytical processes, chain of custody, sample retention, space, recordkeeping, results reporting, and corrective action protocols;
- (e) A proposed plan and timeline for obtaining accreditation;
- (f) A notarized written statement from the applicant that he or she has read the Act and this subtitle and has knowledge of the District and federal laws and regulations relating to medical marijuana.

6402.7 An applicant for a testing laboratory registration shall file a written security plan with the Department. The written security plan shall address, at a minimum, the following elements:

- (a) Evidence that the space will comply with all security system requirements set forth in § 5610 of this subtitle;
- (b) A site plan showing the entire structure the testing laboratory, including the street(s), parking lot(s), other tenants within the facility, and any other entities that physically border the testing laboratory;
- (c) A floor plan of the testing laboratory detailing the location of the following:
  - (1) All entrances and exits to the testing laboratory;
  - (2) The location of any windows, skylights, and roof hatches;
  - (3) The location of all cameras, and their field of view;
  - (4) The location of all alarm inputs (door contacts, motion detectors, duress/hold up devices) and alarm sirens;

- (5) The location of the digital video recorder and alarm control panel; and
- (6) Restricted and public areas;
- (d) The type of security training provided for, and completed by, establishment personnel, including:
  - (1) Conflict resolution training and other security training to be provided by staff; and
  - (2) Procedures for handling violent incidents, other emergencies, and calling the Metropolitan Police Department;
- (e) How the applicant intends to use and maintain an incident log;
- (f) The number and location of cameras used by the establishment;
- (g) Security measures taken by the applicant to prevent individuals from entering the limited access area portion of the registered premises;
- (h) The applicant's closing procedures after the cessation of business each day;
- (i) The applicant's plan to prevent theft or the diversion of medical marijuana, including maintaining all medical marijuana in a secure, locked room that is accessible only to authorized persons;
- (j) The type of alarm system and outdoor lighting to be used by the applicant; and
- (k) The applicant's procedures for obtaining, transporting, posting test results, and disposing of medical marijuana samples.

6402.8 Upon receipt of a written security plan for an initial testing laboratory application, the Director shall forward the security plan electronically to MPD or its designee for an assessment. MPD or its designee shall complete its assessment of the security plan within twenty-one (21) days of receipt from the Director. The Department shall not issue a testing laboratory registration until MPD or its designee completes its security plan assessment and submits that assessment in writing to the Department.

6402.9 After completion of the MPD or the designee assessment, the entire application package shall be submitted to the panel.

6402.10 For purposes of this subsection, the Chief of Police may select a designee from outside of the MPD.

**6403 [RESERVED]**

**6404 ACCREDITATION, CERTIFICATION AND INSPECTION**

6404.1 A testing laboratory registrant shall be accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization by a nonprofit, impartial organization that operates in conformance with standard ISO/IEC 17011 of the International Organization for Standardization and is a signatory to the Mutual Recognition Arrangement of the International Laboratory Accreditation Cooperation.

6404.2 A testing laboratory registrant shall obtain the accreditation required by § 6404.1 of this subtitle within six (6) months after being issued a registration by the Department.

6404.3 The Department may suspend or revoke the registration of a testing laboratory that fails to obtain the accreditation required by § 6404.1 of this subtitle within six (6) months after being issued a registration by the Department.

6404.4 A registered testing laboratory shall remain in good standing with a Department approved proficiency testing program.

6404.5 The Department shall conduct unannounced compliance inspections of registered testing laboratories on at least an annual basis.

6404.6 The Department shall conduct investigations within seventy-two (72) hours of receiving a complaint against a registered testing laboratory.

**6405 RECORDS RETENTION**

6405.1 A testing laboratory shall create, and maintain for not less than five (5) years, and make them immediately available to the Department upon request, records of the testing it conducted on medical marijuana and medical marijuana products, which shall include:

- (a) The time, date, and location the sample was obtained;
- (b) A description of the sample, including the amount;
- (c) What tests were conducted on each sample;
- (d) The results of the tests; and

- (e) The time, date, and method of disposal or destruction of the sample after testing was completed, and the amount of sample disposed of or destroyed.

6405.2 A testing laboratory shall maintain the following records for not less than five (5) years, and make the records immediately available to the Department upon request:

- (a) Test results;
- (b) Quality control and quality assurance records;
- (c) Standard operating procedures;
- (d) Chain-of-custody records;
- (e) Proficiency testing records;
- (f) Analytical data to include printouts generated by the instrumentations;
- (g) Accession numbers;
- (h) Specimen type;
- (i) Raw data of calibration standards and curves, controls and subject results;
- (j) Final and amended reports;
- (k) Acceptable reference range parameters;
- (l) The identity of the analyst; and
- (m) The date of the analysis.

**6406 LABORATORY PERSONNEL QUALIFICATIONS AND DUTIES**

6406.1 All testing laboratory personnel shall be registered with the Department.

6406.2 All testing laboratory personnel shall:

- (a) Pass a criminal background check pursuant to § 5411 of this subtitle; and
- (b) Sign an attestation stating that they do not have any conflicts of interest with any other registered medical marijuana facility or personnel.

6406.3 A testing laboratory shall be staffed with at least the following personnel who shall meet the following requirements and perform the following duties:

- (a) Laboratory Director:
  - (1) Shall have earned a Doctor of Medicine degree (M.D.), Doctor of Osteopathic Medicine degree (D.O.), or doctorate degree in chemical, physical, biological or clinical laboratory sciences from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education, and have at least two (2) years of post-degree laboratory experience;
  - (2) Shall be responsible for the overall operation of the testing laboratory, including but not limited to:
    - (A) Ensuring that the testing laboratory achieves and maintains quality standards;
    - (B) Analytical operation;
    - (C) Quality of the results;
    - (D) Supervising all laboratory personnel;
    - (E) Recordkeeping;
    - (F) Reporting results and data; and
    - (G) Ensuring compliance with all regulatory requirements; and
  - (3) May also serve in any other personnel role;
- (b) Technical Supervisor:
  - (1) Shall have earned at least:
    - (A) A master's degree in medical technology, clinical laboratory science, or chemical, physical or biological science from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education, and have at least two (2) years of post-degree training and experience in high-complexity testing; or
    - (B) A bachelor's degree in medical technology, clinical laboratory science, or chemical, physical or biological science from a college or university that at the time of the

awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education, and have at least four (4) years of post-degree training and experience in high-complexity testing;

- (2) Shall be responsible for, including but not limited to:
  - (A) Supervising laboratory personnel (with the exception of The Laboratory Director);
  - (B) Ensuring appropriate testing methods are performed;
  - (C) Ensuring equipment is operational, clean, and certified;
  - (D) Verifying and ensuring the accuracy of test results; and
  - (E) Training and competency assessments of laboratory personnel; and
- (3) May also serve in the roles of Quality Assurance Manager, Testing Personnel and Collection Specialist;

(c) Quality Assurance Manager:

- (1) Shall have earned at least:
  - (A) A master's degree or bachelor's degree in clinical laboratory science, medical technology, or chemical, physical or biological science from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education, and have at least one (1) year of post-degree training and experience in high-complexity testing; or
  - (B) An associate's degree in medical laboratory technology from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education, and have at least two (2) years of post-degree training and experience in high-complexity testing;
- (2) Shall be responsible for, but not limited to:
  - (A) Implementing standard operating procedures (SOPs) for the testing laboratory;



- (B) Ensuring that SOPs are followed; and
  - (C) Conducting quality assurance assessments;
  - (3) May also serve in the roles of Testing Personnel and Collection Specialist, if he or she meets the qualifications;
- (d) Testing Personnel:
- (1) Shall have earned at least a master's degree or bachelor's degree in clinical laboratory science, medical technology, or chemical, physical or biological science from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education;
  - (2) Shall be responsible for testing medical marijuana samples as set forth in § 6409 of this subtitle, and providing accurate results; and
  - (3) May also serve in the role of the Collection Specialist.
- (e) Collection Specialist:
- (1) Shall have earned at least:
    - (A) A master's degree or bachelor's degree in clinical laboratory science, medical technology, or chemical, physical or biological science from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education; or
    - (B) An associate's degree in medical laboratory technology from a college or university that at the time of the awarding of the degree was accredited by an accrediting body recognized by the United States Department of Education;
  - (2) Shall be responsible for:
    - (A) The selection and collection of representative samples from cultivation centers;
    - (B) Maintaining chain of custody; and
    - (C) Ensuring aseptic sampling techniques are used; and

- (3) Shall not serve in any other personnel role unless he or she meets the educational and training requirements for that role as set forth in this subtitle.

## **6407 STANDARD OPERATING PROCEDURE REQUIREMENTS**

6407.1 A testing laboratory shall have a written manual of standard operating procedures, with detailed instructions for performing each testing method the testing laboratory uses and the minimum standards for each test. The written manual of standard operating procedures must be available to each employee at the testing laboratory at all times.

6407.2 A testing laboratory shall establish, maintain, implement, and comply with the policies and procedures contained in its manual of standard operating procedures. At a minimum, a facility's standard operating procedures shall include policies and procedures that:

- (a) Designate areas in the facility that are compartmentalized based on function, including any areas to which access is restricted, and including areas that segregate samples awaiting analysis from those samples being analyzed or prepared for analysis, to prevent cross-contamination;
- (b) Provide best practices for safe, secure, and proper testing of medical marijuana;
- (c) Establish training and safety policies and procedures to ensure that any person involved in analytical testing of medical marijuana:
  - (1) Has been fully trained in the safe operation and maintenance of any and all instrumentation that will be used in the testing of medical marijuana, with supporting documentation of the training;
  - (2) Has been fully trained in the safe use, handling, and storage of any and all chemicals that will be used in the testing of medical marijuana, in accordance with OSHA protocols, with supporting documentation of the training;
  - (3) Has direct access to applicable safety data sheets and labels; and
  - (4) Has been fully trained regarding compliance with the District's laws and regulations;
- (d) Ensure the chain of custody for all medical marijuana will be documented in the inventory tracking system;

- (e) Ensure the facility will be maintained with adequate lighting, ventilation, temperature, sanitation, equipment, and security for the testing of medical marijuana, including requiring that the testing laboratory shall:
  - (1) Keep the facility free of debris, dust, rodents, insects, birds, and animals of any kind, and any other potential contaminants;
  - (2) Use chemicals, cleaning solutions, and other sanitizing agents generally accepted for laboratory use, and store them in a manner that protects against contamination;
  - (3) Maintain a cleaning and equipment maintenance log at the facility, including any preventive and routine maintenance plans and corresponding records, and whether the maintenance is performed by laboratory staff or by service contract with third-parties or the original equipment manufacturer;
  - (4) Routinely calibrate its scales, balances, or other weight and/or mass measuring devices using “National Institute of Standards and Technology” (NIST)-traceable reference weights, at least once each calendar year; and
  - (5) Standardize all analytical test instrumentation using reference materials traceable to reference material producers accredited to ISO/IEC 17034 “General Requirements for the Competence of Reference Material Producers” or the national metrology institute (NMI), where available;
- (f) Address the analysis, storage, sample inventory tracking, and transportation of plant material, medical marijuana extract, and medical marijuana products; and
- (g) Address the following:
  - (1) Sample Collection;
  - (2) Sample preparation for each matrix that will be tested;
  - (3) Reagent, solution, and reference standard preparation;
  - (4) Instrument setup, if applicable;
  - (5) Standardization of volumetric reagent solutions, if applicable;
  - (6) Data acquisition;

- (7) Calculation of results;
- (8) Identification criteria;
- (9) Quality control frequency;
- (10) Quality control acceptance criteria; and
- (11) Corrective action protocol.

6407.3 The Laboratory Director shall approve, sign, and date each standard operating procedure and each revision to any standard operating procedure.

6407.4 A testing laboratory shall establish and maintain procedures to document a clear and unbroken chain of custody at all stages from sampling to destruction, which shall include:

- (a) Documenting each person handling the original samples, aliquots, and extracts;
- (b) Documenting any transfer of samples, aliquots, and extracts to another testing facility for additional testing or transfer at the request of the marijuana cultivation facility that provided the testing sample;
- (c) Maintaining a current list of authorized persons and restricting entry to the marijuana testing facility to those authorized persons;
- (d) Securing the marijuana testing facility during non-working hours;
- (e) Using a secured area to log in and aliquot samples; and
- (f) Documenting the disposal of samples, aliquots, and extracts.

6407.5 A testing laboratory shall establish and maintain sample requirement procedures that include:

- (a) Issuing instructions for the minimum sample requirements and storage requirements;
- (b) Documenting the condition of the external package and integrity seals utilized to prevent contamination of or tampering with the sample;
- (c) Documenting the condition and amount of sample provided at the time the sample is received at the marijuana testing facility;
- (d) Securing short-term and long-term storage areas when not in use; and

- (e) Ensuring samples are stored appropriately.

6407.6 A testing laboratory shall document the chain of custody of each sample in the Department's medical marijuana inventory tracking system.

**6408 [RESERVED]**

**6409 TESTING REQUIREMENTS AND METHODOLOGIES**

6409.1 Each testing laboratory shall:

- (a) Follow the most current version of the "*Cannabis Inflorescence: Standards of Identity, Analysis, and Quality Control*" monograph published by the American Herbal Pharmacopoeia;
- (b) Follow the most current version of "*Recommendations for Regulators -- Cannabis Operations*" published by the American Herbal Products Association;
- (c) Follow most current version of the "*Guidelines for Laboratories Performing Microbiological and Chemical Analyses of Food, Dietary Supplements, and Pharmaceuticals – An Aid to the Interpretation of ISO/IEC 17025:2005 (2015)*" published by AOAC International;
- (d) Adopt and follow most current version of the minimum good laboratory practices which must, at a minimum, satisfy the "*OECD Series on Principles of Good Laboratory Practice (GLP) and Compliance Monitoring*" published by the Organization for Economic Co-operation and Development;
- (e) Maintain internal standard operating procedures; and
- (f) Maintain a quality control and quality assurance program.

6409.2 A testing laboratory shall use, when available, testing methods that have undergone validation by the "Official Methods of Analysis of AOAC International," the Performance Tested Methods Program of the Research Institute of AOAC International, the "Bacteriological Analytical Manual" of the Food and Drug Administration, the International Organization for Standardization, the United States Pharmacopeia, the "Microbiology Laboratory Guidebook" of the Food Safety and Inspection Service of the United States Department of Agriculture or an equivalent third-party validation study approved by the Department.

- 6409.3 A testing laboratory shall test and analyze a statistically representative sample from each batch of medical marijuana or medical marijuana products for, at minimum:
- (a) Moisture content;
  - (b) Water activity;
  - (c) Cannabinoid potency, including, at minimum, the levels of the following:
    - (1) Delta-9-tetrahydrocannabinolic acid (THCA);
    - (2) Delta-9-tetrahydrocannabinol (THC);
    - (3) Cannabidiolic acid (CBDA);
    - (4) Cannabidiol (CBD); and
    - (5) Cannabinol (CBN);
  - (d) Foreign matter contamination;
  - (e) Microbial contamination;
  - (f) Mycotoxin contamination;
  - (g) Heavy metal contamination, including, at minimum, arsenic, cadmium, lead, and mercury;
  - (h) Pesticide and fertilizer residue,
  - (i) Residual solvents;
  - (j) Cannabinoid and Terpene Profile;
  - (k) Product Assessment (for edible products);
  - (l) Homogeneity (for edible products); and
  - (m) Any other items requested by or approved by the Department.
- 6409.4 All samples shall be personally selected and collected by the testing laboratory personnel on site at the cultivation center.
- 6409.5 The samples personally selected and collected by the testing laboratory shall include, at a minimum:

- (a) One (1) testable sample of the final product of flower, from each harvest for every strain of medical marijuana grown by the cultivation center; and
- (b) One (1) testable sample of each type of product produced from each batch of medical marijuana, such as but not limited to, the following:
  - (1) Tincture;
  - (2) Topical;
  - (3) Shatter;
  - (4) Oils;
  - (5) Edibles;
  - (6) Wax;
  - (7) Kief; and
  - (8) Hash.

6409.6 A testing laboratory shall timely upload into the tracking system the test results for each batch of medical marijuana or medical marijuana product tested.

6409.7 The testing laboratory may retest or reanalyze the sample or a different sample from the same batch by following its standard operating procedures to confirm or refute the original result, upon request by the cultivation center or upon request by the Department at the cultivation center's expense.

6409.8 A testing laboratory shall implement an acceptable method of testing, such as, but not limited to:

- (a) Gas Chromatography;
- (b) Gas Chromatography Mass Spectrometry;
- (c) Immunoassays;
- (d) Thin Layer Chromatography;
- (e) High Performance Liquid Chromatography; and
- (f) Liquid Chromatography Mass Spectroscopy.

- 6409.9 A testing laboratory using Gas Chromatography shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:
- (a) Document the conditions of the gas chromatograph, including the detector response;
  - (b) Perform and document preventive maintenance as required by the manufacturer;
  - (c) Document the performance of new columns before use;
  - (d) Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified;
  - (e) Establish criteria of acceptability for variances between different aliquots and different columns; and
  - (f) Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

- 6409.10 A testing laboratory using Gas Chromatography Mass Spectrometry shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:
- (a) Perform and document preventive maintenance as required by the manufacturer;
  - (b) Document the changes of septa as specified in the standard operating procedure;
  - (c) Document liners being cleaned or replaced as specified in the standard operating procedure;
  - (d) Maintain records of mass spectrometer tuning;
  - (e) Establish written criteria for an acceptable mass spectrometer tune;
  - (f) Document corrective actions if a mass spectrometer tune is unacceptable;
  - (g) Monitor analytic analyses to check for contamination and carry-over;
  - (h) Use selected ion monitoring within each run to assure that the laboratory compares ion ratios and retention times between calibrators, controls and samples for identification of an analyte;



- (i) Use an internal standard for qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
- (j) Document the monitoring of the response (area or peak height) for the internal standard to ensure consistency overtime of the analytical system;
- (k) Define the criteria for designating qualitative results as positive;
- (l) Ensure that when a library is used to qualitatively match an analyte, the relative retention time and mass spectra from a known standard or control shall be run on the same system before reporting the results; and
- (m) Evaluate the performance of the instrument after routine and preventive maintenance (such as clipping or replacing the column or cleaning the source) prior to analyzing subject samples.

6409.11 A testing laboratory using Immunoassays shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:

- (a) Perform and document preventive maintenance as required by the manufacturer;
- (b) Validate any changes or modifications to a manufacturer's approved assays or testing methods when the sample being tested is not included in the list of samples approved for assaying or testing by the manufacturer; and
- (c) Define acceptable separation or measurement units (absorbance intensity or counts per minute) for each assay, which shall be consistent with the manufacturer's instructions.

6409.12 A testing laboratory using Thin Layer Chromatography shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:

- (a) Apply unextracted standards to each thin layer chromatographic plate;
- (b) Include in its standard operating procedures the preparation of mixed solvent systems, spray reagents and designation of their lifetimes;
- (c) Include in its standard operating procedures the storage of unused thin layer chromatographic plates;

- (d) Evaluate, establish, and document acceptable performance for new thin layer chromatographic plates before placing them into service;
- (e) Verify that the spotting technique used precludes the possibility of contamination and carry-over;
- (f) Measure all appropriate  $R_f$  values for qualitative identification purposes;
- (g) Use and record sequential color reactions, when applicable;
- (h) Maintain a copy of the developer TLC plates for each bath of samples analyzed; and
- (i) Analyze an appropriate matrix blank with each batch of samples analyzed.

6409.13

A testing laboratory using High Performance Liquid Chromatography shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:

- (a) Perform and document preventive maintenance as required by the manufacturer;
- (b) Monitor and document the performance of the HPLC instrument each day of testing;
- (c) Document the performance of new columns before use;
- (d) Create standard operating procedures for acceptability when eluting solvents are recycled;
- (e) Use an internal standard for each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified when available or appropriate for the assay; and
- (f) Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system.

6409.14

A testing laboratory using Liquid Chromatography Mass Spectroscopy shall perform and maintain records of the following, which shall be readily available to the staff operating the equipment:

- (a) Perform and document preventive maintenance as required by the manufacturer;
- (b) Maintain records of mass spectrometer tuning;

- (c) Document corrective actions if a mass spectrometer tune is unacceptable;
- (d) Use an internal standard with each qualitative and quantitative analysis that has similar chemical and physical properties to that of the compound identified and is isotopically labeled when available or appropriate for the assay;
- (e) Document the monitoring of the response (area or peak height) of the internal standard to ensure consistency overtime of the analytical system;
- (f) Compare two transitions and retention times between calibrators, controls and samples within each run;
- (g) Document and maintain records when changes in source, source conditions, eluent, or column are made to the instrument; and
- (h) Evaluate the performance of the instrument when changes in source, source conditions, eluent, or to a column are made prior to reporting test results.

6409.15 A testing laboratory shall determine if the following pesticides are within the acceptable limit using the following chart:

<b>Table A. Insecticide Critical Limits in Parts Per Million (PPM)</b>	
<b>Insectide</b>	<b>Critical Limit</b>
Acetamiprid	0.2
Abamectin	0.5
Aldicarb	0.4
Bifenazate	0.2
Carbofuran	0.2
Chlorantraniliprole	0.2
Chlorpyrifos	0.2
Cyfluthrin	1.0
DDVP (Dichlorvos)	0.1
Diazinon	0.2
Dimethoate	0.2
Fenpyroximate	0.5
Fipronil	0.4
Flonicamid	1.0
Imidacloprid	0.4
Malathion	0.2

Methiocarb	0.2
Methomyl	0.4
Naled	0.5
Oxamyl	1.0
Permethrin	0.5
Phosmet	0.2
Piperonyl butoxide	1.0
Pyrethrins	1.0
Spinosad	0.2
Spiromesifen	0.2
Spirotetramat	0.2
Thiacloprid	0.2
Thiamethoxam	0.2

6409.16 A testing laboratory shall determine if the following plant growth regulators are within the acceptable limit using the following chart:

<b>Table B. Plant Growth Regulator Critical Limits in Parts Per Million (PPM)</b>	
<b>Plant Growth Regulator</b>	<b>Critical Limit</b>
Ancymidol	0.2
Carbaryl	0.2
Daminozide (Alar)	0.1
Ethephon	1.0
Flurprimidol	0.2
Paclobutrazol	0.4

6409.17 A testing laboratory shall determine if the following fungicides are within the acceptable limit using the following chart:

<b>Table C. Fungicide Critical Limits in Parts Per Million (PPM)</b>	
<b>Fungicide</b>	<b>Critical Limit</b>
Azoxystrobin	0.2
Bifenthrin	0.2
Boscalid	0.4
Fludioxonil	0.4
Imazalil	0.2
Kresoxim-methyl	0.4
Metalaxyl	0.2
Myclobutanil	0.2

Propiconazole	0.4
Trifloxystrobin	0.2

6409.18 A testing laboratory shall determine if the following acaricides are within the acceptable limit using the following chart:

<b>Table D. Acaricide Critical Limits in Parts Per Million (PPM)</b>	
<b>Acaricide</b>	<b>Critical Limit</b>
Clofentezine	0.2
Etoxazole	0.2

6409.19 A testing laboratory shall determine if the following ovicide is within the acceptable limit using the following chart:

<b>Table E. Ovicide Critical Limits in Parts Per Million (PPM)</b>	
<b>Ovicide</b>	<b>Critical Limit</b>
Hexythiazox	1.0

6409.20 A testing laboratory shall determine if the following residual solvents are within the acceptable limit using the following chart:

<b>Table F. Residual Solvents Critical Limits in Parts Per Million (PPM)</b>	
<b>Solvent</b>	<b>Critical Limit</b>
Benzene	2
Butanes	5000
Ethanol	5000
Heptanes	5000
Hexanes	290
Propanes	5000
Toluene	< 890
Total Xylenes	< 2170

6409.21 A testing laboratory shall determine if the following microbial impurities are within the acceptable limit using the following chart:

<b>Table G. Microbiological Impurity Critical Limits in Colony Forming Units (CFU/g)</b>	
<b>Microbiological Impurity</b>	<b>Critical Limit</b>
E. coli	< 100
Salmonella spp.	0
Total Aerobic Microbial Count	100,000
Total Yeast and Mold Count	10,000

6409.22 A testing laboratory shall determine if the following heavy metals are within the acceptable limit using the following chart:

<b>Table H. Heavy Metal Critical Limits in Parts Per Million (PPM)</b>	
<b>Heavy Metal</b>	<b>Critical Limit</b>
Arsenic	0.4
Barium	60.0
Cadmium	0.4
Chromium	0.6
Lead	< 1.0
Mercury	0.2
Selenium	26.0
Silver	1.4

6409.23 A testing laboratory shall determine if the Water Activity ( $A_w$ ) of a sample is within an acceptable limit. For purposes of this section, the  $A_w$  of a sample shall be acceptable if it is below  $0.65A_w$ .

6409.24 A testing laboratory shall determine if an edible is a potentially hazardous food by using the following charts:

<b>Table I. Interaction of pH and <math>A_w</math> for control of spores in food heat-treated to destroy Vegetative cells and subsequently packaged</b>			
$A_w$ values	pH values		
	4.6 or less	> 4.6 – 5.6	> 5.6

≤0.92	Non-PHF*/non-TCS food**	Non-PHF/non-TCS food	Non-PHF/non-TCS food
> 0.92 - .95	Non-PHF/non-TCS food	Non-PHF/non-TCS food	PA***
> 0.95	Non-PHF/non-TCS food	PA	PA
* PHF means Potentially Hazardous Food ** TCS Food means Time/Temperature Control for Safety Food *** PA means Product Assessment required			

<b>TABLE J. INTERACTION OF pH AND A<sub>w</sub> FOR CONTROL OF VEGETATIVE CELLS AND SPORES IN FOOD NOT HEAT-TREATED BUT NOT PACKAGED</b>				
A <sub>w</sub> values	<u>pH values</u>			
	< 4.2	4.2 – 4.6	> 4.6 – 5.0 -	> 5.0
< 0.88	non-PHF*/non-TCS food**	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food
0.88 – 0.90	non-PHF/non-TCS food	non-PHF/non-TCS food	non-PHF/non-TCS food	PA***
> 0.90 – 0.92	non-PHF/non-TCS food	non-PHF/non-TCS food	PA	PA
> 0.92	non-PHF/non-TCS food	PA	PA	PA
* PHF means Potentially Hazardous Food ** TCS FOOD means Time/Temperature Control for Safety Food *** PA means Product Assessment required				

**6410 RESULT REPORTING**

6410.1 A testing laboratory shall issue results for each sample tested which shall address the following:

- (a) Whether the chemical profile of the medical marijuana sample conforms to the accepted variety for the following compounds:
  - (1) Delta-9-tetrahydrocannabinol (THC);
  - (2) Delta-9-tetrahydrocannabinolic acid (THCA);
  - (3) Cannabidiol (CBD);
  - (4) Cannabidiolic acid (CBDA);
  - (5) The terpenes described in the most current version of the cannabis inflorescence monograph published by the American Herbal Pharmacopeia (AHP);
  - (6) Cannabigerol (CBG); and
  - (7) Cannabinol (CBN);
- (b) That the presence of the following contaminants do not exceed the levels as provided in § 6409 of this subtitle:
  - (1) Heavy metals; and
  - (2) Pesticide residue;
- (c) The presence of microbial impurities, including but not limited to:
  - (1) The total aerobic microbial count (TAMC);
  - (2) The total combined yeast and molds count (TYMC);
  - (3) *Pseudomonas aeruginosa* (*P. aeruginosa*);
  - (4) *Aspergillus* spp;
  - (5) *Staphylococcus aureus* (*S. aureus*);
  - (6) Aflatoxin B<sub>1</sub>, B<sub>2</sub>, G<sub>1</sub> and G<sub>2</sub>; and
  - (7) Ochratoxin A;



(d) Whether the batch is within specification for the characteristics of:

- (1) Odor;
- (2) Appearance;
- (3) Fineness; and
- (4) Moisture content.

6410.2 The testing laboratory shall enter results into the Department's electronic tracking system within twenty-four (24) hours from the date of the test.

6410.3 The level of contaminants in medical marijuana and medical marijuana products shall not exceed the standards provided in this subtitle, and if any of the standards are exceeded, the cultivation center shall not sell or otherwise transfer any portion of the batch of medical marijuana or medical marijuana products to a dispensary.

6410.4 In the event the testing laboratory results determine that the sample does not meet the standards required in this subtitle, the cultivation center may seek approval from the Department to reprocess the batch and/or harvest. If written approval is granted by the Department, the cultivation center may:

- (a) Reprocess the batch and/or harvest according to their SOPs; and
- (b) Have the reprocessed product tested by the same testing laboratory.

6410.5 Upon receiving notification in the tracking system that the batch failed to pass testing, a cultivation center shall immediately quarantine the non-conforming batch until any reprocessing and testing is performed; or until the batch is destroyed by MPD.

6410.6 For purposes of this section, quarantine means that the batch shall be separated from all other inventory and the quarantine status shall be indicated in the tracking system. The quarantine shall be lifted only by the Department in writing, and only upon receipt of test results in the inventory tracking system documenting that the batch conforms to the required testing standards.

6410.7 The testing laboratory shall notify the Department of results that do not meet the standards and specifications set forth in this subtitle within twenty-four (24) hours of completion of analysis.

6410.8 A cultivation center shall release a batch and/or harvest for sale only if the results from the laboratory testing facility have determined that the sample has met the standards and specifications set forth in this subtitle.

**Chapter 99, DEFINITIONS, is amended as follows:**

**Section 9900, DEFINITIONS, is amended as follows:**

**Subsection 9900.1 is amended by adding the following new definitions to appear in alphabetical order:**

**Acaricide** – A substance poisonous to ticks or mites.

**Batch** –

- (a) A quantity of usable medical marijuana from a harvest lot; or
- (b) A quantity of cannabinoid concentrate or extract or cannabinoid product from a process lot.

**Chain of custody** – Procedures employed by a testing laboratory to record the possession of samples from the time of sampling through destruction.

**Fungicide** – A chemical that destroys fungus.

**Ovicide** – A substance that kills eggs.

**Pesticide** – A substance used to destroy insects or other organisms harmful to plants.

**Plant Growth Regulator** – A substance used to alter the plants' characteristics.

**Potentially Hazardous Food**- food that contains moisture or protein that is capable of supporting the rapid and accelerating growth of infectious or toxigenic microorganisms.

**Product Assessment** – Test to determine if an edible is a Potentially Hazardous Food.

**TCS Food** – A food that requires time and temperature control in order to ensure food safety.

**Testable Sample** – A representative sample that is large enough in quantity to perform all of the required tests.

**Testing Laboratory** – An entity that is not owned or operated by a director, officer, member, incorporator, agent, or employee of a cultivation center or dispensary, and is registered by the Department to test medical marijuana and medical marijuana products that are to be sold.

**Water Activity** – The available water ratio for microorganisms or bacteria to grow, expressed on a scale of 0 to 1, where 1 is pure water.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGRM27-2019-01, 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<sup>1</sup> of approval of amendments to Chapter 27 (Regulation of Telecommunications Service Providers) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR).

2. On May 24, 2019, the Commission published a Notice of Proposed Rulemaking (NOPR) seeking to amend two of the definitions in Section 2799, the "Abandonment of Certification Application" definition and the "Abandonment of Service Application."<sup>2</sup> The changes are meant to harmonize the definitions with recent changes to the rules regarding these applications.

3. The Office of the People's Counsel filed comments on this NOPR on June 24, 2019.<sup>3</sup> No reply comments were filed. The Commission approved the amendments as proposed in a vote at the July 17, 2019, open meeting, with the amendments becoming effective upon publication of this notice in the *D.C. Register*.

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

**Section 2799, DEFINITIONS, Subsection 2799.1, is amended by adding the definitions following:**

**Abandonment of Certification or Certificate of Convenience and Public Necessity Application** – an application to abandon the certification or certificate of convenience and public necessity to operate as a telecommunications service provider in the District of Columbia.

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<sup>1</sup> D.C. Official Code §§ 34-802 (2012 Repl.); 2-505 (2016 Repl.), 34-2002(g) and 34-2002(n) (2018 Supp.).

<sup>2</sup> 66 DCR 6493-6494 (May 24, 2019).

<sup>3</sup> *RM27-2019-01, In the Matter of the Commission's Investigation into the Rules Governing Local Exchange Carrier Quality of Service Standards for the District*, Letter Comments of the Office of the People's Counsel of the District of Columbia, filed June 24, 2019.

**Abandonment, Reduction, or Impairment of Service Application** – an application to abandon, reduce, or impair the provisioning of telecommunications services in the District, either in whole or in part (including, but not limited to, for a class of customers {such as residential customers or business customers} or customers located in specified geographic areas).

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**DEPARTMENT OF BEHAVIORAL HEALTH**

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Behavioral Health (“the Department” or “DBH”), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06 and 7-1141.07 (2018 Repl.)), hereby gives notice of the intent to adopt a revised Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards), to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”).

The current Chapter 34 mental health regulations were first published in 2001 and since that time have been periodically amended. Over the past three years, the Department and its mental health provider network have engaged in multiple discussions to identify areas where the regulations could be improved for the benefit of quality of care, accountability and efficiency. Due to the number of changes, the Department is updating Chapter 34. Some of the significant changes to Chapter 34 are outlined below in the following chart.

<b>Section Number</b>	<b>Description of Change</b>	<b>Reasoning</b>
Multiple sections (i.e., § 3408.1; § 3420.2)	Included language in various sections to make the regulations more person-centered at the initiation of treatment planning.	Person-centered language reflects best practices in the provision of behavioral health services and supports as well as reflects the philosophy of the Department.
Multiple Sections (i.e., § 3410.31; § 3411.11; § 3412.3)	Deleted most references to affiliation agreements	Accepted providers’ request and reflects evolving practices in the delivery of behavioral health services in the District’s continuum of care.
Multiple Sections (i.e., § 3411.2; § 3411.4)	Eliminated all references to clinical manager	Per the request of providers’ and following best practices, removing all references to a clinical manager in the regulations.
Multiple Sections (i.e., § 3416.8; 3417.4; § 3419.9)	Added telemedicine as an appropriate mechanism to deliver services like Medication/Somatic and Crisis/ Emergency.	Accepted providers’ request and reflects evolving best practices in the delivery of behavioral health services.

§ 3408	Eliminated Individual Recovery Plan for adults and Individual Plan of Care for children and youth, and established one Plan of Care.	Removes confusion and acknowledges that a consumer may receive services starting in childhood and extending into adulthood.
§ 3410.21	Edited the MHRS Specialty Chart to focus on specialty services.	Removes confusion between core and specialty services.
§ 3411.3	Removed the requirement that Core Service Agencies (CSAs) have a Quality Improvement Director and only require that there is designated staff to monitor quality improvement services and plans.	More reflective of the staff of providers.
§ 3412.6	Added that CSAs must screen for the need for evidence-based practices (EBP) and make appropriate referrals for services.	Added to reflect best practices in the delivery of behavioral health services and supports.
§ 3411.5(b)	Deleted the requirement that a Qualified Practitioner must meet with a consumer within two (2) hours of his or her request for service.	The Department agrees with the request of providers to delete the two hour requirement and modified § 3411.5(b)(2) to note that CSAs On-Call System Policy must provide for timely access to a qualified practitioner (QP) in order to provide any needed crisis support services, to include face-to-face interventions.
3415.3 (formerly)	Deleted the requirement that the Diagnostic Assessment (DA) team shall consist of at least two (2) specific types of qualified practitioners and clarified that one QP can perform a Diagnostic Assessment.	DBH does not think two QPs are clinically necessary.
§ 3418.6 (formerly)	Deleted the requirement that Community Support Providers submit a Community Support Organization Plan to DBH.	DBH does not think this is necessary.
§ 3421.10 (formerly)	Deleted the requirement that a psychiatrist provides supervision for all Intensive Day Treatment services and conduct a daily assessment for Intensive Day Treatment services.	Deleted to better accommodate providers' staffing ratios and reflect evolving best practices in the delivery of behavioral health services in the

		District’s continuum of care.
§ 3422.1	Removed the bottom age limit for Community Based Interventions (CBI) from ages 6 – 21 to up to the age of 21.	Increases access to CBI services for families with young children.
§§ 3422.39; 3422.42; 3422.46; 3422.48	Removed the requirement that CBI team clinicians must have a Master’s degree and instead require they have appropriate licenses to provide services.	Revised to better accommodate providers’ staffing ratios, licensure requirements and reflect best practices in the delivery of CBI.
§ 3423.9(g)-(h)	Added vocational specialists and peer specialists to the ACT team.	Added to better reflect evolving best practices in the delivery of ACT.

The Director gives notice of the intent to take final rulemaking action to adopt the proposed rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 34, MENTAL HEALTH REHABILITATION SERVICES PROVIDER CERTIFICATION STANDARDS, of Title 22-A DCMR, MENTAL HEALTH, is repealed and replaced by a new Chapter 34 to read as follows:**

**CHAPTER 34 MENTAL HEALTH REHABILITATION SERVICES PROVIDER CERTIFICATION STANDARDS**

**3400 GENERAL PROVISIONS**

- 3400.1 The Department of Behavioral Health (the Department) entered into a Memorandum of Agreement with the Department of Health Care Finance to implement a Medicaid Rehabilitation Option for the provision of mental health rehabilitative services (MHRS).
- 3400.2 The purpose of these rules is to set forth the requirements for certification of organizations as the Department-certified MHRS providers by the Department.
- 3400.3 Each Department-certified MHRS provider shall meet and adhere to the terms and conditions of its Human Care Agreement with the Department and its Medicaid provider agreement with the Department of Health Care Finance (DHCF).

**3401 MHRS PROVIDER CERTIFICATION PROCESS**

- 3401.1 No person or entity shall provide MHRS unless certified by the Department. Each applicant seeking certification as an MHRS provider shall submit a certification application to the Department. A DBH-certified MHRS provider seeking renewal of certification shall submit a certification application at least



ninety (90) days prior to the termination of its current certification. The certification of an MHRS provider that has submitted a timely application for renewal certification shall continue until the Department takes action to renew or deny renewal of certification.

- 3401.2 Certification shall be considered terminated if the MHRS provider:
- (a) Fails to submit a complete certification application ninety (90) days prior to the expiration date of the current certification;
  - (b) Voluntarily relinquishes certification;
  - (c) Terminates operations.
- 3401.3 Upon receipt of a certification application, the Department shall review the certification application to determine if it is complete. If a certification application is incomplete, the Department shall return the incomplete certification application to the applicant. An incomplete certification application shall not be regarded as a certification application. Absent good cause, a provider's failure to submit a complete certification application within ninety (90) days prior to expiration of the current certification shall be deemed a voluntary relinquishment of certification and trigger the Department's closure protocol.
- 3401.4 Following the Department's acceptance of the certification application, the Department shall determine whether the applicant's services and activities meet the certification standards described in this chapter. The Department shall schedule and conduct an on-site survey of the applicant's services to determine whether the applicant satisfies the certification standards.
- 3401.5 The Department may conduct an on-site survey at the time of certification application or certification renewal, or at any other time during the period of certification.
- 3401.6 During an on-site survey, the Department shall have access to the entirety of records the Department deems necessary to verify compliance with certification standards, and may conduct interviews with staff, others in the community, and consumers with consumer permission. Applicant or MHRS provider interference with on-site survey, or lack of candor by the provider, shall be grounds for an immediate suspension of any prior certification.
- 3401.7 An applicant or certified MHRS provider that fails to comply with the certification standards or its Human Care Agreement (HCA), or is in non-compliance with Federal or District law, may receive a Corrective Measures Plan (CMP) from the Department. The CMP shall describe the areas of non-compliance, suggest actions needed to bring operations into compliance, and set forth a timeframe no more than ten (10) business days for the provider's

submission of a written Corrective Action Plan (CAP) after receipt of the CMP from the Department. The issuance of a CMP is a separate process from the issuance of a Notice of Infraction under 16 DCMR Chapter 35.

- 3401.8 The Department is not required to utilize the CMP process and may proceed directly to decertification under Section 3426 when, in the Department's discretion, the nature of the violations are for fraud, waste and abuse and present a threat to the health or safety of consumers.
- 3401.9 An applicant or certified MHRS provider's CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to the Department within ten (10) business days after receipt of the CMP from the Department.
- 3401.10 The Department shall notify the applicant or the Department-certified MHRS provider whether the provider's CAP is accepted within ten (10) working days after receipt. In addition to utilizing the CMP process in subsection 3401.6 during the certification and recertification stage, the Director may use the same procedures at any other time to address violations for this chapter, a provider's Human Care Agreement, or a violation of Federal or District law. The Department is not required to use the CMP process and may proceed directly to decertification under section 3426 when, in the Director's discretion, the nature of the violations present a threat to the health or safety of consumers.
- 3401.11 The Department shall issue certification after it verifies that the applicant or the Department-certified MHRS provider has remediated all of the deficiencies identified in the CAP and meets all the certification standards.
- (a) A determination to grant full certification to a program shall be based on the Department's review and validation of the information provided in the application, as well as facility inspection findings, any CAP, and the facility or program's compliance with this chapter.
- (b) Full certification as an MHRS provider shall be for one (1) calendar year for new applicants, and two (2) calendar years for existing providers seeking renewal. Certification shall start from the date of issuance of certification by the Department, subject to the MHRS provider's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to Section 3426. The Certification shall specify the effective date of the certification, whether the MHRS provider is certified as a Core Service Agency (CSA), sub-provider, or specialty provider, and the types of services the MHRS provider is certified to provide.
- 3401.12 The Department may grant provisional certification status to a new facility or program that:

- (a) Has not previously held a certification issued by the Department;
- (b) Is in the process of securing a facility within the District of Columbia, at the time of application; and
- (c) Has met initial requirements for evidence-based practice (EBP) certification process (*e.g.*, Multi-Systemic Therapy, Functional Family Therapy, Trauma Focused Cognitive Behavioral Therapy, Child Parent Psychotherapy).

3401.13 The purpose of provisional certification is to allow a new provider to the District an opportunity to identify a space for their agency within the District. Additionally, this allows a new provider the option of responding to a Request for Qualification while they continue to work on meeting the requirements of certification. Provisional certification shall not exceed a period of six (6) months and may be renewed only once for an additional period not to exceed ninety (90) days. Upon receipt of a provisional certification, a provider may submit a response to the Department's Request for Qualification for an MHRS Human Care Agreement (HCA).

3401.14 Full certification as an MHRS provider shall be for one (1) calendar year for new applicants, and two (2) calendar years for existing providers seeking renewal. Certification shall start from the date of issuance of certification by the Department, subject to the MHRS provider's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to Section 3426. The Certification shall specify the effective date of the certification, whether the MHRS provider is certified as a Core Service Agency (CSA), sub-provider, or specialty provider, and the types of services the MHRS provider is certified to provide.

3401.15 Certification is not transferable to any other organization. The MHRS provider shall notify the Department within forty-eight (48) hours of any changes in its operation that affect the provider's continued compliance with these certification standards, including changes in ownership or control, changes in service, and changes in its affiliation and referral arrangements.

3401.16 The Director may deny certification if the applicant fails to comply with any certification standard. The Director may revoke certification of an MHRS provider through the decertification process in accordance with Section 3426 of this chapter.

3401.17 Prior to adding an MHRS service during the term of certification, the MHRS provider shall submit a certification application describing the service. Upon determination by the Department that the service is in compliance with

certification standards, the Department may certify the MHRS provider to provide that service.

- 3401.18 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. Certification as an MHRS provider depends upon the Director's assessment of the need for additional providers(s) and availability of funds.

## **3402 SERVICE COVERAGE**

- 3402.1 MHRS are those rehabilitative or palliative services administered by the Department and rendered by Department-certified MHRS providers to eligible consumers who meet medical necessity for such services.

- 3402.2 MHRS are intended for the maximum reduction of mental disability and restoration of a consumer to his or her best possible functional level.

- 3402.3 MHRS are recommended by a physician or a licensed practitioner of the healing arts (qualified practitioners) and rendered by qualified practitioners and credentialed staff supervised by an independent licensed qualified practitioner, in certified community mental health rehabilitation services agencies (MHRS providers) in accordance with the certification standards established in this chapter and in compliance with the Department of Health's licensure regulations.

- 3402.4 Rehabilitative services covered as MHRS are:

- (a) Diagnostic Assessment;
- (b) Medication/Somatic Treatment;
- (c) Counseling;
- (d) Community Support;
- (e) Crisis/Emergency;
- (f) Rehabilitation/Day Services;
- (g) Intensive Day Treatment;
- (h) Community Based Interventions (CBI);
- (i) Assertive Community Treatment (ACT);
- (j) Psychosocial Rehabilitation Clubhouse;
- (k) Child-Parent Psychotherapy for Family Violence (CPP-FV); and

(l) Trauma-Focused Cognitive Behavioral Therapy (TF-CBT).

3402.5 Eligible MHRS providers include CSAs, sub-providers and specialty providers that are certified in compliance with the certification standards set forth in this chapter.

3402.6 Qualified practitioners rendering MHRS through the Department-certified MHRS providers shall meet eligibility requirements described in § 3413.

3402.7 MHRS coverage limitations are set forth in § 3424. Coverage for any MHRS is contingent on whether all of the following criteria are met:

- (a) The service shall be medically necessary;
- (b) The service shall be delivered by a Department-certified MHRS provider as described in § 3410, § 3411 and § 3412;
- (c) The service shall be delivered by qualified practitioners (and credentialed staff under the supervision of qualified practitioners) acting within their scope of practice as identified in § 3413;
- (d) The service shall be delivered in accordance with an approved Plan of Care as described in § 3407 and § 3408; and
- (e) The service shall be delivered in accordance with the service specific standards set forth in § 3414, § 3415, § 3416, § 3417, § 3418, § 3419, § 3420, § 3421, § 3422, § 3423, § 3427, and § 3428.

3402.8 All consumers receiving MHRS shall have free choice of MHRS providers.

### **3403 ELIGIBLE CONSUMERS**

3403.1 Consumers eligible for Medicaid-funded MHRS must meet the following requirements:

- (a) Be enrolled in Medicaid, or be eligible for enrollment and have an application pending;
- (b) Be a *bona fide* resident of the District, as defined in D.C. Official Code § 7-1131.02(29) (2018 Repl.);
- (c) Be a child or youth with mental health problems, as defined in D.C. Official Code § 7-1131.02(1), or an adult with mental illness as defined in D.C. Official Code § 7-1131.02(24); and

- (d) Be certified as requiring MHRS by a qualified practitioner.
- 3403.2 Eligible consumers of MHRS shall have a primary mental health diagnosis as described in the International Classification of Diseases (ICD-10) and Diagnostic and Statistical Manual of Mental Health Disorder (DSM-5), or subsequent versions adopted by the Department pursuant to public notice in the D.C. Register.
- 3403.3 Persons with a primary substance use disorder diagnosis only are not eligible consumers of MHRS.
- 3403.4 Subject to Subsection 3403.5, consumers eligible for locally-funded MHRS are those individuals who are not eligible for Medicaid or Medicare or are not enrolled in any other third-party insurance program except the D.C. HealthCare Alliance, and who meet the following requirements:
- (a) Be a *bona fide* resident of the District, as defined in D.C. Official Code § 7-1131.02(29);
- (b) Be a child or youth with mental health problems, as defined in D.C. Official Code § 7-1131.02(1), or an adult with mental illness as defined in D.C. Official Code § 7-1131.02(24);
- (c) Be certified as requiring MHRS by a qualified practitioner; and
- (d) For individuals eighteen (18) years of age and older, live in households with a countable income of less than two hundred percent (200%) of the federal poverty level, and for individuals under eighteen (18) years of age, live in households with a countable income of less than three hundred percent (300%) of the federal poverty level.
- 3403.5 Consumers eligible for Medicare remain eligible for the following locally-funded MHRS only to the extent these services are not otherwise covered by Medicare:
- (a) Community support; and
- (b) Specialized services identified in Subsection 3414.3.
- 3403.6 Providers shall not bill Medicaid and/or the Department for MHRS provided to any consumer that does not meet the eligibility requirements set forth above.
- 3403.7 For new enrollees and those enrollees whose Medicaid certification has lapsed, there is an eligibility grace period of ninety (90) days from the date of first service for new enrollees, or from the date of eligibility expiration for enrollees who have a lapse in coverage, until the date the Economic Security Administration makes an eligibility or recertification determination. In the event the consumer appeals a

denial of eligibility or recertification by the Economic Security Administration, the Director may extend the ninety (90) day eligibility grace period until the appeal has been exhausted. The ninety (90) day eligibility grace period may also be extended at the discretion of the Director for other good cause shown. Upon expiration of the eligibility grace period, MHRS services provided to the consumer are no longer reimbursable by the Department. Nothing in this section alters the Department's timely-filing requirements for claim submissions.

#### **3404 ENROLLMENT, AUTHORIZATION AND RE-AUTHORIZATION OF MHRS**

- 3404.1 Enrollment is the process by which the Department adds a consumer to the MHRS system of care and assigns them to a provider after ascertaining their eligibility. The intake appointment at the assigned provider should occur no later than seven (7) days after enrollment, and providers are required to document steps taken to locate and provide services to a consumer in the Department's electronic data management system.
- 3404.2 Initial authorizations for new MHRS enrollees and for those enrollees whose Medicaid certification has lapsed are limited to ninety (90) days, subject to Subsection 3403.6. Prior authorization and re-authorization requirements are further described in section 3424.
- 3404.3 Upon receiving an authorization plan request, the Department shall determine whether MHRS are medically necessary and issue a service authorization decision to the CSA.
- 3404.4 As part of the service authorization process, the Department may review the consumer's Plan of Care or other clinical material if additional clinical information is required in order to evaluate consumer needs and make a level of care determination.

#### **3405 CONSUMER PROTECTIONS**

- 3405.1 Each MHRS provider shall establish and adhere to a consumer rights policy authorized by its governing authority (Consumer Rights Policy) that complies with the requirements of 22-A DCMR § 301.1.
- 3405.2 Each MHRS provider shall establish and adhere to a system for distributing the Consumer Rights Policy that complies with the requirements of 22-A DCMR § 301.3.
- 3405.3 Each MHRS provider shall establish and adhere to a well-publicized complaint and grievance system, which includes written policies and procedures for handling consumer, family, and practitioner complaints and grievances that complies with 22-A DCMR § 306 (Complaint and Grievance Policy).

- 3405.4 Each MHRS provider shall establish and adhere to policies and procedures for obtaining written informed consent to treatment from consumers (Consent to Treatment Policy), which comply with applicable federal and District laws and regulations, including 22-A DCMR Chapter 1.
- 3405.5 Each MHRS provider shall establish and adhere to policies and procedures governing the release of mental health information about consumers (Release of Consumer Information Policy), which comply with applicable Federal and District laws and regulations. For consumers with co-occurring psychiatric and addictive disorders, the MHRS provider shall comply with the requirements of 42 CFR Part 2 governing the confidentiality and release of drug and alcohol treatment records.
- 3405.6 Each MHRS provider shall establish and adhere to policies and procedures governing the use of advance instructions for mental health treatment, durable power of attorney for health care and advance directives that comply with applicable Federal and District laws and regulations, including 22-A DCMR Chapter 1 and the Department policy (Advance Instructions Policy).
- 3405.7 Each MHRS provider's Advance Instructions Policy shall require qualified practitioners to incorporate the development of advance instructions for mental health treatment, durable power of attorney for health care, and advance directives into the assessment planning process.
- 3405.8 The Department shall review and approve each MHRS provider's Consumer Rights Statement, Complaint and Grievance Policy, Consent to Treatment Policy, Release of Consumer Information Policy, and Advance Instructions Policy, during the certification process.

**3406 CONSUMER CHOICE**

- 3406.1 Each MHRS provider shall establish and adhere to policies and procedures governing the means by which consumers shall be informed of the full choices of MHRS providers and other mental health service providers available, including information about peer support and family support services and groups and how to access these services (MH Consumer Choice Policy).
- 3406.2 The Department shall review and approve each MHRS provider's MH Consumer Choice Policy during the certification process.
- 3406.3 The MH Consumer Choice Policy shall comply with applicable Federal and District laws and regulations.
- 3406.4 Each MHRS provider shall:



- (a) Make its MH Consumer Choice Policy available to consumers and their families; and
- (b) Establish and adhere to a system for documenting that consumers and families receive the MH Consumer Choice Policy.

3406.5 Each CSA's MH Consumer Choice Policy shall ensure that each consumer:

- (a) Requesting MHRS directly from the CSA is informed that the consumer may choose to have MHRS provided by any of the other the Department-certified CSAs;
- (b) Enrolled in the CSA is informed that the consumer may choose to have MHRS provided by any of the Department-certified sub-providers; and
- (c) Enrolled in the CSA is informed that the consumer may choose to have MHRS provided by any of the Department-certified specialty provider.

#### **3407 PLAN OF CARE DEVELOPMENT PROCESS**

3407.1 Each CSA shall coordinate the plan of care development process for its enrolled consumers from the start of intake through exit from the system of care, except that the plan of care development process for consumers authorized to receive:

- (a) CBI shall be coordinated by the consumer's CBI provider;
- (b) ACT services shall be coordinated by the consumer's ACT provider; and
- (c) Psychosocial Rehabilitation Clubhouse (“Clubhouse”) services shall be coordinated by the member's Clubhouse provider, if the member is not linked with a CSA, CBI, or ACT provider.

3407.2 The plan of care development process for consumers shall, at a minimum, include:

- (a) The completion of a Diagnostic Assessment service and required components as described in Section 3415;
- (b) Development of a Plan of Care as described in Section 3408;
- (c) Consideration of the consumer’s beliefs, values, and cultural norms in how, what, and by whom MHRS are to be provided; and
- (d) Consideration, screening and assessment of consumer for treatment in an appropriate evidence-based practice (EBP) offered through a certified MHRS provider.

3407.3 Court-appointed guardians for adults, children and youth and the parents or family members of children and youth shall be involved in the plan of care development process. The families and significant others of adult consumers may participate in the plan of care development process to the extent that the adult consumer consents to the involvement of family and significant others.

**3408 PLAN OF CARE DEVELOPMENT**

3408.1 Each Plan of Care shall:

- (a) Be person-centered;
- (b) Include the consumer's self-identified recovery goals; and
- (c) Provide for the delivery of services in the most normative, least restrictive environment that is appropriate for the consumer.

3408.2 The approval of the Plan of Care, as demonstrated by the electronic signature and date stamp of an independently licensed qualified practitioner, shall occur within thirty (30) calendar days from when the provider obtains consent to treatment from the consumer.

3408.3 Each CSA shall develop and maintain a complete and current Plan of Care for each enrolled consumer after completing intake and assessment. The Plan of Care shall, at a minimum, describe all of the MHRS services the CSA will provide the consumer, as well as any services provided by any sub-provider or specialty provider to the consumer. The CSA is responsible for coordinating the development of the Plan of Care with any sub-provider or specialty provider involved in the provision of services.

3408.4 The Plan of Care shall include the following elements:

- (a) A overall broad, long-term goal statement(s) that captures the individual's or family's short and long term goals for the future, ideally written in first-person language.
- (b) A list or statement of individual or family strengths that support goal accomplishment. These include abilities, talents, accomplishments and resources.
- (c) A list or statement of barriers that pose obstacles to the individual's and/or family's ability to accomplish the stated goal(s). These include symptoms, functional impairments, lack of resources, consequences of substance use disorder and other challenges.

- (d) Objective statements that identify the short-term individual and/or family changes in behavior, function or status that overcome the identified barriers and are building blocks toward the eventual accomplishment of the long-term goal(s). Objective statements describe outcomes that are measurable and include individualized target dates to be accomplished within the scope of the plan.
- (e) Intervention statements that describe the treatment and recovery services intended to reduce or eliminate the barriers identified in the plan and support objective and eventual goal accomplishment. Interventions are specific to each objective and the individual's and/or family's stage of change. Intervention statements identify who will deliver the service, what will be delivered, when it will be delivered and the purpose of the intervention. Natural support interventions should also be included in the plan and include those non-billable supports delivered by resources outside of the formal behavioral health service-delivery system. When appropriate and applicable, EBP shall be incorporated into the intervention statement.

### **3409 PLAN OF CARE IMPLEMENTATION**

- 3409.1 CSA assigned staff and the consumer shall discuss the Plan of Care on an ongoing basis. An encounter note describing the consumer's response to, participation in, and agreement to the Plan of Care shall be recorded in the consumer's clinical record.
- 3409.2 In situations where the consumer does not demonstrate the capacity to sign or does not sign the Plan of Care, the reasons the consumer does not sign shall be recorded in the consumer's clinical record, including each date where signature was attempted.
- 3409.3 An independently licensed qualified practitioner shall electronically sign and electronically date stamp the Plan of Care.
- 3409.4 Documentation of participation of the consumer's court-appointed guardian, family and significant others in the development of the Plan of Care shall also be included in the consumer's clinical record, as appropriate.
- 3409.5 Each MHRS provider shall develop policies and procedures for Plan of Care review (Plan of Care Review Policy). The Plan of Care Review Policy shall be part of the MHRS provider's Treatment Planning Policy as required by § 3410.12.
- 3409.6 The Plan of Care Review Policy shall require that the Plan of Care be reviewed and updated every one hundred eighty (180) days and at any time there is a significant change in the consumer's condition or situation to reflect progress toward or the lack of progress toward the treatment or recovery goals. Each new

Plan of Care should incorporate a review of what is working in treatment as well as challenges that have had an effect on treatment. The Plan of Care may be reviewed more frequently, as necessary, based on the consumer's progress or circumstances.

**3410 MHS PROVIDER QUALIFICATIONS--GENERAL**

3410.1 Each MHS provider shall be established as a legally recognized entity in the United States and qualified to conduct business in the District. A certificate of good standing issued by the District of Columbia Department of Consumer and Regulatory Affairs shall be evidence of qualification to conduct business.

3410.2 Each MHS provider shall maintain the clinical operations policies and procedures described in this section which shall be reviewed and approved by the Department, during the certification survey process.

3410.3 Each MHS provider shall:

- (a) Have a governing authority, which shall have overall responsibility for the functioning of the MHS provider;
- (b) Comply with all applicable Federal and District laws and regulations;
- (c) Hire personnel with the qualifications necessary to provide MHS and to meet the needs of its enrolled consumers;
- (d) Ensure that qualified practitioners, listed in § 3413, are available to provide appropriate and adequate supervision of all clinical activities; and
- (e) Employ qualified practitioners that meet all professional requirements as defined by the District's licensing laws and regulations relating to the profession of the qualified practitioner.

3410.4 Each MHS provider shall establish and adhere to policies and procedures for selecting and hiring staff (Staff Selection Policy), including, but not limited to requiring:

- (a) Evidence of licensure, certification or registration as applicable and as required by the job being performed;
- (b) For unlicensed staff, evidence of completion of an appropriate degree, appropriate training program, or appropriate credentials, for example, an academic transcript or a copy of degree;
- (c) Appropriate reference and background checks as required by Federal and District of Columbia law, including ensuring at least quarterly that no

individual is excluded from participation in a Federal health care program as found on the Department of Health and Human Services “*List of Excluded Individuals/Entities*” (<http://oig.hhs.gov/fraud/exclusion.asp>) or the General Services Administration “*Excluded Parties List System*” (<http://www.wpls.gov>) and the appropriate child abuse registry checks for children and youth serving providers;

- (d) Evidence of completion of all communicable disease testing required by District laws and regulations, including a Tuberculin skin test or a chest x-ray;
- (e) A process by which all staff, as a condition of hiring, shall:
  - (1) Declare any past events that might raise liability or risk management concerns, such as malpractice actions, insurance cancellations, criminal convictions, Medicare/Medicaid sanctions, and ethical violations;
  - (2) Indicate whether they are presently using illegal drugs; and
  - (3) Attest that they are capable of performing the essential functions of their jobs, with or without accommodation; and
- (f) A mechanism for ongoing monitoring of staff licensure, certification, or registration, such as an annual confirmation process concurrent with staff performance evaluations that includes repeats of screening checks outlined above as appropriate.

3410.5 Each MHRS provider shall establish and adhere to written job descriptions for all positions, including, at a minimum, the role, responsibilities, reporting relationships, and minimum qualifications for each position. The minimum qualifications for each position shall be appropriate for the scope of responsibility and clinical practice described for each position.

3410.6 Each MHRS provider shall establish and adhere to policies and procedures requiring a periodic evaluation of clinical and administrative staff performance (Performance Review Policy) that require an assessment of clinical competence, as well as general organizational work requirements, and an assessment of key functions as described in the job description.

3410.7 Each MHRS provider shall establish and adhere to policies and procedures to ensure that clinical staff are licensed and to the extent required by applicable District laws and regulations, work under the supervision of a qualified practitioner (Supervision and Peer Review Policy). The Supervision and Peer Review Policy shall:

- (a) Include procedures for clinical supervision, which require sufficient clinical supervision conducted by qualified practitioners;
- (b) Require personnel files of non-licensed clinical staff and consumer clinical records to contain evidence that the Supervision and Peer Review Policy is observed; and
- (c) Include an active peer review process to monitor quality of care delivered by qualified practitioners and credentialed staff.

3410.8 Each MHRS provider shall establish and adhere to policies and procedures governing the credentialing or privileging of staff (Credentialing Policy) consistent with the Department rules on privileging and competency-based credentialing systems. The Credentialing Policy shall:

- (a) Allow staff who do not possess college degrees to be credentialed for direct service work, based on educational equivalent qualifications which include experience that provides an individual with an understanding of mental illness and which was acquired as an adult through personal experience with the mental health treatment system or through the provision of significant supports to adults with mental illness or children and youth with mental health problems and with serious emotional disturbance;
- (b) Facilitate the employment of persons in recovery as peer counselors and members of community support teams; and
- (c) Include an assessment of qualified practitioners' cultural and linguistic competence.

3410.9 Each MHRS provider shall have annual training that meets the Occupational Safety & Health Administration (OSHA) regulations that govern behavioral health facilities and any other applicable infection control guidelines, including information on the use of universal precautions and on reducing exposure to hepatitis, tuberculosis, and HIV/AIDS.

3410.10 A program shall have a current written plan for staff development and organizational onboarding, approved by the Department, which reflects the training and performance improvement needs of all employees working in that program. The plan shall address the steps the organization will take to ensure the recruitment and retention of highly qualified employees and the reinforcement of staff development through training, supervision, the performance management process, and activities such as shadowing, mentoring, skill testing and coaching. The plan shall minimally include culturally competent training and onboarding activities in the following core areas:

- (a) The program's approach to addressing treatment or recovery services (as appropriate to certification), including philosophy, goals and methods;
- (b) The staff member's specific job description and role in relationship to other staff;
- (c) Emergency preparedness plan and all safety-related policies and procedures;
- (d) The proper documentation of services in individual consumer records, as applicable;
- (e) Policies and procedures governing infection control, protection against exposure to communicable diseases, and the use of universal precautions;
- (f) Laws and policies governing confidentiality, of client information and release of information;
- (g) Laws and policies governing reporting abuse and neglect;
- (h) Client rights; and
- (i) Other trainings deemed necessary and communicated by the Department.

3410.11 Each MHRS provider shall establish and adhere to policies and procedures defining preadmission, intake, screening, assessment, referral, transfer, and discharge procedures (Admission, Transfer, and Discharge Policy) that comply with applicable federal and District laws and regulations. The policies and procedures shall define the required documentation for screening or assessing consumers for admission to an EBP operated by the provider when the consumer's condition requires a modification in the Plan of Care.

3410.12 Each MHRS provider shall establish and adhere to policies and procedures governing the coordination of the treatment or recovery planning process (Treatment Planning Policy or Recovery Planning Policy), including procedures for designing, implementing, reviewing, and revising each consumer's Plan of Care that comply with the requirements of Sections 3407 and 3408.

3410.13 Each MHRS provider shall establish and adhere to policies and procedures requiring that treatment be provided in accordance with the service specific standards in § 3414, § 3415, § 3416, § 3417, § 3418, § 3419, § 3420, § 3421 and § 3422, § 3423, § 3427, and § 3428 (Service Specific Policy). The Service Specific Policy shall:

- (a) Address supervision requirements and required caseload ratios that are appropriate to the population served and treatment modalities employed; and
- (b) Include a written description of the services offered by the MHRS provider (Service Description) describing the purpose of the service, the hours of operation, the intended population to be served, recovery modalities provided by the service, treatment or recovery objectives, and expected outcomes.

3410.14 Each MHRS provider shall establish and adhere to policies and procedures governing communication with the consumer's primary care providers (Primary Care Provider Communication Policy). The Primary Care Provider Communication Policy shall:

- (a) Require the MHRS provider to obtain and document authorization from the consumer in the consumer's clinical records before contacting the consumer's primary care providers;
- (b) Outline the MHRS provider's interface with primary health care providers, managed health care plans, and other providers of mental health services; and
- (c) Describe the MHRS provider's activities which will enhance consumer access to primary health care and the coordination of mental health and primary health care services.

3410.15 Each MHRS provider shall establish and adhere to policies and procedures for handling routine, urgent, and emergency situations (Unscheduled Service Access Policy). The Unscheduled Service Access Policy shall:

- (a) Include referral procedures to local emergency departments;
- (b) Include staff assignment to cover emergency walk-in hours;
- (c) Include on-call arrangements for clinical staff and physicians that provide for both;
- (d) Describe the availability of telephone access to a qualified practitioner, for the consumer, or other person acting on behalf of the consumer making contact with the MHRS provider;
- (e) Describe the availability of timely access to face-to-face crisis support services;



- (f) Specify how the MHRS provider will interact and coordinate services with the Department-designated crisis and emergency service; and
- (g) Include procedures for triaging consumers who require Crisis/Emergency services or psychiatric hospitalization.

3410.16

Each MHRS provider shall establish and adhere to policies and procedures for clinical record documentation, security, and confidentiality of consumer and family information, clinical records retention, maintenance, purging and destruction, and for disclosure of consumer and family information, and informed consent that comply with applicable Federal and District laws and regulations (Clinical Records Policy). The Clinical Records Policy shall:

- (a) Require the MHRS provider to maintain all clinical records in a secured and locked storage area;
- (b) Require the MHRS provider to maintain and secure a current, clear, organized, and comprehensive clinical record for every individual assessed, treated, or served that includes information deemed necessary to provide treatment, protect the MHRS provider, or comply with applicable Federal and District laws and regulations; and
- (c) Require that the clinical record contain information to identify the consumer, support the diagnosis, justify the treatment, document the course and results of treatment, and facilitate continuity of care. The clinical record shall include, at a minimum:
  - (1) Consumer identification information, including enrollment information;
  - (2) Identification of a person to be contacted in the event of emergency;
  - (3) Basic screening and intake information;
  - (4) Documentation of internal or external referrals;
  - (5) Comprehensive diagnostic and psychosocial assessments;
  - (6) Pertinent medical information including the name, address, and telephone number of the consumer's primary care physician;
  - (7) Advance instructions and advance directives;
  - (8) The Plan of Care;

- (9) For children and youth, documentation of family or legal guardian involvement in treatment planning and services or statement of reasons why it is not clinically indicated;
- (10) Methods for addressing consumers' and families' special needs, especially those which relate to communication, cultural, linguistic, and social factors;
- (11) Detailed description of services provided;
- (12) Progress notes;
- (13) Discharge planning information;
- (14) Appropriate consents for service;
- (15) Appropriate release of information forms; and
- (16) Signed Consumer Rights Statement.

3410.17 Each provider shall comply with the Department's policy on supervision, including requirements for the documentation of supervision.

3410.18 Each MHRS provider shall enter encounter notes with sufficient written clinical documentation to support each therapy, service, activity, or session for which billing is made which, at a minimum, consists of:

- (a) The specific service type rendered;
- (b) The date and duration (actual time, a.m. or p.m. (beginning and ending)) in which the services were rendered;
- (c) Name, title, and credentials of the person providing the services;
- (d) The setting in which the services were rendered;
- (e) Confirmation that the services delivered are contained in the consumer's Plan of Care;
- (f) A description of each encounter or service by a qualified practitioner or credentialed staff with the consumer that is sufficient to document that the service was provided in accordance with this chapter;
- (g) A description of the consumer's response to the intervention sufficient to show, particularly in the case of group interventions, their unique participation in the service; and

- (h) Dated and authenticated entries, with their authors identified, which are legible and concise, including the printed name and the signature of the person rendering the service, diagnosis and clinical impression recorded in the terminology of the ICD-10 CM (or any subsequent version adopted by the Department pursuant to written notice published in the *D.C. Register*), and the service provided.

3410.19 Each MHRS provider shall ensure that all clinical records of consumers are completed promptly, filed, and retained in accordance with the MHRS provider's Clinical Records Policy.

3410.20 All CSA, ACT and Community Based Interventions (CBI) MHRS providers shall operate an on-call system for enrolled consumers that is available twenty-four (24) hours a day, seven (7) days a week. Providers shall make the following services available five (5) days per week from 9:00 am to 6:00 pm, evening meetings available by appointment, and at least once a month, on a Saturday, for four (4) hours: diagnostic assessments, medication/somatic treatment, therapy, and community support.

3410.21 Providers who deliver specialty services shall make their services available as follows:

MHRS SPECIALTY SERVICE	HOURS OF OPERATION	OTHER AVAILABILITY REQUIREMENTS
Crisis/Emergency	Twenty-four (24) hours per day, seven (7) days per week	Psychiatric consultation shall be available twenty-four (24) hours per day, seven (7) days per week
Rehabilitation/Day Services	Thirty (30) hours per week, no less than six (6) hours per day	Consumers authorized and referred for service shall be admitted within seven (7) business days of the referral from the CSA.
Intensive Day Treatment	Seven (7) days per week, no less than five (5) hours per day	Programs serving adults shall offer a minimum of forty (40) hours of active programming per week. Programs serving children shall offer a minimum of thirty (30) hours of active programming per week. Consumers authorized and referred for Intensive Day Treatment shall be admitted within forty-eight (48) hours of referral by a CSA.

MHRS SPECIALTY SERVICE	HOURS OF OPERATION	OTHER AVAILABILITY REQUIREMENTS
Community-Based Intervention	Levels I, II, III and IV - Twenty-four (24) hours per day, seven (7) days per week	<p>Consumers authorized and referred for all levels of CBI shall be admitted within forty-eight (48) hours of referral by a CSA.</p> <p>A CBI Team member shall respond to a call from a family member or a significant other, either by telephone or face- to-face contact, within sixty (60) minutes of receiving the call.</p> <p>All CBI providers shall develop a crisis intervention plan for each consumer receiving CBI.</p> <p>Level IV providers shall develop a crisis intervention plan for after-hours response, which shall include Mobile Crisis Response Team.</p>
Assertive Community Treatment	Twenty-four (24) hours per day, seven (7) days per week, with emergency response coverage, to include psychiatric availability	<p>Consumers authorized and referred for ACT shall be admitted within forty-eight (48) hours of referral by a CSA. At least sixty percent (60%) of ACT Services shall be provided in locations other than the office, according to consumer need, preference and clinical appropriateness. An ACT team member shall respond to a call from family or a significant other, either by telephone or face-to-face contact within sixty (60) minutes of receiving the call.</p>

3410.22 Each MHRS provider shall establish and adhere to policies and procedures requiring the MHRS provider to make language interpreters available as needed for persons who do not use English as a first language or use a non-primary language for communication (Interpreter Policy). The Interpreter Policy shall:

- (a) Require using a professional interpreter or interpretation service unless the qualified practitioner providing the treatment is proficient in the client’s language. ;
- (b) Address the employment of qualified sign language interpreters.

- 3410.23 The Interpreter Policy shall allow staff and contractors who do not possess valid certification from the National Registry of Interpreters for the Deaf to be credentialed based on skills in mental health interpreting gained through supervised experience. For purposes of this rule, supervised experience shall include supervision by an interpreter certified by the National Registry of Interpreters for the Deaf and ongoing training in sign language interpreting, preferably related to mental health, and may include on-the-job learning prior to employment by the MHRS provider.
- 3410.24 Each MHRS provider shall utilize a TTY communications line (or an equivalent) to enhance the MHRS provider's ability to respond to service requests and needs of consumers and potential consumers. MHRS provider staff shall be trained in the use of such communication devices.
- 3410.25 Each MHRS provider shall establish and adhere to policies and procedures which govern the provision of services in natural settings (Natural Settings Policy). The Natural Settings Policy shall require the MHRS provider to document how it respects consumers' and families' right to privacy and confidentiality when services are provided in natural settings.
- 3410.26 Each MHRS provider shall establish and adhere to anti-discrimination policies and procedures relative to hiring, promotion, and provision of services to consumers that comply with applicable Federal and District laws and regulations (Anti-Discrimination Policy).
- 3410.27 Each MHRS provider shall establish and adhere to policies and procedures governing quality improvement (Quality Improvement Policy). The Quality Improvement Policy shall require the MHRS provider to adopt a written Quality Improvement (QI) plan describing the objectives and scope of its QI program and requiring MHRS provider staff, consumer, and family involvement in the QI program. The Department shall review and approve each MHRS provider's QI program. The QI program shall be operational and shall measure and ensure at least the following:
- (a) Access and availability of services;
  - (b) Treatment and prevention of acute and chronic conditions;
  - (c) High volume services, high risk conditions and services, especially children and youth services;
  - (d) Coordination of care across behavioral health treatment and primary care treatment settings;
  - (e) Compliance with all MHRS certification standards;

- (f) Adequacy, appropriateness and quality of care;
- (g) Efficient utilization of resources; and
- (h) Consumer and family satisfaction with services.

3410.28 Each MHRS provider shall comply with the following requirements for facilities management:

- (a) Each MHRS provider's service site(s) shall be located and designed to provide adequate and appropriate facilities for private, confidential individual and group counseling sessions in consumer interview rooms.
- (b) Each MHRS provider's service site(s) shall have appropriate space for group activities and educational programs.
- (c) All areas of the MHRS provider's service site(s) shall be kept clean and safe, and shall be appropriately equipped and furnished for the services delivered.
- (d) In-office waiting time shall be less than one (1) hour from the scheduled appointment time. Each MHRS provider shall demonstrate that it can document the time period for in-office waiting.
- (e) Each MHRS provider shall comply with applicable provisions of the Americans with Disabilities Act in all business locations.
- (f) Each MHRS provider's main service site shall be located within reasonable walking distance of public transportation.
- (g) Each MHRS provider shall establish and adhere to a written evacuation plan to be used in fire, natural disaster, medical emergencies, bomb threats, terrorist attacks, violence in the workplace, or other disaster for all service sites (Disaster Evacuation Plan).
- (h) The Disaster Evacuation Plan shall require the MHRS provider:
  - (1) To conduct periodic disaster evacuation drills;
  - (2) Ensure that all evacuation routes are clearly marked by lighted exit signs; and
  - (3) Ensure that all staff participate in annual training about the Disaster Evacuation Plan and disaster response procedures.

- (i) Each MHRS provider shall obtain a written certificate of compliance from the District of Columbia Department of Fire and Emergency Medical Services indicating that all applicable fire and safety code requirements have been satisfied.
- (j) Each MHRS provider shall provide physical facilities for all service site(s) that are structurally sound and meet all applicable Federal and District laws and regulations for construction, safety, sanitation and health.
- (k) Each MHRS provider shall establish and adhere to policies and procedures governing infection control (Infection Control Policy). The Infection Control Policy shall comply with applicable Federal and District laws and regulations, including, but not limited to the blood borne pathogens standard set forth in 29 CFR § 1910.1030.
- (l) Each MHRS provider shall establish and adhere to policies and procedures governing the purchasing, receipt, storage, distribution, return, and destruction of medication that include accountability for and security of medications located at any of its service site(s) (Medication Policy). The Medication Policy shall comply with applicable Federal and District laws and regulations regarding the purchasing, receipt, storage, distribution, dispensing, return, and destruction of medications and require the MHRS provider to maintain all medications and prescription blanks in a secured and locked area.

3410.29 Each MHRS provider shall have established by-laws or other legal documentation regulating the conduct of its internal financial affairs. This documentation shall clearly identify the individual(s) that are legally responsible for making financial decisions for the MHRS provider and the scope of such decision-making authority. Each MHRS provider shall:

- (a) Maintain an accounting system that conforms to generally acceptable accounting principles, provides for adequate internal controls, permits, the development of an annual budget, an audit of all income received and an audit of all expenditures disbursed by the MHRS provider in the provision of services;
- (b) Have an internal process that allows for the development of interim and annual financial statements that compares actual income and expenditures with budgeted amounts, accounts receivable, and accounts payable information; and
- (c) Operate in accordance with an annual budget established by its governing authority.

- 3410.30 Each MHRS provider shall establish and adhere to policies and procedures governing the retention, maintenance, purging and destruction of its business records (Records Retention Policy). The Records Retention Policy shall:
- (a) Comply with applicable Federal and District laws and regulations;
  - (b) Require the MHRS provider to maintain all business records pertaining to costs, payments received and made, and services provided to consumers for a period of six (6) years or until all audits are completed, whichever is longer; and
  - (c) Require the MHRS provider to allow the Department, DHCF, the District's Inspector General, the United States Department of Health and Human Services, the Comptroller General of the United States or any of their authorized representatives to review the MHRS provider's business records, including clinical and financial records.
- 3410.31 Each MHRS provider shall comply with the following requirements for maintaining certification, provider status, and contracts:
- (a) Maintain proof of the Department certification;
  - (b) Maintain an active Medicaid provider status at all times;
  - (c) Maintain copies of contracts with the Department, vendors, suppliers, and independent contractors; and
  - (d) Require that its subcontractors continuously comply with the provisions of the MHRS provider's Human Care Agreement with the Department.
- 3410.32 Each MHRS provider, at its expense, shall:
- (a) Obtain at least the minimum insurance coverage required by its Human Care Agreement (HCA); and
  - (b) Make evidence of its insurance coverage available to the Department upon request.
- 3410.33 Each MHRS provider shall establish and adhere to policies and procedures governing billing and payment for MHRS (Billing and Payment Policy). The Billing and Payment Policy shall require the MHRS provider to have the necessary operational capacity to submit claims, document information on services provided, and track payments received. This operational capacity shall include the ability to:
- (a) Verify eligibility for Medicaid and other third party payers;



- (b) Document MHRS provided (by MHRS provider staff and subcontractors);
- (c) Submit claims and documentation of MHRS to the Department on a timely basis; and
- (d) Track payments for all MHRS provided to enrolled or referred consumers.

3410.34 Each MHRS provider shall submit claims for MHRS provided to enrolled consumers to the Department within ninety (90) days of the date of service, or thirty (30) days after a secondary or third party payer has adjudicated a claim for this service. The Department shall not pay for a claim that is submitted more than one (1) year from the date of service, except when federal law or regulations would require such payment to be made.

3410.35 Each MHRS provider shall have an established sliding fee schedule covering each of the MHRS it provides. For services provided to Medicaid-eligible consumers, no additional charge shall be imposed for services beyond that paid by Medicaid.

3410.36 Each MHRS provider shall utilize and require its subcontractors to utilize payments from other public or private sources, including Medicare. Payment of the Department and federal funds to the MHRS provider shall be conditional upon the utilization of all benefits from other payment sources.

3410.37 Each MHRS provider shall operate according to all applicable Federal and District laws and regulations relating to fraud and abuse in health care, the provision of mental health services, and the Medicaid program. An MHRS provider's failure to report potential or suspected fraud or abuse may result in sanctions, cancellation of contract, or exclusion from participation as an MHRS provider. Each MHRS provider shall:

- (a) Cooperate and assist any District or Federal agency charged with the duty of identifying, investigating, or prosecuting suspected fraud and abuse;
- (b) Provide the Department with regular access to the provider's medical and billing records, including electronic medical record, within twenty-four (24) hours of a Departmental request, or, immediately in the case of emergency;
- (c) Be responsible for promptly reporting suspected fraud and abuse to the Department, taking prompt corrective actions consistent with the terms of any contract or subcontract with the Department, and cooperating with DHCF or other governmental investigations; and
- (d) Ensure that none of its practitioners have been excluded from participation as a Medicaid or Medicare provider and, if a practitioner is determined to

be excluded by the Center for Medicare and Medicaid Services (CMS), notify the Department immediately.

- 3410.38 Each MHRS provider shall establish and adhere to a plan for ensuring compliance with applicable Federal and District laws and regulations (Corporate Compliance Plan), approved by the Department. Each MHRS provider shall submit any updates or modifications to its Corporate Compliance Plan to the Department for prior review and approval. Each MHRS provider's Corporate Compliance Plan shall:
- (a) Designate an officer or director with responsibility and authority to implement and oversee the operation of the Corporate Compliance Plan;
  - (b) Require that all officers, directors, managers, and employees know and understand its provisions;
  - (c) Include procedures designed to prevent and detect potential or suspected abuse and fraud in the administration and delivery of MHRS;
  - (d) Include procedures for the confidential reporting of violations of the Corporate Compliance Plan to the Department, including procedures for the investigation and follow-up of any reported violations;
  - (e) Ensure that the identities of individuals reporting suspected violations of the Corporate Compliance Plan are protected and that individuals reporting suspected violations, fraud, or abuse are not retaliated against;
  - (f) Require that confirmed violations of the Corporate Compliance Plan be reported to the Department within twenty-four (24) hours of confirmation; and
  - (g) Require any confirmed or suspected fraud and abuse under state or federal law or regulation be reported to the Department.
- 3410.39 Each MHRS provider shall ensure that sufficient resources (*e.g.* personnel, hardware, software) are available to support the operations of computerized systems for collection, analysis, and reporting of information, along with claims submission.
- 3410.40 Each MHRS provider shall have the capability to interact with the Department contract management system as required by the Department.
- 3410.41 Claims for MHRS shall be submitted using the format required by the Department.

3410.42 Each MHRS provider shall manage information in compliance with the confidentiality requirements contained in applicable Federal and District laws and regulations.

3410.43 Each MHRS provider shall establish and adhere to a plan that contains policies and procedures for maintaining the security of data and information (Disaster Recovery Plan). Each MHRS provider's Disaster Recovery Plan shall also stipulate back-up and redundant systems and measures that are designed to prevent the loss of data and information and to enable the recovery of data and information lost due to disastrous events.

### **3411 CORE SERVICES AGENCY REQUIREMENTS**

3411.1 Each CSA shall comply with the general certification standards described in § 3410, the service specific certification standards applicable to core services and the certification standards set forth in this section, as well as the other certification standards in this chapter.

3411.2 Each CSA shall:

- (a) Serve as the clinical home for the consumers it enrolls;
- (b) Be responsible for ensuring that Plans of Care are developed and approved for its enrolled consumers; and
- (c) Provide clinical management for its enrolled consumers.

3411.3 Each CSA shall satisfy the following minimum staffing requirements:

- (a) A Chief Executive Officer with professional qualifications and experience who meets the requirements established by the MHRS provider's governing authority. The Chief Executive Officer shall be charged with responsibility for day-to-day management of the CSA, and shall be a full-time employee devoting at least twenty (20) hours a week to administrative and management functions for the CSA;
- (b) A Medical Director who is a board-eligible psychiatrist, responsible for the quality of medical and psychiatric care provided by the MHRS provider. A child and youth-serving CSA may have a staff or consulting board-eligible child psychiatrist or a staff board-eligible psychiatrist with substantial child and adolescent experience as its Medical Director;
- (c) A full-time Clinical Director who is a qualified practitioner with an appropriate, relevant behavioral health advanced degree, with overall responsibility for oversight of the clinical program of the MHRS provider.

The Clinical Director may also serve as the Medical Director if the Clinical Director is a board-eligible psychiatrist;

- (d) A Controller, Chief Financial Officer, or designated individual responsible for executing or overseeing the financial operations of the MHRS provider. The CSA shall submit an annual audit completed by a Certified Public Accountant to the Department within one-hundred and twenty (120) days after the close of the provider's fiscal year. The designated financial officer shall have a Bachelors' Degree plus two (2) years of fiscal experience and may also oversee administrative operations and information services;
- (e) A staff person who is responsible for developing and implementing the CSA's quality improvement (QI) program and a medical records administrator responsible for the following:
  - (1) Ongoing quality control of clinical documentation;
  - (2) Assuring that clinical records are maintained, completed, and preserved in accordance with the MHRS provider's Clinical Records Policy;
  - (3) Assuring that information on enrolled consumers is immediately retrievable; and
  - (4) Establishing a central records index for the MHRS provider.

3411.4 Each CSA shall comply with the following requirements regarding clinical operations:

- (a) The CSA shall accommodate consumer preferences and needs with respect to primary staff and team representation.
- (b) The consumer and the assigned CSA staff, shall be responsible for the development and periodic review of the consumer's Plan of Care and for the coordination the delivery of all MHRS received by the consumer.
- (c) The signing qualified practitioner shall be primarily responsible for assuring that the Plan of Care assists the adult or child consumer in developing self-care skills and achieving recovery.
- (d) Each CSA shall establish and adhere to policies and procedures governing its relationship with subcontractors (Subcontractor Policy) in compliance with Federal and District laws and regulations. The Subcontractor Policy shall address, at a minimum, access to records, clinical responsibility and supervision, legal liability, insurance and dispute resolution.

- (e) Each CSA shall establish and adhere to policies and procedures governing the means by which family education and support will be offered and provided (Consumer and Family Education Policy). The Consumer and Family Education Policy shall require, at a minimum, the following:
- (1) The CSA shall make family education and support available for all consumer families;
  - (2) Family education and support shall include general information about mental health and psychiatric illness;
  - (3) Specific information about a consumer's situation shall be provided with the consent of the consumer, or in the case of child, with the consent of the parent or guardian in accordance with the CSA's Release of Consumer Information Policy;
  - (4) The availability of appointments for family members to meet with staff and availability of family support and education groups to be scheduled at times convenient for the family; and
  - (5) In written materials and face-to-face contacts provide information about available and needed services, as well as how the consumer may access Crisis/Emergency services. The materials shall be written at the 4th grade reading level and shall be printed in English and either Spanish or the secondary language conducive to facilitating communication with the majority of the CSA's target population.

3411.5 Each CSA shall comply with the following requirements regarding service accessibility:

- (a) Each CSA shall operate an on-call system for its enrolled consumers twenty-four (24) hours per day, seven (7) days per week, which is staffed by qualified practitioners to respond to urgent, emergency and routine situations (CSA On-Call System).
- (b) Each CSA shall establish and adhere to policies and procedures governing the operation of its On-Call System (On-Call System Policy). The On-Call System Policy shall require the CSA to provide:
  - (1) Telephone access to a qualified practitioner for consumers and their significant others to resolve problems telephonically, where possible;

- (2) Timely access to a qualified practitioner in order to provide any needed crisis support services, to include face-to-face interventions;
  - (3) Linkage to Crisis/Emergency services, including crisis stabilization services and "next day" appointments to assist the consumer to address urgent problems during the next business day;
  - (c) Each CSA shall, at a minimum, offer the core services as required by § 3414, § 3415, § 3416, § 3417 and § 3418 of these certification standards.
  - (d) Each CSA shall ensure that its business hours comply with the requirements of § 3410.20 and facilitate each enrolled consumer's ability to choose an MHRS provider.
  - (e) Each CSA shall provide a consumer presenting with an urgent need with a qualified practitioner for an intervention which may include face-to-face contact within the same day that the consumer presents for service.
  - (f) Each potential consumer presenting with a routine need shall be provided an intake appointment by a CSA for an intake appointment within seven (7) business days of presentation for service.
  - (g) Each CSA shall have policies and procedures for the provision of outreach services, including means by which these services and individuals will be targeted for such efforts (Outreach Policy). The Outreach Policy shall include procedures for protecting the safety of staff who engage in outreach activities.
  - (h) Each CSA shall educate consumers on EBPs and document consumers' receipt of this information.
- 3411.6 Each CSA shall establish and adhere to policies and procedures governing quality improvement (Quality Improvement Policy). The Quality Improvement Policy shall require the provider to adopt a written quality improvement (QI) plan describing the objectives and scope of its QI program and requiring provider staff, client, and family involvement in the QI program.
- 3411.7 The Department shall review and approve each provider's QI program at a minimum as part of the certification and recertification process. The QI program shall submit data to the Department, upon request.
- 3411.8 The QI program shall be operational and shall measure and ensure at least the following:
- (a) Easy and timely access and availability of services;

- (b) Treatment and prevention of acute and chronic conditions;
- (c) Close monitoring of high volume services, clients with high risk conditions, and services for children and youth;
- (d) Coordination of care across behavioral health treatment and primary care treatment settings;
- (e) Compliance with all certification standards, adequacy, appropriateness, and quality of care for clients;
- (f) Client and family satisfaction with services;
- (g) Quarterly random samplings of client outcomes, including but not limited to biological markers such as drug/alcohol screening results, in a format approved by the Department; and
- (h) Any other indicators that are part of the Department QI program for the larger system.

- 3411.9 Each CSA shall make a play area available for children in the waiting room area.
- 3411.10 Each CSA shall have a Controller, Chief Financial Officer, or a designated individual who is responsible for executing or overseeing the financial operations of the CSA, as described in this chapter.
- 3411.11 Each CSA shall be responsible for submitting clinical information to the Department upon request for enrolled consumers for the purposes of receiving authorization for medically necessary services and updating this information for each of its enrolled consumers to the Department as clinically necessary.
- 3411.12 Each CSA shall have the capability to submit timely and accurate claims, encounter data and other submissions as necessary directly to the Department contract management system.
- 3411.13 The Department shall review and approve each CSA's Subcontractor Policy, Consumer and Family Education Policy, On-Call System Policy, Outreach Policy, Quality Improvement Policy, and Evidence-Based Practices Information Policy as part of the certification and re-certification process.
- 3411.14 All MHRS providers certified for Supported Employment, ACT, CPP-FV, Functional Family Therapy (FFT), Multisystemic Treatment (MST), TF-CBT and CBI Level II and III, must obtain the Department approval to add teams supported through a Human Care Agreement. Providers shall submit a written request which must include the staffing patterns including supervisors, training plan

and/or dates, staff/case ratio and new capacity for the entire team including the new addition.

- 3411.15 A program shall have a current written plan for staff development and organizational onboarding, approved by the Department through the Accountability Administration, which reflects the training and performance improvement needs of all employees working in that program.

## **3412 SUBPROVIDER AND SPECIALTY PROVIDER REQUIREMENTS**

- 3412.1 Each sub-provider and specialty provider shall comply with the certification standards described in § 3410, the service specific standards applicable to the MHRS offered by the sub-provider or specialty provider and the certification standards described in this section, as well as the other certification standards in this Chapter.

- 3412.2 Sub-providers shall provide one (1) or more of the core services only through a written agreement with a CSA. Sub-providers shall ensure consumers are enrolled with a CSA.

- 3412.3 Each sub-provider shall establish and adhere to policies and procedures governing its relationship with a CSA that address access to records, clinical responsibility, legal liability, dispute resolution, and all other MHRS certification standards.

- 3412.4 Except for the provision of ACT, CBI, or Clubhouse services, specialty providers shall ensure consumers are enrolled with a CSA.

- 3412.5 Each specialty provider shall establish and adhere to policies and procedures governing its relationship with a CSA that address access to records, clinical responsibilities, legal liability, dispute resolution, and all other MHRS certification standards within the CSA Referral Policy.

- 3412.6 Each specialty provider shall screen and assess consumers for EBP as appropriate and applicable, and shall refer them to services as necessary. Each specialty provider shall have an Evidence Based Programs Information Policy, which includes how providers shall:

- (a) Screen and document screening consumers for EBP;
- (b) Describe the process of referring and linking consumers to another provider using a warm handoff, if the specialty provider does not render the appropriate EBP; and,
- (c) Collaborate with the CSA to ensure there are periodic assessments for the need for EBP.



3412.7 Each sub-provider and specialty provider shall satisfy the following minimum staffing requirements:

- (a) A Chief Executive Officer or Program Director with professional qualifications and experience who shall meet requirements as established by the MHRS provider's governing authority and is responsible for day-to-day management of the MHRS provider;
- (b) A sub-provider or specialty provider who provides rehabilitation/day services must also have a Consulting Psychiatrist who is a board-eligible psychiatrist and advises the sub-provider or specialty provider on the quality of medical and psychiatric care provided;
- (c) A Clinical Director who is a qualified practitioner with overall responsibility for oversight of the clinical program of the sub-provider or specialty provider;
- (d) Each sub-provider who provides either Diagnostic Assessment or Medication/Somatic Treatment shall demonstrate adequate oversight of quality of medical and psychiatric care by employing or contracting with a Medical Director or arranging for the Medical Director for the consumer's CSA to provide such oversight; and
- (e) The required staff listed in this subsection shall be either employees of the sub-provider or specialty provider or under contract to the sub-provider or specialty provider for an amount of time sufficient to carry out the duties assigned.

3412.8 Each sub-provider and specialty provider shall establish and adhere to policies and procedures governing its collaboration with a referring CSA in the development, implementation, evaluation, and revision of each consumer's Plan of Care, that comply with the Department rules (Collaboration Policy). The Collaboration Policy shall:

- (a) Be a part of each sub-provider and specialty provider's Treatment Planning Policy;
- (b) Require sub-providers and specialty providers to incorporate CSA-developed Diagnostic Assessment material into the sub-provider and specialty provider's treatment planning process, including the use of EBP as an intervention; and
- (c) Require sub-providers and specialty providers to coordinate the consumer's treatment with the consumer's CSA assigned staff.

- 3412.9 Each sub-provider shall offer core services as required by § 3410.20. At a minimum, the sub-provider shall offer services during these hours at its primary location.
- 3412.10 At a minimum, each specialty provider shall offer access to specialty services as required by § 3410.20.
- 3412.11 Each sub-provider and specialty provider QI program shall be directed by a coordinator who is a qualified practitioner and who has direct access to the Chief Executive Officer (QI Coordinator). The QI Coordinator shall review unusual incidents, deaths, and other sentinel events, monitor and review utilization patterns, and track consumer complaints and grievances.
- 3412.12 Each sub-provider and specialty provider with total annual revenues at or exceeding three hundred thousand dollars (\$300,000.00) shall have an annual audit by a certified public accounting firm in accordance with generally accepted auditing standards. The resulting financial audit report shall be consistent with formats recommended by the American Institute of Public Accountants. Each sub-provider and specialty provider shall submit a copy of the financial audit report to the Department ninety (90) days after the end of its fiscal year.
- 3412.13 Each sub-provider and specialty provider with total annual revenues less than three hundred thousand dollars (\$300,000.00) shall submit financial statements reviewed by an independent certified public accounting firm one hundred twenty (120) days after the end of its fiscal year.
- 3412.14 Each sub-provider and specialty provider shall have the capability to submit timely and accurate claims, encounter data, and other submissions as necessary directly to the Department contract management system.
- 3412.15 Each sub-provider and specialty provider shall only provide those MHRS to consumers that are specified in the consumers' Plan of Care as designated by the consumers' CSA.
- 3412.16 The Department shall review and approve the CSA Referral Policy, Collaboration Policy and the Evidence-Based Programs Information Policy.

### **3413 QUALIFIED PRACTITIONERS**

- 3413.1 MHRS shall be provided by qualified practitioners either directly or under the supervision of another qualified practitioner as set forth in this chapter. Qualified practitioners are behavioral health clinicians appropriately licensed by the jurisdiction where services are delivered and who practice within the scope of their license.

- 3413.2 Qualified practitioners shall be authorized to diagnose mental illness for purposes of determining eligibility for MHRS if acting within the scope of their appropriate independent licensure by the jurisdiction where services are delivered.
- 3413.3 Credentialed staff shall be authorized to provide MHRS or components of MHRS if under the supervision of an appropriate qualified practitioner in accordance with applicable Federal and District law.
- 3413.4 A psychiatrist shall include a:
  - (a) Physician licensed by the District who is, at a minimum a board-eligible psychiatrist;
  - (b) Psychiatric resident providing care in an approved clinical rotation; or
  - (c) Moonlighting psychiatric resident.
- 3413.5 A psychiatric resident is a medical school graduate from a program that meets the standards for medical education found in 17 DCMR § 4602.3, who:
  - (a) Has completed at least one year of a psychiatric residency program that satisfies the requirements of 17 DCMR § 4611.4;
  - (b) Is supervised by a licensed psychiatrist who satisfies the requirements of 17 DCMR § 4611.6;
  - (c) Complies with the requirements of 17 DCMR §§ 4611.7 and 8; and
  - (d) Complies with the standards of conduct for licensed physicians found in 17 DCMR § 4612.
- 3413.6 A moonlighting psychiatric resident is a medical school graduate who:
  - (a) Satisfies all of the requirements of § 3413.4; and
  - (b) Is working under the supervision of the medical director or consulting psychiatrist of a certified MHRS provider in accordance with protocols approved by the Department's chief clinical officer.
- 3413.7 The staffing requirements for MHRS are described below.

MHRS	QUALIFIED PRACTITIONERS	QUALIFIED PRACTITIONERS AND CREDENTIALLED STAFF WITH SUPERVISION
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MHRS	QUALIFIED PRACTITIONERS	QUALIFIED PRACTITIONERS AND CREDENTIALLED STAFF WITH SUPERVISION
Diagnostic/Assessment	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> </ul> May diagnose and assess	<ul style="list-style-type: none"> <li>● RN</li> <li>● LPC</li> <li>● LISW</li> <li>● Credentialed Staff</li> </ul> May provide assessment services only
Medication / Somatic Treatment	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● APRN</li> <li>● RN</li> </ul>	None
Counseling	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● LISW</li> <li>● LPC</li> <li>● APRN</li> <li>● RN</li> </ul>	<ul style="list-style-type: none"> <li>● LGSW</li> <li>● Credentialed Staff</li> </ul>
Community Support	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● RN</li> <li>● LPC</li> <li>● LISW</li> </ul>	<ul style="list-style-type: none"> <li>● Credentialed Staff</li> </ul>
Crisis/ Emergency	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> </ul>	<ul style="list-style-type: none"> <li>● RN</li> <li>● LPC</li> <li>● LISW</li> <li>● Credentialed Staff</li> </ul>
Rehabilitation/Day Services	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● RN</li> <li>● LPC</li> <li>● LISW</li> </ul>	<ul style="list-style-type: none"> <li>● Credentialed Staff</li> </ul>

MHRS	QUALIFIED PRACTITIONERS	QUALIFIED PRACTITIONERS AND CREDENTIALLED STAFF WITH SUPERVISION
Intensive Day Treatment	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● RN</li> <li>● LPC</li> <li>● LISW</li> </ul>	<ul style="list-style-type: none"> <li>● Credentialed Staff</li> </ul>
Community Based Interventions <i>(See Section 3422 for qualifications to provide CBI services)</i>	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● LPC</li> <li>● LISW</li> <li>● RN</li> </ul>	<ul style="list-style-type: none"> <li>● LGSW</li> <li>● LGPC</li> </ul>
Assertive Community Treatment	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● RN</li> </ul>	<ul style="list-style-type: none"> <li>● Credentialed Staff</li> </ul>
Trauma-Focused Cognitive Behavioral Therapy	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● RN</li> <li>● LPC</li> </ul>	<ul style="list-style-type: none"> <li>● LGSW</li> <li>● LGPC</li> <li>● LISW</li> <li>● Psychology Associate</li> </ul>
Child-Parent Psychotherapy-Family Violence	<ul style="list-style-type: none"> <li>● Psychiatrist</li> <li>● Psychologist</li> <li>● LICSW</li> <li>● APRN</li> <li>● RN</li> <li>● LPC</li> </ul>	<ul style="list-style-type: none"> <li>● LGSW</li> <li>● LGPC</li> <li>● LISW</li> <li>● Psychology Associate</li> </ul>

**3414 COVERED MHRS**

3414.1 The service specific standards described in this section apply to the individual MHRS offered by each MHRS provider and reimbursed by the Department in accordance with this chapter.

3414.2 Covered core services shall include Diagnostic Assessment, Medication/Somatic Treatment, Counseling, and Community Support.

3414.3 Covered specialty services shall include Crisis/Emergency, Rehabilitation/Day Services, Intensive Day Treatment, CPP-FV, TF-CBT, CBI, and ACT.

### **3415 DIAGNOSTIC ASSESSMENT**

3415.1 A Diagnostic Assessment is an intensive clinical and functional evaluation of a consumer's mental health condition by a qualified practitioner that results in the issuance of a Diagnostic Assessment report with recommendations for service delivery that provides the basis for and includes the development of a Plan of Care. A psychiatrist shall supervise and coordinate all psychiatric and medical functions required by a consumer's Diagnostic Assessment.

3415.2 A Diagnostic Assessment shall:

- (a) Determine whether the consumer is appropriate for and can benefit from MHRS based upon the consumer's diagnosis, presenting problems, and recovery goals;
- (b) Evaluate the consumer's level of readiness and motivation to engage in treatment;
- (c) Include the development of a Plan of Care; and
- (d) Screen and assess consumers for EBP as appropriate and applicable.

3415.3 An initial Diagnostic Assessment shall be performed by a qualified practitioner for each consumer being considered for enrollment with a CSA.

3415.4 The Diagnostic Assessment shall include the following elements:

- (a) A chronological behavioral health history of the consumer's symptoms, treatment, treatment response, and attitudes about treatment and recovery over time, emphasizing factors that have contributed to or inhibited previous recovery efforts;
- (b) For youth and adults, the chronological behavioral health history includes both psychiatric history and substance use disorder history, treatment history for either or both diagnoses and the consumer's perception of the outcome;
- (c) Biological, psychological, familial, social, and environmental dimensions and identified strengths and weaknesses in each area;

- (d) A description of the presenting problem(s), including source of distress, precipitating events, associated problems or symptoms, and recent progression;
- (e) Both a strengths summary and a problem summary, which address the following:
  - (1) Risk of harm;
  - (2) Functional status, including relevant emotional and behavioral conditions or complications and addressing self-control, self-care, interpersonal abilities, coping, and independent living skills;
  - (3) Co-morbidity, including biomedical conditions and complications;
  - (4) Recovery environment, including supports and stressors; and
  - (5) Treatment and recovery history, including relapse potential.
- (f) Diagnoses in the DSM-5 or any subsequent version adopted by the Department pursuant to written notice published in the *D.C. Register*;
- (g) A review of the consumer's alcohol and substance use disorder history and presenting problem(s), including an assessment of substances used and intensity of use, the likelihood and severity of withdrawal, and the medical and behavioral risk secondary to intoxication. This review either identifies or excludes substance use disorder as a co-occurring treatment need;
- (h) Assessment of the need for psychiatric hospitalization for consumers being referred to psychiatric inpatient services to assure that less restrictive alternatives are considered and used when appropriate; and
- (i) Evidence of consumer participation including, families or guardians where required.

3415.5 The Diagnostic Assessment may include psychological testing.

3415.6 Following the completion of the Diagnostic Assessment, an interpretative clinical summary of findings and recommendations for treatment shall be listed in a Diagnostic Assessment report. A Diagnostic Assessment report shall identify barriers to be addressed during treatment and recovery in order to reduce or eliminate identified deficits.

3415.7 A qualified practitioner shall complete the Diagnostic Assessment report no later than ten (10) business days after the completion of the Diagnostic Assessment.

The results of the Diagnostic Assessment shall be incorporated into the Plan of Care.

- 3415.8 The qualified practitioner shall convene the consumer, the consumer's family and significant others, if appropriate, to review the Diagnostic Assessment report and develop the Plan of Care.
- 3415.9 One Diagnostic Assessment shall be allowable every one-hundred and eighty (180) days. Additional units of Diagnostic Assessment shall be allowable when pre-authorized by the Department for:
- (a) Periodic assessment;
  - (b) Pre-Hospitalization screening;
  - (c) Neuro-psychological assessment; or
  - (d) Re-Admission to Rehabilitation/Day Services.
- 3415.10 Diagnostic Assessment shall not be billed on the same day as ACT.
- 3415.11 Diagnostic Assessment services shall be provided:
- (a) At the MHRS provider's service site;
  - (b) In natural settings, including the consumer's home or other community setting; or
  - (c) In a residential facility of sixteen (16) beds or less unless otherwise stated by the Department.
- 3415.12 Qualified practitioners of Diagnostic Assessment authorized to both diagnose and assess are:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs; and
  - (d) APRNs working in a collaborative protocol with a psychiatrist.
- 3415.13 Staff and licensed clinicians who may provide assessment and treatment planning services, but may not diagnose, as part of a Diagnostic Assessment, in accordance with District laws and regulations are:



- (a) RNs;
- (b) LISWs;
- (c) LPCs; and
- (d) Credentialed staff.

3415.14 Diagnostic services may also be provided by licensed behavioral health practitioners working under the supervision of an independently licensed staff.

### **3416 MEDICATION/SOMATIC TREATMENT**

3416.1 Medication/Somatic Treatment services are medical interventions including physical examinations; prescription, supervision or administration of mental-health related medications; monitoring and interpreting results of laboratory diagnostic procedures related to mental health-related medications; and medical interventions needed for effective mental health treatment provided as either an individual or group intervention.

3416.2 Medication/Somatic Treatment services include monitoring the side effects and interactions of medication and the adverse reactions which a consumer may experience, and providing education and direction for symptom and medication self-management.

3416.3 Group Medication/Somatic Treatment services shall be therapeutic, educational and interactive with a strong emphasis on group member selection, facilitated therapeutic peer interaction and support as specified in the Plan of Care.

3416.4 Each Medication/Somatic Treatment provider shall offer a comprehensive psycho-educational program for consumers and families, as appropriate, regarding the consumer's mental illness, emotional disturbance or behavior disorder, treatment and recovery goals, potential benefits and risk of treatment, self-monitoring aids, and consumer/family groups for education, support, and enhancement of therapeutic alliance between the consumer and the MHRS provider.

3416.5 Consumers receiving Medication/Somatic Treatment shall participate in a psychoeducational session to discuss medication side effects, adverse reactions to medications, and medication self-monitoring and management.

3416.6 Medication/Somatic Treatment shall be provided with no annual limits on service.

3416.7 Medication/Somatic Treatment shall not be billed on the same day as ACT.

3416.8 Medication/Somatic Treatment shall be provided:

- (a) At the MHRS provider's service site;
- (b) By telemedicine as described in the Department of Health Care Finance's Telemedicine in Final Rule dated XX
- (c) In natural settings, including the consumer's home or other community setting; or
- (d) A residential facility of sixteen (16) beds or less unless otherwise stated by the Department.

3416.9 Qualified practitioners of Medication/Somatic Treatment are the following behavioral health clinicians appropriately and independently licensed by the jurisdiction where services are delivered and who practice within the scope of their license:

- (a) Psychiatrists;
- (b) APRNs; and
- (c) RNs.

### **3417 COUNSELING AND PSYCHOTHERAPY**

3417.1 Counseling services are individual, group, or family face-to-face services for symptom and behavior management, development, restoration, or enhancement of adaptive behaviors and skills, and enhancement or maintenance of daily living skills. Mental health supports and consultation services provided to consumer's families are reimbursable only when such services and supports are directed exclusively to the well-being and benefit of the consumer. Counseling is a core service. Providers certified or applying to become certified to deliver counseling services may be further certified to provide the specific counseling service of Child-Parent Psychotherapy for Family Violence (CPP-FV) or Trauma-Focused Cognitive Behavioral Therapy (TF-CBT) as described below in Subsections 3427 and 3428.

3417.2 Counseling services provided in excess of one hundred sixty (160) units require pre-authorization from DBH in accordance with § 3404.

3417.3 Counseling shall not be billed on the same day as:

- (a) Rehabilitation/Day Services;
- (b) Intensive Day Treatment;

- (c) CBI;
- (d) ACT;
- (e) TF-CBT; or
- (f) CPP-FV.

3417.4 Counseling services shall be provided:

- (a) At the MHRS provider's service site;
- (b) By telemedicine as described in the Department of Health Care Finance's Telemedicine rule;
- (c) In natural settings, including the consumer's home or other community setting; or
- (d) A residential facility of sixteen (16) beds or less.

3417.5 Qualified practitioners of Counseling are:

- (a) Psychiatrists;
- (b) Psychologists;
- (c) LICSWs;
- (d) APRNs;
- (e) RNs;
- (f) LPCs;
- (g) LISWs; and
- (h) LGSWs and credentialed staff that are under supervision and are behavioral health clinicians appropriately and independently licensed by the jurisdiction where services are delivered and who practice within the scope of their license.

**3418 COMMUNITY SUPPORT**

3418.1 Community Support services are rehabilitation and environmental supports considered essential to assist the consumer in achieving rehabilitation and

recovery goals that focus on building and maintaining a therapeutic relationship with the consumer.

3418.2 Community Support services include a variety of interventions, such as:

- (a) Participation in the development and implementation of a consumer's Plan of Care;
- (b) Assistance and support for the consumer in stressor situations;
- (c) Mental health education, support and consultation to consumers' families and their support system, which is directed exclusively to the well-being and benefit of the consumer;
- (d) Individual mental health intervention for the development of interpersonal and community coping skills, including adapting to home, school, and work environments;
- (e) Assisting the consumer in symptom self-monitoring and self-management for the identification and minimization of the negative effects of psychiatric symptoms, which interfere with the consumer's daily living, financial management, personal development, or school or work performance;
- (f) Assistance to the consumer in increasing social support skills and networks that ameliorate life stresses resulting from the consumer's mental illness or emotional disturbance and are necessary to enable and maintain the consumer's independent living;
- (g) Developing strategies and supportive mental health intervention for avoiding out-of-home placement for adults, children, and youth and building stronger family support skills and knowledge of the adult, child, or youth's strengths and limitations;
- (h) Developing mental health relapse prevention strategies and plans; and
- (i) Assistance with coordination of any substance use disorders, co-occurring disorders, and primary care needs.

3418.3 Community Support services may be provided by a team of staff that is responsible for an assigned group of consumers, or by staff who are individually responsible for assigned consumers.

3418.4 Community Support services provided to children and youth shall include coordination with family and significant others and with other systems of care, such as education managed health plans (including Medicaid managed care

plans), juvenile justice, and children's protective services when appropriate to treatment and recovery educational needs.

- 3418.5 Community Support services shall be provided:
- (a) At the MHRS provider service site;
  - (b) In natural settings, including the consumer's home or other community settings; or
  - (c) In a residential facility of sixteen (16) beds or less unless otherwise stated by the Department.
- 3418.6 The Community Support provider shall maintain a staffing ratio of no less than one (1) staff person for every twenty (20) consumers for children and youth, and one (1) staff person for every forty (40) consumers for adults.
- 3418.7 Community Support services shall be delivered in accordance with the service accessibility requirements in § 3410.21.
- 3418.8 Community Support shall not be billed on the same day as ACT.
- 3418.9 Qualified practitioners of Community Support are:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs;
  - (d) APRNs;
  - (e) RNs;
  - (f) LPCs; and
  - (g) LISWs.
- 3418.10 Credentialed staff shall be authorized to provide Community Support under the supervision of an independently licensed Qualified Practitioner in the jurisdiction where services are delivered and who practice within the scope of their license.

### **3419 CRISIS/EMERGENCY**

- 3419.1 Crisis/Emergency is a face-to-face or telephone immediate response to an emergency situation involving a consumer with mental illness or emotional

disturbance that is available twenty-four (24) hours per day, seven (7) days per week.

3419.2 Crisis/Emergency services are provided to consumers involved in an active mental health crisis and consist of immediate response to evaluate and screen the presenting situation, assist in immediate crisis stabilization and resolution, and ensure the consumer's access to care at the appropriate level.

3419.3 Crisis/Emergency services may be delivered in natural settings, and the Crisis/Emergency provider shall adjust its staffing to meet the requirements for immediate response.

3419.4 Each Crisis/Emergency provider shall:

- (a) Obtain consultation, locate other MHRS and resources, and provide written and oral information to assist the consumer in obtaining follow-up MHRS;
- (b) Be a the Department-certified MHRS provider of Diagnostic Assessment or have an agreement with a CSA as a sub-provider or specialty provider as described in § 3412.7 to assure the provision of necessary hospital pre-admission screenings;
- (c) Demonstrate the capacity to assure continuity of care for consumers by facilitating follow-up mental health appointments and providing telephonic support until outpatient services occur; and
- (d) Have an agreement with the Department Consumer Enrollment and Referral System.

3419.5 Each Crisis/Emergency provider shall have waiting, assessment, and treatment areas for children, youth, and families that are separate from the areas for adults.

3419.6 Each Crisis/Emergency provider shall establish and adhere to policies and procedures and staffing sufficient to ensure that all individuals seeking and in need of Crisis/Emergency services receive face-to-face services within one (1) hour of request or referral (Crisis/Emergency Staffing Policy). The Crisis/Emergency Staffing Policy shall:

- (a) Require qualified practitioners to be available twenty-four (24) hours per day, seven (7) days per week for telephone, face-to-face and mobile interventions for individuals needing crisis services;
- (b) Delineate the criteria upon which appropriate venue for service delivery is determined;

- (c) Require that backup support for staff who need assistance during an intervention is always available;
  - (d) Require that all staff receive current training in persuasion, engagement, and de-escalation techniques for disruptive or aggressive acts, consumers, and situations; and
  - (e) Require all staff to hold current certification in cardiopulmonary resuscitation and first aid.
- 3419.7 Crisis/Emergency shall be provided with no annual limits on services.
- 3419.8 Retrospective authorization from the Department is required for Crisis/Emergency services provided on the same day as ACT.
- 3419.9 Crisis/Emergency services shall be provided:
- (a) At the MHRS provider service site;
  - (b) By telemedicine as described in the Department of Health Care Finance's Telemedicine rule; or
  - (c) In natural settings, including the consumer's home or other community settings.
- 3419.10 Qualified practitioners of Crisis/Emergency are the following behavioral health clinicians appropriately and independently licensed by the jurisdiction where services are delivered and who practice within the scope of their license:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs; and
  - (d) APRNs.
- 3419.11 Staff who may provide this service working under appropriate supervision of qualified practitioners:
- (a) LISWs;
  - (b) LPCs; and
  - (c) RNs.

3419.12 Credentialed staff shall be authorized to provide Crisis/Emergency services under the supervision of a qualified practitioner as set forth in § 3413.3.

**3420 REHABILITATION/DAY SERVICES**

3420.1 Rehabilitation/Day Services is a structured, clinical program intended to develop skills and foster social role integration through a range of social, psycho-educational, behavioral, and cognitive mental health interventions. Rehabilitation/Day Services:

- (a) Are curriculum-driven and psycho-educational and assist the consumer in the retention, or restoration of independent and community living, socialization, and adaptive skills;
- (b) Include cognitive-behavioral interventions and diagnostic, psychiatric, rehabilitative, psychosocial, counseling, and adjunctive treatment; and
- (c) Are offered most often in group settings, and may be provided individually.

3420.2 Rehabilitation/Day Services shall:

- (a) Be founded on the principles of consumer choice and the active involvement of each consumer in the consumer's mental health recovery;
- (b) Provide both formal and informal structures through which consumers can influence and shape service development;
- (c) Facilitate the development of a consumer's independent living and social skills, including the ability to make decisions regarding self-care, management of illness, life work, and community participation;
- (d) Promote the use of resources to integrate the consumer into the community; and
- (e) Include education on self-management of symptoms, medications and side effects, the identification of rehabilitation preferences, the setting of rehabilitation goals, and skills teaching and development.

3420.3 Each consumer shall have a person-centered plan that addresses the consumer's needs and progress toward achievement of Rehabilitation/Day Services Treatment Goals.

3420.4 Each Rehabilitation/Day Services provider shall provide adequate space, equipment, and supplies to ensure that services can be provided effectively.



Rehabilitation/Day Services program space and furnishings shall be separate and distinct from other services offered within the same service site(s).

- 3420.5 Each Rehabilitation/Day Services provider shall have policies and procedures included in its Service Specific Policies addressing the provision of Rehabilitation/Day Services (Rehabilitation/Day Services Organizational Plan) which includes:
- (a) A description of the particular rehabilitation models utilized, types of intervention practiced, and typical daily curriculum and schedule; and
  - (b) A description of the staffing pattern, and how staff are deployed to ensure that the required staff-to-consumer ratios are maintained, including how unplanned staff absences and illnesses are accommodated.
- 3420.6 Each Rehabilitation/Day Services provider shall have a minimum of one (1) full-time equivalent staff for every ten (10) consumers, based on average daily attendance.
- 3420.7 At least one (1) independently licensed qualified practitioner shall be present on site at all times.
- 3420.8 Each Rehabilitation/Day Services provider shall have a clinical supervisor or director who is a qualified practitioner on site at least thirty (30) hours per week.
- 3420.9 Each consumer shall participate in at least three (3) hours of Rehabilitation/Day Services per day, excluding adequate time for breaks and administrative functions in order for the services to be reimbursable.
- 3420.10 Rehabilitation/Day Services in excess of ninety (90) days within a twelve (12) month period shall require prior authorization from the Department in accordance with § 3404.
- 3420.11 Rehabilitation/Day Services shall not be billed on the same day as ACT.
- 3420.12 Rehabilitation/Day Services shall only be provided at an MHRS provider's service site.
- 3420.13 Qualified practitioners of Rehabilitation/Day Services are:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs;

- (d) APRNs;
- (e) RNs;
- (f) LPCs; and
- (g) LISWs.

3420.14 Credentialed staff shall be authorized to provide Rehabilitation/Day Services under the supervision of a qualified practitioner.

### **3421 INTENSIVE DAY TREATMENT**

3421.1 Intensive Day Treatment is a facility-based, structured, intensive, and coordinated acute treatment program which serves as an alternative to acute inpatient treatment or as a step-down service from inpatient care, rendered by an interdisciplinary team to provide stabilization of psychiatric impairments.

3421.2 Daily physician and nursing services are essential components of Intensive Day Treatment services.

3421.3 Intensive Day Treatment shall:

- (a) Be time-limited and provided in an ambulatory setting to consumers who are not in danger but have behavioral health issues that are incapacitating and interfering with their ability to carry out daily activities;
- (b) Be provided within a structured program of care which offers individualized, strengths-based, active, and timely treatment directed toward the alleviation of the impairment which caused the admission to Intensive Day Treatment;
- (c) Be an active treatment program that consists of documented mental health interventions that address the individualized needs of the consumer as identified in the Plan of Care;
- (d) Consist of structured individual and group activities and therapies that are planned and goal-oriented and provided under active psychiatric supervision;
- (e) Offer short-term day-programming consisting of therapeutically intensive, acute, and active treatment;
- (f) Be services that closely resemble the intensity and comprehensiveness of inpatient services; and

- (g) Include psychiatric, medical, nursing, social work, occupational therapy, Medication/Somatic Treatment, and psychology services focusing on timely crisis intervention and psychiatric stabilization so that consumers can return to their normal daily lives.
- 3421.4 Each consumer shall participate in at least five (5) hours of Intensive Day Treatment per day, excluding time for adequate breaks and administrative functions in order for the services to be reimbursable.
- 3421.5 Each consumer shall be directly evaluated by a qualified practitioner as part of the admissions process.
- 3421.6 Each consumer's care shall be supervised by a qualified practitioner who assumes primary responsibility for the consumer's assessment, treatment planning, and treatment services.
- 3421.7 Each consumer shall be assigned to a full-time staff member who assists the consumer and the consumer's family to assess the consumer's needs and progress toward achievement of Treatment Goals.
- 3421.8 An interdisciplinary treatment team shall meet within one (1) working day of the consumer's admission to develop an initial Intensive Day Treatment Plan of Care.
- 3421.9 Each Intensive Day Treatment Plan of Care shall be updated every three (3) days and shall be reviewed by the interdisciplinary treatment team on a weekly basis and upon termination of treatment.
- 3421.10 At least one (1) qualified practitioner shall be present on site at all times. Each Intensive Day Treatment provider shall have policies and procedures included in its Service Specific Policies addressing the provision of Intensive Day Treatment (Intensive Day Treatment Organizational Plan) which includes the following:
- (a) A description of the particular treatment models utilized, types of intervention practiced, and typical daily curriculum and schedule;
  - (b) A description of the staffing pattern and how staff is deployed to ensure that the required staff-to-consumer ratios are maintained, including how unplanned staff absences and illnesses are accommodated; and
  - (c) A description of how the Intensive Day Treatment Plan of Care is modified or adjusted to meet the needs specified in each consumer's Plan of Care.
- 3421.11 The Intensive Day Treatment provider shall maintain a minimum staffing ratio of one (1) staff for every eight (8) consumers. The Intensive Day Treatment provider shall maintain a minimum staffing pattern sufficient to address consumer needs,

including adequate physician, nursing, social work, therapy, and psychology services to assure the availability of intensive services.

- 3421.12 Intensive Day Treatment units in excess of seven (7) units within a twelve (12) month period, or for the second and any additional episode of care within a twelve (12) month period, shall require pre-authorization from the Department.
- 3421.13 Intensive Day Treatment shall not be billed on the same day as any other MHRS except for Community Support, Crisis/Emergency or CBI.
- 3421.14 Intensive Day Treatment shall only be provided in an MHRS provider service site.
- 3421.15 Qualified practitioners of Intensive Day Treatment are:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs;
  - (d) APRNs;
  - (e) RNs;
  - (f) LPCs; and
  - (g) LISWs.
- 3421.16 Credentialed staff shall be authorized to provide Intensive Day Treatment under the supervision of a qualified practitioner.

## **3422 COMMUNITY-BASED INTERVENTION**

- 3422.1 CBI services are time-limited, intensive, mental health services delivered to children and youth through age twenty-one (21). CBI services are intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI services may be provided at the time a child or youth is identified for a service, particularly to meet an urgent or emergent need during his or her course of treatment.
- 3422.2 In order to be eligible for CBI services, a consumer shall have:
- (a) Insufficient or severely limited individual or family resources or skills to cope with an immediate crisis; and

- (b) Either individual or family issues, or a combination of individual and family issues, that are unmanageable and require intensive coordinated clinical and positive behavioral interventions.

3422.3 There shall be four (4) levels of CBI services available to children and youth. A provider may be certified to offer one (1) or more level(s) of CBI services. The four (4) levels of CBI services are:

- (a) CBI Level I, delivered using MST treatment model adopted by the Department;
- (b) CBI Level II, delivered using the Intensive Home and Community-Based Services (IHCBS) model adopted by the Department;
- (c) CBI Level III, delivered using the IHCBS model adopted by the Department; and
- (d) CBI Level IV, delivered using the Functional Family Therapy (FFT) model adopted by the Department.

3422.4 All levels of CBI services shall include the services described in Subsection 3422.7, as medically necessary and clinically appropriate for the consumer.

3422.5 The CBI provider shall be responsible for coordinating the treatment planning process for all consumers authorized to receive CBI for the duration of CBI services. CBI services shall be delivered primarily in natural settings and shall include in-home services.

3422.6 The basic goals of all levels of CBI services are to:

- (a) Defuse the consumer's current situation to reduce the likelihood of a recurrence, which if not addressed, could result in the use of more intensive therapeutic interventions;
- (b) Coordinate access to covered mental health services and other covered Medicaid services;
- (c) Provide mental health services and support interventions for consumers that develop and improve consumer and family interaction and improve the ability of parents, legal guardians, or caregivers to care for the consumer; and
- (d) Assess the needs of and transition the consumer to an appropriate level of care following the end of CBI treatment services.

- 3422.7 All levels of CBI services shall include the following services, as medically necessary and clinically appropriate for the consumer:
- (a) Immediate crisis response for enrolled consumers;
  - (b) Stabilization and behavioral support services to:
    - (1) Reduce family conflict;
    - (2) Stabilize the family unit;
    - (3) Maintain the consumer in the home environment;
    - (4) Increase family support; and
    - (5) Monitor the consumer's medication compliance with prescribed psychiatric medications;
  - (c) Environmental assessment to:
    - (1) Identify risk factors that may endanger either the consumer or the consumer's family; and
    - (2) Assess the strengths of the consumer and the consumer's family;
  - (d) Individual and family support interventions that develop and improve the ability of parents, legal guardians, or significant others to care for the consumer's behavioral and emotional disturbance(s);
  - (e) Skills training related to:
    - (1) Consumer self-help;
    - (2) Parenting techniques to help the consumer's family develop skills for managing the consumer's emotional disturbance;
    - (3) Problem solving;
    - (4) Behavior management;
    - (5) Communication techniques, including the facilitation of communication and consistency of communication for both the consumer and the consumer's family; and
    - (6) Medication management, monitoring, and follow-up for family members and other caregivers.

- (f) Coordination and linkage with other covered MHRS and supports and other covered Medicaid services in order to prevent the utilization of more restrictive residential treatment, including one (1) or more of the following activities:
  - (1) Referral of consumers to other MHRS providers;
  - (2) Assisting consumers in transition to less intensive or more intensive MHRS;
  - (3) Referral of consumers to providers of other Medicaid covered services); or
  - (4) Supporting and consulting with the consumer's family or support system, which is directed exclusively to the well-being and benefit of the consumer.

3422.8 CBI Level I services are intended for children and youth who are experiencing serious emotional disturbance with either of the following:

- (a) A documented behavioral concern with externalizing (aggressive or violent) behaviors; or
- (b) A history of chronic juvenile offenses that has or may result in involvement with the juvenile justice system.

3422.9 CBI Level I services shall not be authorized for:

- (a) Children or youth who require the safety of a hospital or other secure setting;
- (b) Children or youth in independent living programs; or
- (c) Children or youth without a long-term placement option.

3422.10 Eligible consumers of CBI Level I services shall have a permanent caregiver who is willing to participate with service providers for the duration of CBI Level I treatment services and be:

- (a) At imminent risk for out-of-home placement within thirty (30) days; or
- (b) Currently in out-of-home placement due to the consumer's disruptive behavior, with permanent placement expected to occur within thirty (30) days.

- 3422.11 CBI Level I Service providers shall obtain prior authorization of CBI Level I services from the Department for a period not to exceed six (6) months.
- 3422.12 Readmission to CBI Level I services, after the six (6)-month period may be considered for prior authorization by the Department in accordance with medical necessity requirements specified by the Department.
- 3422.13 CBI Level I services shall be delivered in accordance with MST Model.
- 3422.14 Eligible consumers of CBI Level II services shall have any one (1) or combination of the following:
- (a) A history of involvement with the Child and Family Services Agency (CFSA) or the Department of Youth Rehabilitation Services (DYRS);
  - (b) A history of negative involvement with schools for behavioral-related issues; or
  - (c) A history of either chronic or recurrent episodes of negative behavior that have or may result in out-of-home placement.
- 3422.15 CBI Level II services shall not be authorized for children or youth who require the safety of a hospital or other secure setting.
- 3422.16 CBI Level II service providers shall obtain prior authorization of CBI Level II services from the Department for a period not to exceed six (6) months.
- 3422.17 Readmission to CBI Level II services, after the six (6)-month period may be considered for prior authorization by the Department in accordance with medical necessity requirements specified by the Department.
- 3422.18 CBI Level II services shall be delivered in accordance with the IHCBS model as adopted by the Department.
- 3422.19 A consumer shall be eligible for CBI Level III services if the consumer meets any of the following criteria:
- (a) Has situational behavioral problems that require short-term, intensive treatment;
  - (b) Is currently dealing with stressor situations such as trauma or violence and requires development of coping and management skills;
  - (c) Recently experienced out-of-home placement and requires development of communication and coping skills to manage the placement change;



- (d) Is undergoing transition from adolescence to adulthood and requires skills and supports to successfully manage the transition;
- (e) Was recently discharged from an inpatient setting such as acute hospitalization or psychiatric residential treatment facility; or
- (f) Is an adult parent or caregiver with a clinically significant mental health concern and the parent or caregiver will be parenting a child or youth returning from a residential treatment center within the next ninety (90) days.

3422.20 CBI Level III services shall not be authorized for children or youth who require the safety of a hospital or other secure setting.

3422.21 CBI Level III service providers shall obtain prior authorization for CBI Level III services from the Department for a period not to exceed ninety (90) days.

3422.22 Readmission to CBI Level III services, after the ninety (90)-day period may be considered for prior authorization by the Department in accordance with medical necessity requirements specified by the Department.

3422.23 CBI Level III services shall be delivered in accordance with the IHCBS model as adopted by the Department.

3422.24 Eligible consumers of CBI Level IV services shall:

- (a) Be between the ages of ten (10) and eighteen (18); and
- (b) Have a documented history of moderate to serious behavioral problems which impair functioning in at least one (1) area (for example school or home); or
- (c) Exhibit significant externalizing behavior which impairs functioning in at least one (1) area (for example school or home); or
- (d) Be at risk of a disruption in placement; and
- (e) Be:
  - (1) Willing to participate with service providers for the duration of CBI Level IV treatment services; or
  - (2) Involved with a caregiver who is willing to participate with service providers for the duration of CBI Level IV treatment services.

3422.25 CBI Level IV services shall not be authorized for:

- (a) Children or youth who require the safety of a hospital or other secure setting;
  - (b) Children or youth in congregate living programs; or
  - (c) Children or youth in an emergency or respite placement.
- 3422.26 CBI Level IV Service providers shall obtain prior authorization of CBI Level IV services from the Department for a period not to exceed six (6) months.
- 3422.27 Readmission to CBI Level IV services after the six (6)-month period may be considered for prior authorization by the Department in accordance with medical necessity requirements specified by the Department.
- 3422.28 A maximum of twenty-four (24) additional units of CBI Level IV services may be delivered at the discretion of the provider, in consultation with the consumer and the consumer's caregiver without an additional authorization, within twelve (12) months of the close of the initial six (6) month authorization period.
- 3422.29 CBI Level IV services shall be delivered in accordance with the FFT model adopted by the Department.
- 3422.30 Discharge from all levels of CBI services shall occur when the consumer has achieved the goals for CBI as outlined in the Plan of Care or the consumer no longer benefits from CBI services. Discharge decisions shall be based on one (1) or a combination of the following:
- (a) The consumer is performing reasonably well in relation to goals contained in the Plan of Care and discharge to a lower level of care is indicated (for example, the consumer is not exhibiting risky behaviors or family functioning has improved);
  - (b) The consumer or the consumer's family or caregiver has developed the skills and resources needed to step down to a less intensive service;
  - (c) The consumer is not making progress or is regressing and all realistic CBI treatment options have been exhausted;
  - (d) A family member or caregiver requests discharge and the consumer is not imminently dangerous to self or others;
  - (e) The consumer requires a higher level of care (for example, inpatient hospitalization or psychiatric residential treatment facility); or
  - (f) The consumer does not reside in the District and:

- (1) Is not eligible to participate in the District's Medicaid program;
- (2) Is not within the physical or legal custody of the Child and Family Services Agency (CFSA); or
- (3) Is not within the physical or legal custody of the Department of Youth Rehabilitation Services (DYRS).

3422.31 Eligible providers of CBI Level I services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Be licensed MST providers in good standing and utilize the MST treatment model;
- (c) Be either a Network Partner that is providing the MST services and receiving MST consultation services from another MST Network Partner, or a non-Network Partner that is receiving MST consultant services from a MST Network Partner or MST Services;
- (d) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (e) Meet CBI Level I training requirements specified by the Department;
  - (1) Have the capacity to deliver CBI Level I services to four (4) to six (6) consumers for each full-time team member; and
  - (2) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

3422.32 Eligible providers of CBI Level II services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Utilize the IHCBS treatment and fidelity model adopted by the Department to deliver CBI Level II services;
- (c) Meet CBI Level II training requirements specified by the Department;
  - (1) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;

- (2) Have the capacity to deliver CBI Level II services to at least four (4) to six (6) consumers for each full-time team member; and
- (3) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

3422.33 Eligible providers of CBI Level III services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Utilize the IHCBS treatment and fidelity model adopted by the Department to deliver CBI Level III services;
- (c) Meet CBI Level III training requirements specified by the Department;
- (d) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (e) Have the capacity to deliver CBI Level III services to at least four (4) to six (6) consumers for each full-time team member; and
- (f) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

3422.34 Eligible providers of CBI Level IV services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Have current site certification as an FFT provider and utilize the FFT treatment model to deliver CBI Level IV services;
- (c) Comply with the FFT site certification and staff training requirements;
- (d) Comply with the CBI Level IV training and site certification requirements specified by the Department;
- (e) Have the capacity to provide or arrange for the non-Medicaid reimbursed wraparound services required by eligible consumers;
- (f) Have the capacity to deliver CBI Level IV services to at least ten (10) to twelve (12) consumers for each full-time therapist; and
- (g) Be available to work a flexible schedule based on the needs of the consumer and the family or caregiver.

- 3422.35 Providers of CBI services shall meet the staffing requirements applicable to the level of services offered in order to render CBI Level I, Level II, Level III or Level IV services.
- 3422.36 Providers of all levels of CBI services shall:
- (a) Individually design CBI services for each consumer and family to minimize intrusion and maximize independence;
  - (b) Provide more intensive services at the beginning of treatment and decrease the intensity of treatment over time as the strengths and coping skills of the consumer and family develop;
  - (c) Provide services utilizing a team approach;
  - (d) Maintain appropriate back-up coverage for team member absences and facilitate substitution of team members, as necessary;
  - (e) Conduct face-to-face transition planning with consumers and families no later than thirty (30) days prior to the anticipated discharge date, including meetings with providers of more intensive or less intensive services;
  - (f) Conduct continuity of care planning with consumers and families prior to discharge from any level of CBI services, including facilitating follow-up mental health appointments and providing telephonic support until follow-up mental health services occur;
  - (g) Provide all of the components of treatment specified in §3422.7, as appropriate, based on each consumer's needs;
  - (h) Provide CBI services with a family-focus;
  - (i) Assist the consumer and his or her family with the development of mental health relapse prevention strategies and plans, if none exist;
  - (j) Assist the consumer and his or her family with the development of a safety plan to address risk factors identified during the environmental assessment;
  - (k) Have policies and procedures included in its Service Specific Policies that address the provision of CBI (CBI Organizational Plan) which include the following:
    - (1) A description of the particular treatment models utilized, types of intervention practiced, and typical daily curriculum and schedule;

- (2) A description of the staffing pattern and how staff is deployed to ensure that the required staff-to-consumer ratios are maintained, including how unplanned staff absences and illnesses are accommodated;
- (3) A requirement to directly conduct or arrange for the provisions of Diagnostic Assessment services within thirty (30) days before or after the initiation of CBI services the Department may approve alternative sources to serve as the diagnostic assessment instrument if similar assessments have been conducted within the past twelve (12) months of an individual's referral to CBI services; and
- (4) A requirement to collect and submit clinical outcome data using the process, timeline and tools specified or approved by the Department.

3422.37 Each CBI Level I team shall include:

- (a) A full-time CBI Level I clinical supervisor; and,
- (b) Two (2) to four (4) full time CBI Level I clinicians.

3422.38 The CBI Level I team clinical supervisor shall be an independently licensed qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years of post-graduate experience working with behaviorally challenged youth and their families in community-based settings.

3422.39 The CBI Level I team clinicians shall be appropriately licensed by the jurisdiction where services are delivered and practice within the scope of their license.

3422.40 Each CBI Level II team shall include:

- (a) A full-time clinical supervisor dedicated minimally 50% to IHCBS; and
- (b) At a minimum, two (2) full time clinicians dedicated to IHCBS.

3422.41 The CBI Level II team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years of post-graduate experience working with behaviorally challenged youth and their families in community-based settings.

- 3422.42 The CBI Level II team clinicians shall be appropriately licensed by the jurisdiction where services are delivered, practice within the scope of their license, and have a minimum of one (1) year of experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.43 Each CBI Level III team shall include:
- (a) A full-time clinical supervisor dedicated, minimally, 50% to IHCBS; and
  - (b) At a minimum, two (2) full time clinicians dedicated to IHCBS.
- 3422.44 The CBI Level III team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years post-graduate experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.45 The CBI Level III team clinicians shall be appropriately licensed by the jurisdiction where services are delivered, practice within the scope of their license, and have one (1) year of experience working with behaviorally challenged youth and their families in community-based settings.
- 3422.46 Each CBI Level IV team shall include:
- (a) A full-time clinical supervisor who has satisfied the FFT requirements for a clinical supervisor; and
  - (b) Three (3) to eight (8) full-time equivalent clinicians who have satisfied the FFT requirements for a therapist.
  - (c) Be licensed FFT providers in good standing and utilize the FFT treatment model.
- 3422.47 The CBI Level IV team clinical supervisor shall be a Master's level qualified practitioner experienced in providing individual, group, marital or family counseling or psychotherapy in accordance with applicable District laws and regulations, with a minimum of two (2) years of post-graduate experience working with behaviorally challenged youth and their families in community-based settings who has satisfied the FFT requirements for a clinical supervisor.
- 3422.48 The CBI Level IV clinicians shall be appropriately licensed by the jurisdiction where services are delivered, practice within the scope of his or her license, have a minimum of one (1) year of experience working with behaviorally challenged youth and their families in community-based settings, and shall have satisfied the FFT requirements for FFT therapists.

- 3422.49 Providers of all levels of CBI services shall ensure the availability and provision of alcohol and other substance use disorder treatment and recovery services as well as services to facilitate consumers' transition from adolescence to adulthood, as medically necessary for consumers.
- 3422.50 Prior authorization from the Department is required for enrollment in all levels of CBI services.
- 3422.51 CBI shall not be billed on the same day as Rehabilitation/Day Services, Intensive Day Treatment or ACT.
- 3422.52 CBI shall not be billed on the same day as Counseling.
- 3422.53 CBI shall not be billed on the same day as Community Support unless the Community Support services are provided within thirty (30) days prior to the consumer's discharge from CBI.
- 3422.54 CBI shall be provided in:
- (a) MHRS provider service sites; or
  - (b) Natural settings, including the consumer's home or other community setting.
- 3422.55 Qualified practitioners of CBI are the following behavioral health clinicians appropriately and independently licensed by the jurisdiction where services are delivered and who practice within the scope of their license:
- (a) Psychiatrists;
  - (b) Psychologists;
  - (c) LICSWs;
  - (d) APRNs;
  - (e) LPCs
  - (f) RNs; and
  - (g) LISWs.
- 3422.56 Credentialed staff who may provide this service working under appropriate supervision are the following qualified practitioners:



- (a) Licensed Graduate Social Workers (LGSWs); and
- (b) Licensed Graduate Professional Counselors (LGPCs)

3422.57 CBI services shall not exceed thirty-two (32) units in a twenty-four (24) hour period, without prior authorization from the Department. The Department may conduct clinical record reviews to verify the medical necessity of services provided.

3422.58 CBI providers shall comply with training requirements:

- (a) For CBI Level I through nationally recognized body;
- (b) For CBI Level II and CBI Level III in accordance with the Department CBI Policy;
- (c) For CBI IV through FFT Inc.; and
- (d) All other trainings provided through the Department's Training Institute during the calendar year as requested by the Department.

### **3423 ASSERTIVE COMMUNITY TREATMENT**

3423.1 ACT is an intensive, integrated, rehabilitative, crisis, treatment, and mental health rehabilitative community support service provided by an interdisciplinary team to transition-age youth and adults with serious and persistent mental illness with dedicated staff time and specific staff to consumer ratios.

3423.2 Service coverage by the ACT team is required twenty-four (24) hours per day, seven (7) days per week.

3423.3 The consumer's ACT team shall complete a comprehensive or supplemental assessment and develop a self-care-oriented Plan of Care (if a current and effective one does not already exist).

3423.4 Services offered by the ACT team shall include:

- (a) Mental health-related medication prescription, administration, and monitoring;
- (b) Crisis assessment and intervention;
- (c) Symptom assessment, management, and individual supportive therapy;
- (d) Substance use disorder treatment for consumers with a co-occurring addictive disorder;

- (e) Psychosocial rehabilitation and skill development;
- (f) Interpersonal, social, and interpersonal skill training;
- (g) Education, support, and consultation to consumers' families and their support system which is directed exclusively to the well-being and benefit of the consumer.
- (h) Finding safe and affordable, supportive housing;
- (i) Money management and benefits; and
- (j) Coordination of medical and psychosocial services.

3423.5 ACT services shall include a comprehensive and integrated set of medical and psychosocial services for the treatment of the consumer's mental health condition that is provided in non-office settings by the consumer's ACT team.

3423.6 The ACT team provides community support services that are interwoven with treatment and rehabilitative services and regularly scheduled team meetings. ACT team meetings shall be held a minimum of four (4) times a week.

3423.7 ACT services and interventions shall be highly individualized and tailored to the needs and preferences of the consumer, with the goal of maximizing independence and supporting recovery.

3423.8 Each ACT provider shall have policies and procedures included in its Service Specific Policies that address the provisions of ACT (ACT Organizational Plan) which include the following:

- (a) A description of the particular treatment models utilized, types of intervention practice, and typical daily curriculum and schedule; and
- (b) A description of the staffing pattern and how staff are deployed to ensure that the required staff-to-consumer ratios are maintained, including how unplanned staff absences and illnesses are accommodated.

3423.9 At a minimum, the ACT team shall include the following members:

- (a) A full-time team leader or supervisor who is the clinical and administrative supervisor of the ACT team and who is a qualified practitioner;
- (b) A psychiatrist or a psychiatric prescriber working on a full-time or part-time basis for a minimum of four (4) hours per week per twenty (20) consumers that provides clinical and crisis services to all consumers

served by the ACT team, works with the ACT team leader to monitor each consumer's clinical status and response to treatment, and directs psychopharmacologic and medical treatment;

- (c) A registered nurse working on a full-time basis and providing nursing services for all ACT team consumers who works with the ACT team to monitor each consumer's clinical status and response to treatment and functions as a primary practitioner on the ACT team for a caseload of consumers;
- (d) A certified addiction counselor who is working on a full-time basis and providing or accessing substance use disorder services for ACT team consumers who functions as a primary practitioner on the ACT team for a caseload of consumers;
- (e) A clinically trained, licensed generalist practitioner working on a full-time basis and providing individual and group supportive therapy to ACT team consumers who functions as a primary practitioner on the ACT team for a caseload of consumers and is a qualified practitioner;
- (f) A recovery specialist or peer specialist carrying out rehabilitation and support functions who may be consumers in recovery that have been specially credentialed based on their psychiatric and life experiences. Recovery specialists are fully integrated ACT team members who provide consultation to the ACT team, highly individualized services in the community, and who promote consumer self-determination and decision making; and
- (g) A vocational specialist with at least one year of training or experience who has knowledge of supported employment, vocational assessment, job exploration and marketing to recipient's interest and strengths and securing and maintain employment.

- 3423.10 The ACT team shall maintain a minimum consumer-to-staff ratio of no more than ten (10) consumers per staff person, and such ratio shall take into consideration evening and weekend hours, needs of special populations, and geographical areas to be covered.
- 3423.11 Pre-authorization from the Department is required prior to enrollment for ACT.
- 3423.12 ACT shall not be billed on the same day as any other MHRS except for Crisis/Emergency.
- 3423.13 ACT shall be provided in:

- (a) The MHRS provider's service site; or
- (b) The consumer's home or other community setting.

3423.14 Qualified practitioners of ACT are the following behavioral health clinicians appropriately licensed by the jurisdiction where services are delivered and who practice within the scope of their license.

- (a) Psychiatrists; and
- (b) RNs;

3423.15 Credentialed staff shall be authorized to provide ACT under the supervision of a qualified practitioner.

3423.16 All ACT Programs must be certified by the Department. Eligible providers of ACT services shall:

- (a) Meet the specialty service provider requirements in § 3412;
- (b) Utilize the ACT model adopted by the Department;
- (c) Meet ACT training requirements specified by the Department;
- (d) Have culturally and linguistically competent staff;
- (e) Have the capacity to deliver ACT services to at least one (1) to ten (10) consumer ratio for each team; and
- (f) Be available to consumers twenty-four (24) hours per day, seven (7) days per week.

#### **3424 REIMBURSABLE SERVICES**

3424.1 Reimbursement for the provision of MHRS shall be on a per unit basis as indicated in § 3424.4.

3424.2 Each covered service shall have a unique billing code as established by the Department.

3424.3 The actual start and stop time of the service must be used to calculate the duration of the service rounded to the nearest fifteen minute unit.

3424.4 Reimbursement shall be limited as follows:

<b>MHRS</b>	<b>LIMITATIONS AND SERVICE SETTING</b>	<b>BILLABLE UNIT OF SERVICE</b>
Diagnostic Assessment	<ul style="list-style-type: none"> <li>● One (1) every six (6) months</li> <li>● Additional units allowable when pre-authorized for periodic assessment, pre-hospitalization screening, neuropsychological assessment and re-admission to Rehabilitation/Day Services</li> <li>● Shall not be billed the same day as ACT</li> <li>● Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	An assessment, which is at least three (3) hours in duration
Medication/Somatic Treatment	<ul style="list-style-type: none"> <li>● No annual limit</li> <li>● Shall not be billed the same day as ACT</li> <li>● Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	Fifteen (15) minutes
Counseling	<ul style="list-style-type: none"> <li>● One hundred sixty (160) units per year</li> <li>● Additional units allowable with prior authorization by the Department</li> <li>● Shall not be billed the same day as Rehabilitation/Day Services, Intensive Day Treatment, CBI or ACT</li> <li>● Shall be rendered face-to-face, when consumer is present, unless there is adequate documentation to justify why the consumer was not present during the session</li> <li>● May be provided in individual on-site, individual off- site or group</li> <li>● Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	Fifteen (15) minutes

<b>MHRS</b>	<b>LIMITATIONS AND SERVICE SETTING</b>	<b>BILLABLE UNIT OF SERVICE</b>
Community Support	<ul style="list-style-type: none"> <li>● No annual limits</li> <li>● Shall not be billed on the same day as ACT</li> <li>● May be provided individually or in a group</li> <li>● Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	Fifteen (15) minutes
Crisis/ Emergency	<ul style="list-style-type: none"> <li>● No annual limits</li> <li>● Provided only in a community-based MHRS provider or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	Fifteen (15) minutes
Rehabilitation / Day Services	<ul style="list-style-type: none"> <li>● Ninety (90) days within a twelve (12) month period</li> <li>● Additional units allowable with prior authorization by the department</li> <li>● Shall not be billed on the same day as Counseling</li> <li>● Shall not be billed on the same day as Counseling or ACT</li> <li>● Provided only in a community-based MHRS provider site</li> </ul>	One (1) day (which shall consist of at least three (3) hours) of service, excluding appropriate time for breaks and administrative functions)
CBI	<ul style="list-style-type: none"> <li>● Prior authorization from the Department required for enrollment and continued stay</li> <li>● Shall not be billed on the same day as ACT, Counseling or Intensive Day Treatment</li> <li>● Provided only in a community-based MHRS provider agency, home or other community setting, or residential facility of sixteen (16) beds or less unless otherwise stated by the Department</li> </ul>	Fifteen (15) minutes

Assertive Community Treatment	<ul style="list-style-type: none"> <li>● Prior authorization from the Department required for enrollment</li> <li>● Shall not be billed on the same day as any other MHRS, except for Crisis/Emergency with retrospective authorization</li> </ul>	Fifteen (15) minutes
Child-Parent Psychotherapy	<ul style="list-style-type: none"> <li>● Prior authorization from the Department required for enrollment</li> <li>● Provided in community settings such as the birth family home, child’s home, adoptive home, foster home, MHRS provider service site, community-based group home facility of sixteen (16) beds or less, or other community settings unless otherwise stated by the Department</li> </ul>	One (1) fifteen (15) minute unit of service up to ninety (90) minutes once (1) per week
Trauma-Focused Cognitive Behavioral Therapy	<ul style="list-style-type: none"> <li>● Prior authorization from the Department required for enrollment</li> <li>● Shall not be billed the same day as Rehabilitation/Day Services, Intensive Day Treatment, CBI, ACT, or, other therapy services</li> </ul>	One (1) fifteen (15) minute unit of service up to ninety (90) minutes once (1) per week

**3425 NON-REIMBURSABLE SERVICES**

3425.1 Services not covered as MHRS include, but are not limited to:

- (a) Room and board residential costs;
- (b) Inpatient hospital services, including hospital, nursing facility, intermediate care facility for the intellectually and developmentally disabled individuals and institutions for mental diseases;
- (c) Transportation services;
- (d) Vocational services;
- (e) School and educational services;
- (f) Services rendered by parents or other family members;
- (g) Socialization services;
- (h) Screening and prevention services (other than those provided under Early and Periodic Screening, Diagnosis and Treatment requirements);

- (i) Services that are not medically necessary as recommended in an approved Plan of Care;
- (j) Services that are not provided and documented in accordance with these certification standards;
- (k) Services that are not behavioral health services as described in these rules; and
- (l) Services furnished to persons other than the consumer when those services are not directed primarily to the well-being and benefit of the consumer.

### **3426 DECERTIFICATION PROCESS**

- 3426.1 Decertification is the revocation of the certification issued by the Director to an organization or entity as an MHRS provider. A decertified MHRS provider shall not be entitled to provide any MHRS services and shall not be eligible for reimbursement for any services as a MHRS provider.
- 3426.2 Grounds for revocation include a provider's failure to comply with the certification requirements contained in this chapter, the provider's breach of its Human Care Agreement, violations of Federal or D.C. law, or any other action that constitutes a threat to the health or safety of consumers. Nothing in this chapter requires the Director to issue a CMP prior to revoking certification.
- 3426.3 If grounds for revocation have been met, the Director will issue a written notice of revocation setting forth the factual basis for the revocation, the effective date, and right to request an administrative review.
- 3426.4 The provider may request an administrative review from the Director within fifteen (15) business days of the date on the notice of revocation.
- 3426.5 Each request for an administrative review shall contain a concise statement of the reason(s) why the provider should not have the certification revoked and include any relevant supporting documentation.
- 3426.6 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.
- 3426.7 The Director shall issue a written decision and provide a copy to the provider. If the Director approves the revocation of the provider's certification, the provider may request a hearing under the D.C. Administrative Procedure Act, D.C. Official Code §§ 2-501, *et seq.*, within fifteen (15) business days of receipt of the Director's written decision. The administrative hearing shall be limited to the



issues raised in the administrative review request. The revocation shall be stayed pending resolution of the hearing.

3426.8 Once certification is revoked, the MHRS provider shall not be allowed to reapply for certification for a period of five (5) years following the date of the order of revocation. If a provider reapplies for certification, the provider must reapply in accordance with the established certification standards for the type of services provided, and show evidence that the grounds for the revocation have been corrected.

### **3427 CHILD-PARENT PSYCHOTHERAPY FOR FAMILY VIOLENCE**

3427.1 Child-Parent Psychotherapy for Family Violence (CPP-FV) is a relationship-based treatment intervention for young children with a history of trauma exposure or maltreatment, and their caregivers. CPP-FV helps restore developmental functioning in the wake of violence and trauma by focusing on restoring the attachment relationship that was negatively affected. Young children aged birth through six (6) years who have experienced traumatic stress often have difficulty regulating their behaviors and emotions during distress. They may exhibit fearfulness of new situations, be easily frightened, difficult to console, aggressive or impulsive. These children may also have difficulty sleeping, lose recently acquired developmental skills and show regression in functioning and behavior. Under CPP-FV, counselors assess and provide information on how parents' past experiences, including past insecure or abusive relationships, affect their relationships with their children. Sessions focus on parent-child interactions and Counselors provide support on healthy coping, affect regulation and increased appropriate reciprocity between parent/caregiver and child, resulting in a stronger relationship between a child and his or her parent or caregiver, and improvement in the child's symptoms. On average CPP-FV service sessions are sixty (60) to ninety (90) minutes, one (1) time per week, for a period up to fifty-two (52) weeks. CPP-FV sessions are longer in the first six months of treatment (*i.e.*, ninety (90) minutes) and decrease over time (to sixty (60) minutes) as the child improves his/her coping skills.

- (a) The goals of CPP-FV are to:
- (1) Reduce posttraumatic stress reactions and symptoms in children;
  - (2) Improve both parental and child functioning, as well as improve the parent-child attachment relationship;
  - (3) Establish a sense of safety and trust within the parent-child relationship;
  - (4) Return a child to a normal developmental trajectory; and

- (5) Restore parental sensitivity and responsiveness, in order to strengthen the child/parent relationship.
- (b) CPP-FV is available to children ages birth through six (6) years with a diagnosed serious emotional disorder, who have experienced at least one traumatic event including maltreatment, the sudden or traumatic death of a caregiver, a serious accident, sexual abuse, physical abuse, neglect, or exposure to domestic violence, and, as a result, are experiencing behavioral, attachment, and or mental health problems, including post-traumatic stress symptoms.
- (c) CPP-FV shall be provided in accordance with the following limitations:
  - (1) One (1) unit of service shall be one (1) fifteen (15) minute increment;
  - (2) CPP-FV shall only be provided with the participation of the parent/caregiver; and
  - (3) Be licensed CPP-FV providers in good standing.
- (d) Providers of CPP-FV services shall meet and maintain certification as a CPP-FV provider from the Department-approved training entity. Providers shall also maintain documentation of training for CCP-FV certified staff.
- (e) All CPP-FV Clinical team members shall complete the Department-approved CPP-FV clinical training or have a certificate of completion from one of the Department-accepted nationally-approved master trainers.
- (f) Each CPP-FV Service Team shall include an independently licensed clinical supervisor and no more than six (6) counselors who have successfully completed the CPP-FV training requirements. The CPP-FV team clinical supervisor shall be a licensed qualified practitioner.
- (g) CPP-FV counselors must be a licensed qualified practitioner in psychology, social work, therapy or other related field, have satisfied the CPP-FV training requirements;
- (h) Credentialed staff must receive supervision from a qualified practitioner trained in CCP-FV in accordance with the CPP-FV fidelity standards; and
- (i) Providers of CCP-FV must maintain an acceptable rating on an annual CCP-FV fidelity audit.

3427.2 Qualified practitioners of CPP-FV are the following behavioral health clinicians appropriately licensed by the jurisdiction where services are delivered and who practice within the scope of their license.

- (a) Psychiatrists;
- (b) Psychologists;
- (c) LICSWs
- (d) APRNs;
- (e) RNs; and
- (f) LPCs.

3427.3 Credentialed staff who may provide this service working under appropriate supervision are the following qualified practitioners:

- (a) LGSWs;
- (b) LGPCs;
- (c) LISWs; and
- (d) Psychology Associates.

## **3428 TRAUMA-FOCUSED COGNITIVE BEHAVIORAL THERAPY**

3428.1 Trauma-Focused Cognitive Behavioral Therapy (TF-CBT) is a psychotherapeutic intervention designed to help children, working with their parent or caregivers, overcome the negative effects of traumatic life events. The treatment focuses on parent-child interactions, parenting skills, therapeutic treatment, skills development (such as stress management, cognitive processing, communication, problem solving, and safety), and parental support. A parent/caregiver treatment component is an integral part of this treatment model. It parallels the interventions used with the child so that parent or caregivers are aware of the content covered with the child and are prepared to reinforce or discuss this material with the child between treatment sessions and after treatment has ended. A typical course of TF-CBT treatment requires children to participate in sixty (60) to ninety (90) minute individual and conjoint child parent or caregiver sessions, one (1) time per week, over an average period of twelve (12) to sixteen (16) weeks in accordance with the evidence-based practice requirements.

- (a) The goals of TF-CBT are to:

- (1) Target symptoms of post-traumatic stress disorder that are often co-occurring with depression and behavior problems;
  - (2) Address issues commonly experienced by traumatized children, such as poor self-esteem, difficulty trusting others, mood instability, and self-injurious behavior, including substance use disorder;
  - (3) Increase stress management skills of youth and parent/caregiver;
  - (4) Improve youth's self-esteem, problem-solving and safety skills and decrease self-injurious and aggressive behaviors; and
  - (5) Decrease caregiver trauma-related distress.
- (b) TF-CBT is available to children ages four (4) through eighteen (18) years of age with a diagnosed serious emotional disorder, who have experienced or witnessed one or more traumatic events and who are experiencing behavioral, or mental health problems, including post-traumatic stress symptoms as a result of the event.
- (c) TF-CBT service shall be provided in accordance with the following limitations:
- (1) One (1) unit of service shall be one (1) fifteen (15) minute increment;
  - (2) TF-CBT shall only be provided with an active parent/caregiver willing to participate for the anticipated twelve to sixteen week treatment period; and
  - (3) Be licensed TF-CBT providers in good standing.
- (d) Providers of TF-CBT services shall meet and maintain certification as a TF-CBT provider from the Department-approved training entity. Providers shall maintain documentation of training for TF-CBT certified staff.
- (e) All TF-CBT Clinical team members shall complete the Department-approved TF-CBT clinical training or have a certificate of completion from one of the Department-accepted nationally-approved master trainers.
- (f) Each TF-CBT service team shall include at least one (1) independently licensed clinical supervisor, and no more than eight (8) counselors who have successfully completed the TF-CBT training requirements. The TF-CBT team clinical supervisor shall be a licensed qualified practitioner.

- (g) TF-CBT counselors must be a licensed qualified practitioner in psychology, social work, therapy or other related field, have satisfied the TF-CBT training requirements for TF-CBT counselors.
- (h) Services provided by credentialed staff must be supervised by a qualified practitioner trained in TF-CBT as required by the TF-CBT requirements and documented in the TF-CBT Practice Session Checklist.

3428.2 Qualified practitioners of TF-CBT are the following behavioral health clinicians appropriately licensed by the jurisdiction where services are delivered and who practice within the scope of their license.

- (a) Psychiatrists;
- (b) Psychologists;
- (c) LICSWs;
- (d) APRNs;
- (e) RNs; and
- (f) LPCs.

3428.3 Credentialed staff who may provide this service working under appropriate supervision are the following qualified practitioners:

- (a) LGSWs;
- (b) LGPCs;
- (c) LISWs; and
- (e) Psychology Associates.

### 3499 DEFINITIONS

3499.1 The following terms have the meaning ascribed in this section:

**Advanced Practice Registered Nurse or APRN** - a person licensed as an advanced practice registered nurse in accordance with applicable District laws and regulations, with psychiatry as an area of practice and working in a collaborative protocol with a psychiatrist. An Advanced Practice Registered Nurse is a qualified practitioner

**Assertive Community Treatment or ACT** - intensive, integrated rehabilitative, crisis, treatment, and mental health rehabilitative community support provided by an interdisciplinary team to children and youth with serious emotional disturbance and to adults with serious and persistent mental illness by an interdisciplinary team. ACT is provided with dedicated staff time and specific staff to consumer ratios. Service coverage by the ACT team is required twenty-four (24) hours per day, seven (7) days per week. ACT is a specialty service.

**Assertive Community Treatment team or ACT team** - A mobile interdisciplinary team of qualified practitioners and other staff involved in providing ACT to a consumer.

**Authorized** - MHRS services that are prior authorized or reauthorized by the Department, in accordance with these standards.

**Behavioral concern** - A behavioral and emotional reaction of childhood and adolescence that can range from normal to severe responses and can be categorized as troubling, disruptive, or threatening. Behavioral concerns can have varying ranges of manifestations by children that include but are not limited to poor concentration, changes in social interactions, sadness, poor academic performance, high levels of irritability, acting out aggressively, expressing anger inappropriately, and engaging in a variety of antisocial and destructive acts, including violence towards people and animals, destruction of property, lying, stealing, truancy, and running away from home.

**Certified Addiction Counselor** - a person who provides addiction counseling services to persons with co-occurring psychiatric and addictive disorders and is licensed or certified in accordance with applicable District laws and regulations. A certified addiction counselor is a qualified practitioner.

**Certification** - the written authorization from the Department rendering an entity eligible to provide MHRS. The Department grants certification to community-based organizations that submit an approved certification application and satisfy the certification standards.

**Certification application** - the application and supporting materials prepared and submitted to the Department by a community-based organization requesting certification to provide MHRS.

**Certification standards** - The minimum requirements established by the Department in this chapter that an MHRS provider shall satisfy to obtain and maintain certification to provide MHRS and receive reimbursement from the Department for MHRS.

**Child and Family Services Agency or CFSA** - The District agency responsible for the coordination of foster care, adoption and child welfare services and services to protect children against abuse or neglect.

**Child-Parent Psychotherapy for Family Violence or CPP-FV Fidelity Audit** - A process by which the implementation of CPP-FV, in accordance with the established standards and guiding principles, will be evaluated annually.

**Child-Parent Psychotherapy for Family Violence or “CPP-FV”** - A psychotherapy treatment intervention for young children from birth through age six (6) who have experienced a traumatic life event and, as a result, are experiencing behavior, attachment, and/or mental health problems.

**Clinical supervisor** - The qualified practitioner responsible for monitoring consumer welfare, ensuring compliance with professional standards of service delivery, monitoring clinical performance and professional development of team members, and evaluating team members for performance, service delivery and credentialing purposes.

**Clinician** – An licensed individual in social work, counseling, psychology, family therapy or related social science or appropriate therapeutic experience with the target population.

**CMS** - Centers for Medicare and Medicaid services, formerly known as the Health Care Financing Agency.

**Community-Based Intervention or CBI** - Time-limited, intensive mental health services delivered to children and youth ages up to twenty-one (21) and intended to prevent the utilization of an out-of-home therapeutic resource or a detention of the consumer. CBI is primarily focused on the development of consumer skills to promote behavior change in the child or youth's natural environment and empower the child or youth to cope with his or her emotional disturbance.

**Community Based Intervention team or CBI team** - The interdisciplinary team of qualified practitioners and other staff involved in providing CBI to a consumer.

**Community Support** - Rehabilitation and environmental support considered essential to assist a consumer in achieving rehabilitation and recovery goals. Community Support services focus on building and maintaining a therapeutic relationship with the consumer. Community Support is a core service.

**Consumer** - A person eligible to receive MHRS as defined in the District of Columbia Department of Mental Health Establishment Congressional

Review Emergency Amendment Act of 2001, effective July 23, 2001 (D.C. Act 14-101).

**Core services** - Includes the following four categories of MHRS: Diagnostic Assessment, Medication/Somatic Treatment, Counseling and Psychotherapy, and Community Support.

**Core Services Agency or CSA** - A Department-certified community-based MHRS provider that has entered into a Human Care Agreement with the Department to provide specified MHRS. A CSA shall provide at least one core service directly and may provide up to three core services via contract with a sub-provider or subcontractor. A CSA may provide specialty services directly if certified by the Department as a specialty provider.

**Corporate Compliance Plan** - A written plan developed by each MHRS provider to ensure that the MHRS provider operates in compliance with all applicable federal and District laws and regulations.

**Corrective Action Plan or CAP** - A written plan prepared by either an applicant for certification or the Department-certified MHRS provider describing the actions that the provider intends to take to correct or abate the violations described in a CMP issued by the Department.

**Corrective Measures Plan or CMP** - A written statement of non-compliance issued by the Department, which describes the areas in which an applicant for certification or the Department-certified MHRS provider fails to comply with the certification standards.

**Counseling** - Individual, group, or family face-to-face services for symptom and behavior management, development, restoration, or enhancement of adaptive behaviors and skills, and enhancement or maintenance of daily living skills. Mental health supports and consultation services provided to consumer's families are reimbursable only when such services and supports are directed exclusively to the well-being and benefit of the consumer. Counseling is a core service.

**CPP-FV Fidelity Standards** - the six established interconnected standards of fidelity, as set forth by the developers of CCP-FV, which guides treatment delivery.

**Credentialed staff** - Unlicensed staff or staff who are not qualified practitioners that are credentialed by the MHRS provider to perform certain MHRS or components of MHRS under the clinical supervision of a qualified practitioner.



**Crisis/Emergency** - Face-to-face or telephone immediate response to an emergency situation involving a consumer with mental illness or emotional disturbance that is available twenty-four (24) hours per day, seven (7) days per week. Crisis/Emergency services are provided to consumers involved in active mental health crisis and consist of immediate response to evaluate and screen the presenting mental health situation, assist in immediate crisis stabilization and resolution and ensure the consumer's access to mental health care at the appropriate level. Crisis/Emergency is a specialty service.

**Crisis support services** - Mental health services that support the consumer through a crisis, such as meeting with the consumer in the community or an emergency department to help calm the consumer; implementing the crisis plan developed for the consumer; assisting the consumer to reach an emergency department; and providing pertinent mental health information about a consumer to an emergency department to assist in addressing a crisis.

**Cultural and linguistic competence** - Means the ability of an MHRS provider to deliver mental health services and mental health supports in a manner that effectively responds to the languages, values, and practices present in the various cultures of the MHRS provider's consumers.

**DHCF** - The Department of Health Care Finance, the District's Medicaid authority.

**Department of Youth Rehabilitative Services or DYRS** - The District agency responsible for providing security, supervision and residential and community support services for committed and detained juvenile offenders and juvenile persons in need of supervision.

**Diagnostic Assessment** - Intensive clinical and functional evaluation of a consumer's mental health condition that results in the issuance of a Diagnostic Assessment report with recommendations for service delivery and may provide the basis for the development of the Plan of Care. A Diagnostic Assessment shall determine whether the consumer is appropriate for and can benefit from MHRS, based upon the consumer's diagnosis, presenting problems and recovery goals. Diagnostic Assessment is a core service.

**Diagnostic Assessment Report** - the report prepared by the Qualified Practitioner that summarizes the results of the Diagnostic Assessment service and includes recommendations for service delivery. The Diagnostic Assessment report is used to initiate the Plan of Care.

**Director** - The Director of the Department of Behavioral Health.

**Disaster Recovery Plan** - The policies and procedures developed by each MHRS provider to ensure that computerized data is properly maintained and can be retrieved in the event of a disaster.

**District of Columbia or District** - The government of the District of Columbia.

**District of Columbia State Medicaid Plan** - The plan approved by CMS that is developed and administered by DHCF, pursuant to Section 1(b) of An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes and Title XIX of the Social Security Act as added July 30, 1965 (79 Stat. 343; 42 USC §§ 1396a *et seq.*), as amended. The program operated in accordance with the District of Columbia State Medicaid Plan is referred to as the "Medicaid" or "Medical Assistance" program.

**Department or DBH** - The Department of Behavioral Health, the successor in interest to the Department of Mental Health and the Addiction and Prevention Recovery Administration.

**Department Consumer Enrollment and Referral System** - The system developed and administered by the Department to enroll eligible consumers into the MHRS system.

**DHCF/the Department Interagency Agreement** - A written agreement entered into by DHCF and the Department that describes how DHCF and the Department will handle the operation and administration of the MHRS program.

**DSM** - The most recent version of the Diagnostic and Statistical Manual of Mental Disorders.

**Economic Security Administration or ESA** - The unit within the District of Columbia Department of Human Services that determines eligibility for medical assistance programs for District residents.

**Emergency** - A situation in which a consumer is experiencing a mental health crisis and the immediate provision of mental health treatment is, in the written judgment of the consumer's attending physician, necessary to prevent serious injury to the consumer or others.

**Enrollment:** Process by which the Access Help Line (AHL) adds a consumer to the MHRS system of care and assigns them to a provider after ascertaining their eligibility. The intake appointment at the assigned provider should occur no later than seven (7) days after enrollment, and providers are required to

document steps taken to locate and provide services to a consumer in the Department's electronic data management system.

**Evidence-based practice:** Evidence-based practice is a process that brings together the best available research, professional expertise, and input from consumers to identify and deliver services that have been demonstrated to achieve positive outcomes for individuals. Evidence-based programs and practices (EBPPs) are specific techniques and intervention models that have shown to have positive effects on outcomes through rigorous evaluations.

**Foster home** - A residence in which a foster parent is licensed by the District to provide care to a foster child in accordance with the requirements of Title 29 DCMR Chapter 60.

**Functional Family Therapy** or **FFT** – Research-based prevention and intervention program for at-risk adolescents and their families provided by a team of trained therapists by a certified CBI Level IV provider with FFT site certification.

**Governing authority** - The designated individuals or governing body legally responsible for conducting the affairs of the MHRS provider.

**Grievance** - A description by any individual of his or her dissatisfaction with an MHRS provider, including the denial or abuse of any consumer right or protection provided by applicable Federal and District laws and regulations.

**Human Care Agreement** - A written agreement entered into by the Department-certified MHRS provider and the Department which describes how the parties will work together.

**ICD-10** - The most recent version of the International Classification of Diseases Code Manual.

**Independent Living Program** - A residential program licensed by the District in accordance with Title 29 DCMR Chapter 63, Licensing of Independent Living Programs for Adolescents and Young Adults.

**Inpatient mental health service** - Residence and treatment provided in a psychiatric hospital or unit licensed or operated by the District of Columbia.

**Intensive Day Treatment** - A structured, intensive, and coordinated acute treatment program that serves as an alternative to acute inpatient treatment or as a step-down service from inpatient care, rendered by an interdisciplinary team to provide stabilization of psychiatric impairments. Its duration is time-limited. Intensive Day Treatment is provided in an ambulatory setting. Intensive Day Treatment is a specialty service.

**Intensive Home and Community-Based Services or IHCBS** - an intensive model of treatment adopted by the Department to prevent the utilization of out-of-home treatment resources by emotionally disturbed children and youth. IHCBS is the modality adopted for CBI Levels II and III.

**Licensed independent clinical social worker or LICSW** - A person licensed as an independent clinical social worker in accordance with applicable District laws and regulations. An LICSW is a qualified practitioner.

**Licensed independent social worker or LISW** - A person licensed as a licensed independent social worker in accordance with applicable District laws and regulations.

**Licensed marriage and family therapist or LMFT** – A person licensed to practice marriage and family therapy under District law and regulations.

**Licensed graduate social worker or LGSW** – A person licensed as a licensed graduate social worker in accordance with applicable District laws and regulations, and may perform any function as the practice of social work, other than psychotherapy, under the supervision of a licensed social worker.

**Licensed graduate professional counselor or LGPC** – A person licensed as a licensed graduate professional counselor under District laws and regulations and may provide allowable services under appropriate supervision.

**Licensed professional counselor or LPC** - A professional counselor licensed in accordance with applicable District laws and regulations.

**Long-term placement option** - A permanent caregiver or permanent home. A group home or other residential placement is not a long-term placement option.

**Medicaid or Medical Assistance** - The program described in the District of Columbia State Medicaid Plan, approved by CMS, and administered by MAA pursuant to Section 1(b) of An Act to enable the District of Columbia to receive Federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes and Title XIX of the Social Security Act, as amended July 30, 1965 (79 Stat. 343; 42 USC §§ 1396a *et seq.*).

**Medical necessity or medically necessary** - Health care services or products that a prudent provider would provide to a client for the purpose of preventing, diagnosing or treating an illness, injury, disease or its symptoms in a manner that is: (a) in accordance with generally accepted standards of health care practice; (b) clinically appropriate in terms of type, frequency, extent, site,

and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the client or treating provider

**Medication/Somatic Treatment** - Medical interventions, including physical examinations, prescription, supervision or administration of mental-health related medications, monitoring and interpreting the results of laboratory diagnostic procedures related to mental health-related medications, and medical interventions needed for effective mental health treatment provided as either an individual or group intervention. Medication/Somatic Treatment is a core service.

**Mental Health Rehabilitation Services or MHRS** - Mental health rehabilitative or palliative services provided by a the Department-certified community mental health provider to consumers in accordance with the District of Columbia State Medicaid Plan, the DHCF/the Department Interagency Agreement, and this chapter.

**Mental illness** - A substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life.

**MHRS provider** - an organization certified by the Department to provide MHRS. MHRS provider includes CSAs, sub-providers, and specialty providers.

**Mobile Crisis Response Team** – A team of mental health clinicians who provide face-to-face and telephone support to children and families in crisis.

**Multisystemic therapy or MST** - An intensive model of treatment based on empirical data and evidence-based interventions that target specific behaviors with individualized behavioral interventions.

**Natural settings** - The consumer's residence, workplace, or other locations in the community the consumer frequents, such as the consumer's home, school, workplace, community centers, homeless shelters, street locations, or other public facilities. Natural settings do not include inpatient hospitals or community residential facilities.

**Neglect** - Any act or omission by an MHRS provider that causes or is likely to cause or contribute to, or which caused or is likely to have caused or contributed to, injury or death of a consumer.

**Organizational onboarding:** the mechanism through which new employees acquire the necessary knowledge, skills, and behaviors to become effective performers. It begins with recruitment and includes a series of events, one of which is employee orientation, which helps new employees understand performance expectations and contribute to the success of the organization.

**Out-of-home therapeutic resource** - a psychiatric hospital or psychiatric residential treatment facility.

**Permanent caregiver** - A natural or adoptive family or foster home that has cared for the consumer for at least six (6) consecutive months within the twelve (12) month period immediately preceding the referral for CBI. A group home or other residential placement is not a permanent caregiver.

**Permanent home** - A natural or adoptive family or foster home where the consumer has lived for at least six (6) consecutive months within the twelve month (12) month period immediately preceding the referral to CBI with a permanent caregiver. A group home or other residential placement is not a permanent home.

**Plan of care (formerly called the Individual Plan of Care / Individual Recovery Plan)** – The Plan of Care refers to what the DBH formerly called the IPC/IRP, and encompasses the provision of services to all consumers regardless of age.

**Policy** - A written statement developed by an MHRS provider that gives specific direction regarding how the MHRS provider shall operate administratively and programmatically.

**Prior authorization** - Approval by the Department in advance for the initiation of MHRS to a consumer, including the commencement of services such as Diagnostic/Assessment or Crisis Emergency services before a consumer is enrolled in the MHRS program.

**Procedure** - A written set of instructions describing the step-by-step actions to be taken by MHRS provider staff in implementing a policy of the MHRS provider.

**Psychiatric residential treatment facility** - Shall have the meaning ascribed in 42 CFR Subpart G, Section 483.352.

**Psychiatrist** - A physician who has completed all training in a program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, approved by the American Board of Psychiatry and Neurology, Inc., or is board certified in psychiatry. A psychiatrist is a qualified practitioner.

**Psychologist** - A person licensed to practice psychology in accordance with applicable District laws and regulations. A Psychologist is qualified practitioner.

**Psychosocial Rehabilitation Clubhouse or Clubhouse** – MHRS specialty services that assist individuals with behavioral health diagnoses to develop social networking, independent living, budgeting, self-care, and other skills that will assist them to live in the community and to prepare for securing and retaining employment. A Clubhouse shall operate in accordance with established standards coordinated by Clubhouse International (<http://clubhouse-intl.org/resources/quality-standards/>).

**Qualified practitioner** - A Qualified Practitioner is a behavioral health clinician appropriately licensed by the jurisdiction where services are delivered and who may practice MHRS independently within the scope of their license.

**Reauthorized** - Having received approval by the Department for the continued provision of medically necessary MHRS that are time-limited, such as Rehabilitation/Day Services, Intensive Day Treatment, CBI or ACT.

**Referral** - A recommendation to seek or request services or evaluation between a CSA and a sub-provider or specialty provider in order to assess or meet the needs of consumers.

**Registered nurse or RN** – A person licensed as a registered nurse in accordance with applicable District laws and regulations. An RN is a qualified practitioner.

**Rehabilitation/Day Services** - A structured, clinical program intended to develop skills and foster social role integration through a range of social, psycho-educational, behavioral, and cognitive mental health interventions. Rehabilitation/Day Services are curriculum-driven and psycho-educational and assist the consumer in the retention, or restoration of community living, socialization, and adaptive skills. Rehabilitation Day Services include cognitive- behavioral interventions and diagnostic, psychiatric, rehabilitative, psychosocial, counseling, and adjunctive treatment. Rehabilitation/Day Services are offered most often in group settings. Rehabilitation/Day Services is a specialty service.

**Residential placement** - A psychiatric residential treatment center, group home, independent living program or other residence where children or youth are temporarily receiving services. A permanent home is not a residential placement.

**Service specific standards** - the certification standards described in § 3414, § 3415, § 3416, § 3417, § 3418, § 3419, § 3420, § 3421, § 3422 and § 3423, which set forth the specific requirements applicable to each MHRS.

**Specialty provider** - a community-based organization MHRS provider certified by the Department to provide specialty services either directly or through contract.

**Specialty services** - Assertive Community Treatment, Child-Parent Psychotherapy for Family Violence, Community-Based Interventions, Clubhouse, Crisis Intervention/Emergency, Intensive Day Treatment, Rehabilitation/Day Services, and Trauma-Focused Cognitive-Behavioral Therapy.

**Subcontractor** - A licensed independent practitioner qualified to provide mental health services in the District. A subcontractor may provide one or more core service(s) under contract with a CSA. A subcontractor may also provide specialty service(s) under contract with a specialty provider.

**Subcontractor Agreement** - An agreement by and between an MHRS provider and a subcontractor that describes how they will work together to benefit consumers in the form approved by the Department.

**Subprovider** - A community-based organization certified by the Department to provide one or more core services.

**Trauma-Focused Cognitive Behavioral Therapy** or “**TF-CBT**” - a psychosocial treatment model designed to treat posttraumatic stress and related emotional and behavioral problems in children and adolescents.

**TF-CBT Practice Session Checklist** - An instrument used to track whether supervisors and therapists are implementing TF-CBT in accordance with the established model.

**Triaging** - Prioritizing the level of crisis services required by a consumer, based upon the assessed needs of the consumer.

**Urgent Need** - A situation where, due to a mental illness, there is no immediate risk to life, health or property, but if the situation is not addressed promptly may turn into an emergency situation. An emergency situation is where a consumer is an immediate risk to life, health, or property due to a mental illness.

All persons desiring to comment on these proposed regulations should submit comments in writing to Atiya Frame, Interim Senior Deputy Director, Department of Behavioral Health, Government of the District of Columbia, 64 New York Ave, NE, Third Floor, Washington DC 20002, via telephone at (202) 673-2200, via email at [DBHpubliccomments@dc.gov](mailto:DBHpubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.



## DEPARTMENT OF EMPLOYMENT SERVICES

NOTICE OF PROPOSED RULEMAKING**(Paid-Leave Program Benefits)**

The Director of the Department of Employment Services (DOES), pursuant to the authority set forth in the Universal Paid Leave Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-264; D.C. Official Code §§ 32-541.01 *et seq.* (2012 Repl. & 2018 Supp.)) (the “Act”), and Mayor’s Order 2018-36, dated March 29, 2018, hereby gives notice of the intent to amend Title 7 (Employment Benefits) of the District of Columbia Municipal Regulations (DCMR) by adding a new Chapter 35 (Paid Leave Benefits) in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

The proposed rulemaking would implement the Act by establishing the procedures necessary to administer a paid-leave program for eligible individuals employed in the District of Columbia.

The Director initially published a Notice of Proposed Rulemaking in the *D.C. Register* on April 6, 2018, at 65 DCR3668, which included regulations to implement the Act as a whole. Based on comments received, and the statutory timelines, DOES decided to bifurcate the regulations into two chapters, separating the employer contributions and paid-leave benefits. Also, based on comments received, these proposed rules include significant changes from the initial proposed rules in order to address eligibility for benefits, calculation of benefit amounts, filing for benefits, erroneous payments, and the repayment of benefits.

Pursuant to Section 102 of the Act (D.C. Official Code § 32-541.02), the proposed rules shall be submitted to the Council for a forty-five (45)-day period of review, excluding Saturdays, Sundays, holidays, and days of Council recess.

**Title 7 DCMR, EMPLOYMENT BENEFITS, is amended by adding a new Chapter 35, PAID LEAVE BENEFITS, to read as follows:**

**CHAPTER 35 PAID LEAVE BENEFITS****3500 ELIGIBILITY FOR PAID LEAVE BENEFITS**

3500.1 An individual shall be eligible for paid-leave benefits under this chapter if:

- (a) The individual experiences a qualifying event;
- (b) The individual does not perform his or her regular and customary work because of the occurrence of the qualifying event; and
- (c) The individual satisfies one or both of the following sets of criteria:

- (1) (A) The individual is employed by a covered employer at the time of application;
- (B) The individual has earned income as a covered employee of a covered employer during at least one (1) of the past five (5) completed quarters immediately preceding the qualifying event for which the paid-leave claim is being submitted; and
- (C) The employee’s wages were reportable to DOES under Chapter 34 (Paid Leave Contributions) by the covered employer(s); or
- (2) (A) The individual is currently a self-employed individual who is currently opted into and enrolled in the paid-leave program;
- (B) The individual earned and reported to DOES under Chapter 34 (Paid Leave Contributions) self-employment income during at least one (1) of the past five (5) completed quarters immediately preceding the qualifying event for which the paid-leave claim is being submitted;
- (C) The individual is in good standing with the program and has no past-due contributions for self-employment income earned in previous completed quarters; and
- (D) The individual earned self-employment income for work performed more than fifty percent (50%) of the time in the District of Columbia during some or all of the fifty-two (52) calendar weeks immediately preceding the qualifying event for which paid leave is being taken.

**3501 FILING A CLAIM FOR PAID-LEAVE BENEFITS**

3501.1 An applicant shall submit a claim for paid-leave benefits using the online portal, or an electronic or non-electronic format approved by DOES.

3501.2 An applicant may submit a claim for one (1) of three (3) types of qualifying paid leave. The three (3) types of qualifying paid leave are:

- (a) Qualifying family leave;
- (b) Qualifying medical leave; and
- (c) Qualifying parental leave.

- 3501.3 No claim submitted before the date of the occurrence of a qualifying leave event shall be approved by DOES.
- 3501.4 No benefits shall be payable for leave taken before the applicant submitted a claim to DOES for paid-leave benefits, except in exigent circumstances.
- (a) For the purposes of this subsection, “exigent circumstances” means:
- (1) Physical or mental incapacity that prevented the applicant or the applicant’s authorized representative from filing for benefits following the occurrence of the qualifying event; or
- (2) A demonstrable inability to reasonably access the means by which a claim could have been filed by the applicant or the applicant’s authorized representative following the occurrence of the qualifying event.
- (b) If an applicant believes that exigent circumstances exist, the applicant or the applicant’s authorized representative shall submit the claim for paid-leave benefits as soon as practicable after the qualifying event and shall provide evidence of the exigent circumstances.
- (c) Based on the evidence provided by the applicant or the applicant’s representative (and any supplemental evidence requested by DOES and provided by the applicant or the applicant’s representative), DOES shall determine whether exigent circumstances existed. If DOES determines that exigent circumstances existed, DOES shall then determine the earliest date on which a claim could practicably have been filed by the applicant or the applicant’s authorized representative, taking into consideration the evidence submitted by the applicant, and process the claim based on that date.
- 3501.5 No benefits shall be payable for qualifying parental leave more than fifty-two (52) calendar weeks after the qualifying parental leave event.
- 3501.6 When submitting a claim for paid-leave benefits, an applicant shall provide the following information through the online portal, or an electronic or non-electronic format as approved by DOES:
- (a) Proof of the applicant’s identity, which shall be satisfied by providing evidence showing valid proof for each of the following three (3) elements:
- (1) The applicant’s name;
- (2) Date of birth; and

- (3) One of the following:
  - (A) Social security number; or
  - (B) Individual taxpayer identification number.
- (b) Contact information, including the applicant's mailing address, telephone number, and email address;
- (c) Whether the paid leave will initially be taken continuously or intermittently;
- (d) If the paid leave will be taken continuously, then the elements set forth in Subsection 3506.4;
- (e) If the paid leave will be taken intermittently, then the elements set forth in Subsection 3506.5;
- (f) The specific future dates, or, in exigent circumstances pursuant to § 3501.4, the past dates, for which paid leave is being sought;
- (g) For covered employees, the name, business address, telephone number, and email address of the applicant's supervisor at the covered employer, if applicable;
- (h) A signed affirmation certifying that the information provided in support of the claim for paid-leave benefits is true and accurate; and
- (i) (1) For a paid medical leave claim:
  - (A) Proof of a qualifying medical leave event, including medical documentation signed by the health care provider that certifies the diagnosis or occurrence of a serious health condition;
  - (B) The expected duration of the condition certified by the health care provider and based on industry standards used by health care professionals to identify diagnoses of medical conditions and treatments; and
  - (C) A form signed by the applicant authorizing the individual's health care provider to provide medical documentation and/or additional information necessary to process the claim for paid leave.

- (2) For a paid family leave claim:
  - (A) Proof of a qualifying family leave event, including medical documentation signed by the health care provider that certifies the diagnosis or occurrence of a serious health condition of a family member;
  - (B) The expected duration of the condition certified by the health care provider and based on industry standards used by health care professionals to identify diagnoses of medical conditions and treatments;
  - (C) An affirmation that the applicant will be taking the leave in order to provide care or companionship for the family member with a serious health condition;
  - (D) A statement of the relationship of the family member needing care to the applicant, and proof of such relationship, which may be established by a signed affirmation form promulgated by DOES or other documentation approved by DOES;
  - (E) A description of the care or companionship to be provided by the applicant to the family member; and
  - (F) If requested by DOES, a form signed by the family member authorizing the family member's health care provider to provide medical documentation and/or additional information to DOES necessary to process the claim for paid leave.
- (3) For a paid parental leave claim, proof of a qualifying parental leave event, which may be established by a birth certificate, court document, a document issued by the health care provider of the child, a document from the adoption or foster care agency involved in the placement that confirms the placement and date of placement, hospital admission form associated with delivery, or another document approved by DOES for this purpose.

3501.7 For paid medical leave claims or paid family leave claims, applicants shall also include a medical certification. The medical certification must be completed by a health care provider. The applicant shall bear the cost, if any, charged by the health care provider for completing the certification. The medical certification shall include the following information:

- (a) Contact information for the health care provider, including the name, address, telephone number, and email address;
- (b) Medical license information for the health care provider;
- (c) The date that the serious health condition began;
- (d) The expected duration for the serious health condition;
- (e) If medical leave, a physician’s opinion as to the employee’s ability to work, and the expected duration of any inability to work;
- (f) If family leave, the type of care or companionship required by the family member, and the expected frequency and duration of the leave that is required for the applicant to provide that care to the family member; and
- (g) A summary of the medical condition.

3501.8

- (a) DOES may, to the extent necessary to administer the paid-leave program under the Act and to the extent consistent with federal and District law, seek records from the applicant that are deemed confidential under federal or District law.
- (b) If an applicant does not consent to the disclosure of information necessary to process a claim or to determine eligibility, an individual’s claim for paid-leave benefits may be denied.
- (c) All records shall be kept confidential by DOES and may only be released to parties other than authorized DOES staff when such release is required by law. Information contained in the records pertaining to an individual under this chapter shall be confidential and not open to public inspection, other than to public employees in the performance of their official duties, pursuant to Section 106(h) of the Act (D.C. Official Code § 32–541.06(h)).

3501.9

Any applicant filing a new claim for paid leave shall be advised at the time of filing the claim that:

- (a) Paid-leave benefits may be subject to federal, state, and local income taxes; and
- (b) The applicant is responsible for complying with applicable federal, state, and local tax laws.

3501.10

DOES may require that the applicant obtain additional medical documentation if:

- (a) The applicant requests an extension of leave or a different type or frequency of leave, beyond what the applicant requested in his or her initial application for the qualifying leave event; or
  - (b) DOES obtains new information which causes it to doubt the validity of the applicant's stated reason for the leave or the validity of the medical documentation.
- 3501.11 If the adoptive or foster status of an individual changes while an application for paid parental leave is pending or while the individual is currently receiving paid-leave benefits based on their adoptive or foster status, the applicant or eligible individual shall notify DOES within ten (10) business days of the status change.
- 3501.12 DOES shall permit authorized representatives to file and manage claims on behalf of applicants. In order to be designated as an authorized representative, an individual or entity must submit appropriate legal documentation sufficient to establish bona fide legal authority to represent the applicant. Such documentation may include a court order, proof of designation as a power of attorney, or other documentation approved by DOES.
- 3501.13
  - (a) An applicant may have more than one (1) open claim at a time, provided that the simultaneously open claims are for different qualifying events.
  - (b) The multiple qualifying events may be within the same type of qualifying event; for example, there may be two (2) open qualifying family leave claims or two (2) open qualifying medical leave claims for an individual at a time.
  - (c) An individual shall not receive payment for more than one (1) open claim on any particular day.
- 3501.14 During an open claim, an applicant may request a continuation of leave for the claim. A continuation of leave occurs when an applicant requests and is approved for a new last payable date of the claim that is later than the existing last payable date of the claim. DOES shall process the request for continuation of leave in a manner consistent with the provisions of this chapter.
- 3501.15 During an open claim, an applicant may request a reduction in leave for the claim. A reduction of leave occurs when an applicant requests and is approved for a new last payable date of the claim that is sooner than the existing last payable date of the claim. DOES shall process the request for reduction of leave in a manner consistent with the provisions of this chapter.
- 3501.16 Unless an applicant requests a continuation of leave pursuant to Subsection 3501.14, a claim shall be considered a closed claim after the last payable date.

**3502 PROCESSING CLAIMS FOR PAID LEAVE**

- 3502.1 Within ten (10) business days after the filing of a claim for paid-leave benefits, a DOES claims examiner shall:
- (a) Notify the applicant of DOES's determination of eligibility or ineligibility for the type of paid-leave benefits sought; or
  - (b) Issue a provisional denial of the claim and provide an explanation of the need to submit additional information for DOES to process the claim.
- 3502.2 Within three (3) business days after the filing of a claim for paid-leave benefits, a DOES claims examiner shall:
- (a) Notify the current covered employer of the filing of a claim by the applicant; and
  - (b) Request from the employer:
    - (1) The employment status of the applicant;
    - (2) The last day worked by the applicant;
    - (3) Which type of leave from among the three (3) options described in Subsection 3501.2 that the employee requested from the employer pursuant to the notice described in Section 3509; and
    - (4) If applicable, whether the employer agrees with the employee's self-described workweek provided pursuant to § 3506.5(b)(1).
- 3502.3 The covered employer shall submit the requested information, or an attestation that the applicant was or is not an employee of the employer, within four (4) business days after receipt of the request from the claims examiner. If the covered employer fails to provide the requested information within four (4) business days, the claim for paid leave shall be processed using the available information; provided that if the covered employer later files additional information, DOES may re-process the claim, taking into account the additional information.
- 3502.4
- (a) If DOES requires additional information from an applicant to process a claim, and the information cannot be obtained within the ten (10)-day processing period provided in § 3502.1, DOES shall issue a provisional denial of the claim and provide a description of the missing information to the applicant.
  - (b) If the applicant provides the additional information in response to DOES' request for additional information within ten (10) business days of the date



of the provisional denial, DOES shall reprocess the claim taking into account the additional information.

- (c) If the applicant does not provide additional information in response to DOES' request for additional information within ten (10) business days of the date of the request, the determination of denial shall be final.
- (d) A provisional denial pursuant to this subsection shall be considered an official determination for the purposes of appeals pursuant to Sections 3511 and 3512.

3502.5 For qualifying family leave or qualifying medical leave, the claims examiner shall first determine an applicant's tentative eligibility based on non-medical factors supported by documentation submitted to establish the applicant's identity, employment history, and familial relationship.

3502.6 After establishing tentative eligibility for qualifying family leave or qualifying medical leave, the claims examiner shall review the medical evidence for eligibility. The medical evidence shall take the form of proof of a qualifying event provided by the eligible individual, health care provider, and the qualified family member, if applicable. This evidence shall be reviewed by the claims examiner in accordance with the International Classification of Diseases, Tenth Revision (ICD-10), or subsequent revisions by the World Health Organization to the International Classification of Diseases.

3502.7 If DOES determines that additional information is not required and makes an initial determination on eligibility for paid-leave benefits, DOES shall issue a notification of the initial determination:

- (a) To both the eligible individual and the covered employer that includes:
  - (1) A statement as to whether the claim for paid-leave benefits has been approved or denied;
  - (2) If the claim was approved:
    - (A) The start date for the payment of paid-leave benefits;
    - (B) Whether the leave will initially be taken continuously or intermittently, and, if intermittently, the scheduled days on which benefits will be payable; and
    - (C) The expected end date for paid-leave benefits, given the current payment schedule elected by the eligible individual.
- (b) To the eligible individual in private communication:

- (1) If the claim was approved, the approved weekly benefit amount, and, if applicable, the equivalent daily benefit amount;
- (2) If the claim was denied, the reason(s) for the denial; and
- (3) Regardless of whether the claim was approved or denied, a description of the process to file an appeal with the DOES Administrative Appeals Division or the Office of Administrative Hearings.

3502.8 Any information described in Subsection 3502.7(b) provided by DOES to the individual may be shared by the eligible individual with the covered employer or other entities for the purposes of allowing the covered employer or other entities to coordinate their paid-leave benefits with the benefits provided by this chapter, or for other purposes at the discretion of the eligible individual. Covered employers or other entities may require that such information be shared by the individual in order for benefits provided by the covered employer or other entity to be paid to the individual.

### **3503 CALCULATION OF WEEKLY BENEFIT AMOUNT**

3503.1 Subject to other provisions in this chapter, including but not limited to Subsection 3503.2 and Sections 3504 and 3513, DOES shall calculate the weekly paid-leave benefit amount to which an eligible individual is entitled pursuant to the following procedures:

- (a) The wages used to calculate the weekly benefit amount shall be limited to wages reported and paid to the covered employee by covered employers; provided, that “wages” also includes reported self-employment income.
- (b) The weekly benefit amount shall be calculated in the following manner (which provides a higher wage replacement for low wages (below the formula bend point) in comparison to high wages (above the formula bend point)):
  - (1) DOES shall first determine the total amount of all reported covered wages, including any reported self-employment income, for each of the past five (5) completed quarters. Only completed quarters shall be considered in calculating the weekly benefit amount. The quarters are as follows: January 1 to March 31; April 1 to June 30; July 1 to September 30; October 1 to December 31.
  - (2) The quarter with the lowest total earnings in the past five (5) quarters shall be discarded for purposes of the benefit calculation. If multiple quarters have the same total earnings, and those

quarters with identical earnings are the lowest-earning quarters, only one (1) of the quarters with identical earnings shall be discarded.

- (3) The total earnings in the four (4) remaining quarters with the highest total earnings shall then be added together. This sum shall be divided by fifty-two (52) to arrive at the average weekly wage.
  - (4) The resultant average weekly wage shall then be compared with the formula bend point to determine the applicable formula to be used to calculate the weekly benefit amount.
  - (5) For the purpose of this subsection, the formula bend point is defined as the District's hourly minimum wage multiplied by forty (40), then multiplied by one point five (1.5).
  - (6) The applicable benefit formula for the weekly benefit amount shall be as follows:
    - (A) If the average weekly wage is less than or equal to the formula bend point, then the average weekly wage shall be multiplied by nine-tenths (0.9). The resulting product shall be the weekly benefit amount, subject to Subsection 3503.2.
    - (B) If the average weekly wage is greater than the formula bend point, then the following benefit formula shall be used:
      - (i) The amount of the formula bend point shall be subtracted from the average weekly wage;
      - (ii) The resultant difference shall be multiplied by five-tenths (0.5);
      - (iii) This product shall be added to the following: the amount of the formula bend point multiplied by nine-tenths (0.9);
      - (iv) This sum shall be the weekly benefit amount, subject to Subsection 3503.2.
- (c) If an eligible individual has wages from multiple covered employers or income from self-employment, the wages from these multiple sources in each separate quarter shall be combined to determine the eligible individual's average weekly wage calculated pursuant to paragraph (b).

(d) The weekly benefit amount calculated according to this section, if not a multiple of one dollar (\$1.00), shall be rounded to the nearest dollar amount.

3503.2 (a) No eligible individual shall be entitled to payment of paid-leave benefits at a rate in excess of the maximum weekly benefit amount.

(b) Before October 1, 2021, the maximum weekly benefit amount shall be one thousand dollars (\$1,000).

(c) DOES shall adjust the maximum weekly benefit amount annually, to take effect on October 1, 2021, and on October 1 of each successive year, as provided in Section 104(g)(6) of the Act (D.C. Official Code § 32-541.04(g)(6)).

**3504 WAITING PERIOD FOR BENEFITS**

3504.1 After the occurrence of a qualifying event, an eligible individual shall not be entitled to paid-leave benefits payable under this chapter until after the eligible individual has waited seven (7) calendar days.

3504.2 No benefits shall be payable during the seven (7) calendar-day waiting period.

3504.3 The seven (7) calendar-day waiting period shall begin to run on the first day of the qualifying event.

3504.4 Regardless of the number of qualifying events for which an eligible individual files a claim for paid-leave benefits, he or she shall only have one (1) waiting period of seven (7) calendar days during and for which no benefits are payable within a fifty-two (52) calendar-week period.

3504.5 The seven (7) calendar-day waiting period shall not count toward the number of workweeks of paid-leave benefits that an eligible individual may receive.

**3505 DURATION OF PAID-LEAVE BENEFITS**

3505.1 An eligible individual shall not receive more than:

(a) Two (2) workweeks of qualifying medical leave for qualifying medical leave event(s) within a fifty-two (52) calendar week period;

(b) Six (6) workweeks of qualifying family leave for qualifying family leave event(s) within a fifty-two (52) calendar week period; and

(c) Eight (8) workweeks of qualifying parental leave for qualifying parental leave event(s) within a fifty-two (52) calendar week period.

3505.2 Notwithstanding subsection 3505.1, an eligible individual shall not receive more than a maximum of eight (8) workweeks of paid leave during a fifty-two (52) calendar week period, regardless of the number of qualifying leave events that occurred during the fifty-two (52) calendar week period.

3505.3 All leave taken pursuant to this chapter shall be in no less than one (1) workday increments.

## **3506 CONTINUOUS AND INTERMITTENT LEAVE**

3506.1 An eligible individual may elect to receive paid leave either intermittently or continuously.

3506.2 When receiving benefits payable for continuous leave, an eligible individual shall earn no income by performing his or her usual and customary work during any part of the calendar weeks during which benefits for continuous leave are payable to the eligible individual, except for the first and last payable weeks, which, if they are partial weeks, shall be treated for the purposes of benefit amounts in a similar manner as weeks during which intermittent-leave benefits are payable pursuant to this section.

3506.3 When receiving benefits payable for intermittent leave, an eligible individual shall earn no income by performing his or her usual and customary work on any of the days for which the eligible individual is claiming paid-leave benefits. However, the eligible individual may earn income by performing his or her usual and customary work on days for which intermittent-leave benefits are not payable, subject to the limitation described in Subsection 3506.11.

3506.4 When electing continuous leave upon initial application for benefits, or when electing a change in payment schedule from intermittent to continuous leave, an eligible individual shall:

- (a) Acknowledge in writing to DOES that the individual understands that he or she may earn no income by performing his or her usual and customary work during any part of the calendar week(s) during which benefits for continuous leave benefits are payable to the eligible individual, except for the first and last payable weeks, if they are partial weeks; and
- (b) If either the first or last payable weeks are partial weeks:
  - (1) Designate an intermittent leave indicator pursuant to Subsection 3506.5; and
  - (2) Certify that the days of the calendar week for which the individual seeks a partial week of benefits were days of the calendar week

during which the individual performed his or her regular and customary work in the period before the occurrence of the qualifying paid-leave event.

3506.5 When electing intermittent leave upon initial application for benefits, or when electing a change in payment schedule from continuous to intermittent leave, the eligible individual shall:

- (a) Inform DOES and the covered employer of the specific dates on which the individual wishes to claim paid-leave benefits;
- (b) Designate an intermittent leave indicator, identifying the days on which the individual regularly worked, in total, from all sources of employment. This intermittent leave indicator shall be either a personalized intermittent leave indicator or the default intermittent leave indicator.
  - (1) A personalized intermittent leave indicator identifies the number of days per calendar week, different from the five (5) day workweek described in the default intermittent leave indicator, that the individual regularly worked, during the individual's most recent usual and customary week of working.
  - (2) The default intermittent leave indicator is based on a five (5) day workweek. Individuals receiving benefits on a continuous payment schedule are assigned the default intermittent leave indicator (except for the first and last payable weeks, if they are partial weeks) for the purposes of this chapter. If an individual receiving benefits on an intermittent leave schedule does not designate a number of days as provided in subparagraph (1), the default intermittent leave workweek shall be assigned to the individual.
- (c) Certify that the days of the calendar week for which the individual seeks intermittent benefits were days of the calendar week during which the individual performed his or her regular and customary work in the period before the occurrence of the qualifying paid-leave event; and
- (d) Acknowledge in writing to DOES that the individual understands that he or she may earn no income by performing his or her usual and customary work on any of the days for which intermittent paid-leave benefits are payable to the eligible individual.

3506.6 When receiving benefits on an intermittent payment schedule, an individual may submit a request to amend the leave schedule.

- (a) For qualifying medical leave or qualifying family leave, any amendment to the leave schedule must be medically necessary as established by appropriate medical documentation submitted to DOES by the individual.
- (b) If the individual did not take leave on the past dates on which the individual intended to take paid leave, the individual shall submit a request to amend the payment schedule to DOES with an explanation of the need to amend the past dates and an indication of the dates on which leave was actually taken. A request to amend leave for past dates shall be submitted either during an open claim or no later than ten (10) days after a claim has been closed.
- (c) During an open claim, when the individual intends to take leave on future dates that differ from the approved schedule, the individual shall submit a request to amend the payment schedule to DOES with an explanation of the need to amend the future dates and an indication of the dates on which the individual now intends to claim paid leave.
- (d) DOES shall notify the employer of any such amendment.

3506.7 The amount paid to an individual electing intermittent leave shall be calculated based on a daily benefit amount, which shall be derived from the individual's weekly benefit amount calculated pursuant to Section 3503. The daily benefit amount for an individual electing intermittent leave shall equal the individual's weekly benefit amount calculated in Section 3503 divided by the individual's intermittent leave indicator, incorporating any amendments pursuant to Subsection 3506.8.

3506.8 During an open claim, an individual may request that DOES amend the indicator supplied pursuant to Subsection 3506.5(b) if the individual's work schedule changes.

- (a) Any such change shall affect only those benefits payable for dates after the date on which DOES receives notice of such change, if the change is approved.
- (b) An individual may request such an amendment no more than one (1) time per calendar month during an open claim.

3506.9 If an individual's intermittent leave indicator changes during an open claim as a result of the individual's election pursuant to Subsection 3506.8, the maximum number of intermittent-leave days for which the individual is eligible for benefits will also change, but neither the total number of eligible workweeks nor the total dollar amount of eligible benefits will change. For example, if an individual's work schedule changes from three days to five days during an open claim, and the individual properly notifies DOES of such change pursuant to Subsection 3506.8

and is approved for such change, then the individual's daily benefit amount for all days claimed in the future will decrease from one-third (1/3) of the weekly benefit amount to one-fifth (1/5) of the weekly benefit amount. In such case, the maximum amount of approved benefits for the open claim, expressed as a dollar amount or as a number of workweeks, will not change, but the number of remaining days for which the individual is eligible for intermittent leave will change.

3506.10 If, as a result of changes to the individual's work schedule pursuant to Subsection 3506.8, the amount of workweeks of leave remaining on the last day of approved leave equals a fraction less than the individual's weekly benefit amount calculated in Section 3503 divided by the individual's intermittent leave indicator, then the individual shall receive payment only for the fraction remaining.

3506.11 For individuals receiving benefits on an intermittent schedule, the sum of the number of days in a calendar week during which benefits under this chapter are payable, and the number of days in that calendar week during which the eligible individual earns income by performing his or her usual and customary work, shall not exceed the number of days given by the intermittent leave indicator supplied by the individual pursuant to Subsection 3506.5(b) and any amendments pursuant to Subsection 3506.8.

(a) Calendar weeks during which the sum of the number of days on which the individual performs his or her usual and customary work, and the number of days on which the individual receives benefits payable under this chapter, exceeds the individual's current intermittent leave indicator shall be considered weeks during which erroneous payments subject to Section 3514 were made.

(b) The number of days for which erroneous payments were made in such weeks shall be determined as the number of days on which the individual performed his or her usual and customary work and received benefits payable under this chapter that exceed the individual's current intermittent leave indicator.

3506.12 At any time after the first day for which paid-leave benefits are payable under this chapter, an eligible individual may notify DOES of his or her election to change the leave schedule, but such elections may be made no more frequently than once a month. When a change in the payment schedule is from intermittent to continuous leave or from continuous to intermittent leave, such notification shall include:

(a) The type of benefit payment schedule currently in payment status, either continuous or intermittent;



- (b) The type of benefit payment schedule to which the eligible individual is electing to change, either continuous or intermittent;
- (c) If changing to a continuous payment schedule, then the elements described in Subsection 3506.4; and
- (d) If changing to an intermittent payment schedule, then the elements described in Subsection 3506.5.

3506.13 Within ten (10) business days after receiving the eligible individual's notification of his or her election to change the leave schedule from either intermittent to continuous leave or from continuous to intermittent leave, DOES shall notify both the covered employer and eligible individual of the following:

- (a) A determination of the approval or denial of the request to change the payment schedule, or a request for additional information;
- (b) If approved, a description of the approved payment schedule.

3506.14 In addition to the notifications described in Subsection 3506.13, DOES shall also notify the eligible individual in private communication within the ten (10) business day period described in Subsection 3506.13 of the following:

- (a) The approved weekly benefit amount and, if applicable, the approved daily benefit amount; and
- (b) A description of the process to file an appeal with the DOES Administrative Appeals Division or the Office of Administrative Hearings.

3506.15 A change in the benefit payment schedule from continuous to intermittent or from intermittent to continuous shall take effect on the first Sunday that begins the next biweekly payment period following DOES's approval of the individual's request to change the payment schedule.

### **3507 PAYMENT OF BENEFITS**

3507.1 Subject to the other provisions of this chapter, DOES shall pay benefits to which the eligible individual is entitled on a biweekly payment schedule.

3507.2 The biweekly payment period shall begin on a Sunday and end on a Saturday.

3507.3 DOES shall determine the day(s) of the calendar week on which biweekly payments shall be made to eligible individuals.

3507.4 DOES shall determine the method(s) of payment by which eligible individuals may receive benefits.

3507.5 After notifying an applicant of the approval of benefits, DOES shall make the first payment to the eligible individual within ten (10) business days. Such first payment shall coincide with a regularly scheduled biweekly payment schedule.

**3508 ONLINE PORTAL**

3508.1 All claims for paid-leave benefits shall be submitted through the online portal, or an electronic or non-electronic format approved by DOES.

3508.2 All DOES communications pursuant to this chapter shall occur through the online portal, or an electronic or non-electronic format approved by DOES.

3508.3 Initial and subsequent determinations shall be sent to applicants and eligible individuals through the online portal, or an electronic or non-electronic format approved by DOES.

3508.4 All applicants and eligible individuals shall be responsible for maintaining current contact information in the online portal, but may update the contact information via an electronic or non-electronic format approved by DOES.

3508.5 All applicants and eligible individuals shall receive notifications related to any required actions and the status of claims for paid leave through the online portal, or through an electronic or non-electronic format approved by DOES.

3508.6 All applicants and eligible individuals shall be responsible for responding to any requests for additional information through the online portal, or through an electronic or non-electronic format approved by DOES.

**3509 EMPLOYEE NOTICE TO EMPLOYER**

3509.1 (a) Except as provided in paragraph (d), an eligible individual shall provide written notice to his or her employer of the need for the use of paid-leave benefits before taking leave.

(b) If the leave pursuant to this chapter is foreseeable, the eligible individual shall provide the written notice at least ten (10) business days in advance of the leave.

(c) If the leave pursuant to this chapter is unforeseeable, the eligible individual shall provide a notification in writing, or orally in exigent circumstances, before the start of the work shift for which the individual intends to take leave pursuant to this chapter.

- (d) In the case of an emergency that prevents an individual from providing notice before the start of the work shift for which the individual intends to take leave pursuant to this chapter, the eligible individual, or another individual on behalf of the eligible individual, shall notify the eligible individual's employer of the need for leave in writing, or orally in exigent circumstances, within forty-eight (48) hours after the emergency occurs. The eligible individual, or another individual on behalf of the eligible individual, shall supplement oral notice with written notice of the need for leave as soon as practicable.

3509.2 The eligible individual's written or oral notice to the employer shall include:

- (a) The type of qualifying leave requested;
- (b) The expected duration of the leave pursuant to this chapter;
- (c) The expected start and end dates of the leave taken pursuant to this chapter; and
- (d) Whether the paid leave benefits sought under this chapter will initially be used continuously or intermittently.

### **3510 APPEALS OF CLAIM DETERMINATIONS**

3510.1 If the applicant or eligible individual disagrees with all or any part of a claim determination issued pursuant to Section 3502 or 3506, the applicant or eligible individual may appeal the claim determination to DOES's Administrative Appeals Division pursuant to Section 3511, or to the Office of Administrative Hearings pursuant to Section 3512.

### **3511 DOES ADMINISTRATIVE APPEALS**

3511.1 To request an administrative appeal to DOES's Administrative Appeals Division of a claim determination issued under Section 3502 or 3506, the applicant or eligible individual shall file a request for appeal with DOES within ten (10) business days after the applicant or eligible individual receives a claim determination. The applicant or eligible individual shall submit with the request for administrative appeal an explanation of the basis for the appeal and any information and documents in support of the appeal.

3511.2 After receiving a request for an administrative appeal, DOES shall process the claim that is the subject of the appeal in the same manner as provided under this chapter, taking into consideration any new information and documents submitted by the applicant in support of the appeal.

- 3511.3 DOES shall issue a new determination within ten (10) business days after the receipt of the request for an administrative appeal.
- 3511.4 An applicant or eligible individual may appeal the new determination to the Office of the Administrative Hearings, as provided by Section 3512.
- 3511.5 A request for an administrative appeal does not diminish an applicant's right to file an appeal with the Office of Administrative Hearings.

## **3512 OAH APPEALS**

- 3512.1 An applicant or eligible individual may appeal a claim determination issued under Section 3502 or 3506, or a new determination issued under Section 3511, to the Office of Administrative Hearings. The appeal to the Office of Administrative Hearings must be filed within sixty (60) calendar days after the date the claim determination or new determination is issued.
- 3512.2 Appeals to the Office of Administrative Hearings shall be governed by the rules, policies, and procedures of the Office of Administrative Hearings.

## **3513 RELATIONSHIP TO OTHER BENEFITS AND INCOME**

- 3513.1 If paid leave taken pursuant to this chapter also qualifies as protected leave pursuant to FMLA, or D.C. FMLA, the paid leave shall run concurrently with, and not in addition to, leave taken under those other acts.
- 3513.2 Nothing in this chapter shall be construed to provide job protection to any eligible individual beyond that to which an individual is entitled under the D.C. FMLA.
- 3513.3 An eligible individual receiving benefits pursuant to the District of Columbia Unemployment Compensation Act, effective August 28, 1935 (49 Stat. 946; D.C. Official Code §§ 51-101 *et seq.*), shall not be eligible to receive paid-leave benefits under this chapter.
- 3513.4 An eligible individual receiving long-term disability payments, whether provided under a private or public program, shall not be eligible to receive paid-leave benefits under this chapter.
- 3513.5 An eligible individual's right to short-term, employer-provided paid-leave benefits, including but not limited to paid sick time, vacation time, short-term disability benefits, and paid parental leave, while receiving paid-leave benefits under this chapter will be determined by the employer's policies. Nothing in this chapter shall be interpreted as prohibiting employers from amending any existing or future policies regarding their own private employee benefits.

- 3513.6 (a) An eligible individual is not permitted to earn income by performing his or her regular and customary work during the period for which the eligible individual receives benefits under this chapter.
- (b) Payments made under this chapter for days on which the eligible individual earns income by performing his or her regular and customary work shall constitute erroneous payments subject to Sections 3514 and 3515.
- (c) Unless other provisions in this chapter provide for an earlier date of benefit termination, an eligible individual's entitlement to benefits payable under a continuous payment schedule provided by this chapter shall stop on the date on which the eligible individual returns to earning income by performing his or her regular and customary work.
- (d) Unless other provisions in this chapter provide for an earlier date of benefit termination, an eligible individual's entitlement to benefits payable under an intermittent payment schedule provided by this chapter shall stop on the day of the week on which an eligible individual elected to receive intermittent benefits and on which the eligible individual returns to earning income by performing his or her usual and customary work.
- (e) Restrictions on earning income while receiving benefits for continuous and intermittent leave are subject to the limitations set forth in Section 3506.

**3514 ERRONEOUS PAYMENTS AND DISQUALIFICATION FOR BENEFITS**

- 3514.1 It is unlawful for any applicant or eligible individual to intentionally provide knowingly false statements to obtain paid-leave benefits.
- 3514.2 An eligible individual shall not earn income by performing his or her regular and customary work during a period for which paid-leave benefits provided under this chapter are payable.
- 3514.3 An applicant or eligible individual who intentionally makes a false statement or misrepresentation regarding a material fact, or who intentionally fails to report a material fact, in order to obtain paid-leave benefits shall be disqualified from receiving paid-leave benefits for a period of three (3) years beginning with the date of disqualification.
- 3514.4 Disqualification under this section shall not affect paid-leave benefits otherwise properly paid prior to the date of such false statements, misrepresentations, or failure to report a material fact.

- 3514.5 DOES shall provide written notice to an applicant or eligible individual of the applicant or eligible individual's disqualification under this section. The notice shall include the following information:
- (a) The reason for the disqualification;
  - (b) The disqualification period beginning date and ending date; and
  - (c) The amount of paid-leave benefits overpaid to the eligible individual, if any.

### **3515 REPAYMENT OF PAID-LEAVE BENEFITS**

- 3515.1 In the event of erroneous payment or overpayment, DOES shall seek repayment of benefits from the recipient; provided, that the Director may waive, in whole or in part, the amount of any such payments when the recovery would be against equity and good conscience.
- 3515.2 DOES shall provide notice in writing to an eligible individual of the requirement to repay erroneous payments or overpayments. The repayment notice shall include the following information:
- (a) The amount of paid-leave benefits overpaid to the individual;
  - (b) The option to enter into a repayment agreement with DOES; and
  - (c) The collection methods DOES may utilize to seek repayment of paid-leave benefits if the recipient does not enter into a repayment agreement with DOES.
- 3515.3 DOES shall not attempt to collect repayment of paid-leave benefits during an appeal of a claim determination or while the recipient has a pending bankruptcy case.
- 3515.4 DOES may utilize the following methods to seek repayment of paid-leave benefits from the recipient:
- (a) Accepting full repayment, or monthly installments as outlined in an optional repayment agreement between DOES and the recipient, in the form of personal check, money order, or electronic payment through a debit card, credit card, or personal checking account via the online portal;
  - (b) Offsetting the balance of erroneous payments from future paid-leave benefit entitlements at a rate of one hundred percent (100%), if:

- (1) The recipient is actively collecting paid-leave benefits after the completion of the appeal of a claim determination; and
  - (2) There is no existing disqualification on the recipient's current paid-leave claim;
- (c) Filing a claim in the Superior Court of the District of Columbia; and
- (d) Intercepting District income tax refunds to the extent consistent with District law, or of state, federal, and local income tax refunds to the extent consistent with state, federal, or local law.

3515.5 A recipient may request that DOES waive the requirement that a recipient repay paid-leave benefits. The request shall be submitted through the online portal, or through an electronic or non-electronic format approved by DOES, within thirty (30) calendar days after DOES sends a repayment notice to the recipient.

3515.6 If the request for waiver of the paid-leave benefit repayment is not submitted within the thirty (30) calendar-day period, the recipient shall provide good cause for failure to meet the thirty (30) calendar-day requirement before the request can be considered.

3515.7 DOES may refer a repayment matter to the Office of the Attorney General for the District of Columbia or the Office of the Inspector General.

3515.8 (a) If DOES obtains repayment of benefits from an individual who has made a willful misrepresentation or otherwise perpetrated fraud to obtain paid-leave benefits and who received paid-leave benefits under this chapter for a period during which he or she earned income by performing work as a covered employee for a covered employer, and that covered employer made contributions to the Universal Paid Leave Implementation Fund based on the wages paid to that individual during the period he or she improperly received paid-leave benefits under this chapter, DOES shall distribute a proportional share of the recovered amount to that covered employer.

(b) For the purposes of paragraph (a) of this subsection, a covered employer's proportional share of the recovered amount shall be determined by the following method:

- (1) The total amount paid into the Universal Paid Leave Implementation Fund by all covered employers on behalf of the individual during the period that he or she improperly obtained benefits shall be added together;

- (2) The amount contributed by the covered employer during the period described in paragraph (a) shall be divided by the total amount calculated in subparagraph (1);
- (3) This proportion shall be applied to the amount recovered from the individual;
- (4) The resulting amount shall be distributed to the covered employer.

3515.9 DOES may cancel the requirement that a recipient repay a paid-leave repayment balance if:

- (a) The recipient is deceased; provided that a death certificate is provided to DOES; or
- (b) The recipient is a victim of identity theft and the claim submitted to DOES was made by an unauthorized person using the identity of the victim; provided, that evidence supporting the occurrence of identity theft, such as a police report and other supporting documentation, is provided to DOES.

## 3516 COMPLAINTS

3516.1 A complaint alleging a violation of this chapter or the Act, other than a complaint regarding a claim determination (which shall be filed as an appeal as provided in this chapter), shall be filed with the Office of Human Rights and shall be governed by the administrative enforcement procedure used for the D.C. FMLA.

3516.2 All complaints pursuant to this section shall be filed within one (1) year after the occurrence or discovery of the alleged violation, whichever is later.

## 3599 DEFINITIONS

3599.1 In addition to the definitions in 34 DCMR § 3499, the following definitions shall apply to this chapter:

**“Authorized representative”** – means an individual or entity who is legally permitted to act on behalf of an applicant or eligible individual. Such individual or entity may act as an authorized representative only if approved by DOES to act as an authorized representative for the applicant or eligible individual under the provisions of Subsection 3501.12.

**“Average weekly wage”** – means the average weekly wage as calculated by Subsection 3503.1(b).

**“Biweekly”** – means intervals of fourteen (14) calendar days.



“**Bonding**” – means the formation of a close emotional and psychological relationship between a parent or primary caregiver and an infant or child.

“**Calendar week**” – means each seven (7) day period beginning on Sunday and ending on Saturday.

“**Child**” – means a biological, adopted, or foster son or daughter, a stepson or stepdaughter, a legal ward, a son or daughter of a domestic partner, or a person to whom an eligible individual stands in loco parentis.

“**Closed claim**” – means a claim that was an open claim but whose last payable date has passed.

“**Daily benefit amount**” – means, with respect to eligible individuals electing intermittent leave, the weekly benefit amount divided by the intermittent leave indicator.

“**DOES**” – means the District of Columbia Department of Employment Services.

“**D.C. FMLA**” – means the District of Columbia Family and Medical Leave Act of 1990, effective October 3, 1990 (D.C. Law 8-181; D.C. Official Code §§ 32-501 *et seq.*)

“**Family member**” – means:

- (a) A child;
- (b) A biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, or other person who stood in loco parentis to an eligible individual when the eligible individual was a child;
- (c) A person to whom an eligible individual is related by domestic partnership, as defined by Section 2(4) of the Health Care Benefits Expansion Act of 1992, effective June 11, 1992 (D.C. Law 9-114; D.C. Official Code § 32-701(4)), or marriage;
- (d) A grandparent of an eligible individual, which means the biological, foster, or adoptive parent of the eligible individual’s biological, foster, or adoptive parent; or
- (e) A sibling of an eligible individual, which means the biological, half-, step-, adopted-, or foster-sibling or sibling-in-law of the eligible individual.

“**FMLA**” – means the Family and Medical Leave Act of 1993, approved February 5, 1993 (107 Stat. 6; 29 USC §§ 2601 *et seq.*).

“**Health care provider**” – shall have the same meaning as provided in Section 2(5) of the D.C. FMLA (D.C. Official Code § 32-501(5)).

“**In loco parentis**” – means in place of a parent.

“**Intermittent leave indicator**” – means the number of days designated by the eligible individual in § 3506.5(b)(1) or the default intermittent leave workweek provided in § 3506.5(b)(2).

“**Open claim**” – means a claim whose last payable date has not yet occurred.

“**Payable date**” – means a day for which paid-leave benefits provided under this chapter have been approved as payable by DOES.

“**Placement**” – means the transfer of physical custody of a child into the household of an eligible individual.

“**Primary caregiver**” – means legal guardian, or other person who stands in loco parentis to a child.

“**Qualifying event**” – means qualifying family leave event, qualifying medical leave event, or qualifying parental leave event.

“**Qualifying family leave**” – means paid leave for up to a maximum amount of six (6) workweeks within a fifty-two (52) calendar week period, regardless of calendar year, that an eligible individual may take in order to provide care or companionship to a family member because of the occurrence of a qualifying family leave event.

“**Qualifying family leave event**” – means the diagnosis or occurrence of a serious health condition of a family member of an eligible individual.

“**Qualifying medical leave**” – means paid leave for up to a maximum of two (2) workweeks within a fifty-two (52) calendar week period, regardless of calendar year, that an eligible individual may take following the occurrence of a qualifying medical leave event.

“**Qualifying medical leave event**” – means the diagnosis or occurrence of a serious health condition of an eligible individual.

“**Qualifying parental leave**” – means paid leave for up to a maximum of eight (8) workweeks within a fifty-two (52) calendar week period, regardless of

calendar year, that an eligible individual may take following the occurrence of a qualifying parental leave event.

**“Qualifying parental leave event”** – means events, including bonding, associated with:

- (a) The birth of a child of an eligible individual;
- (b) The placement of a child with an eligible individual for adoption or foster care; or
- (c) The placement of a child with an eligible individual for whom the eligible individual legally assumes and discharges parental responsibility.

**“Self-employment income”** – means gross income earned from carrying on a trade or business as a sole proprietor, an independent contractor, or a member of a partnership.

**“Serious health condition”** – means a physical or mental illness, injury, or impairment that requires inpatient care in a hospital, hospice, or residential health care facility, or continuing treatment or supervision at home, or at the home of a caregiver or other family member, by a health care provider or other competent individual. For the purposes of this definition:

- (a)
  - (1) The term “treatment” includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition.
  - (2) Treatment does not include routine physical examinations, eye examinations, or dental examinations.
  - (3) A regimen of continuing treatment such as the taking of over-the-counter medications, bed rest, or similar activities that can be initiated without a visit to a health care provider is not, by itself, sufficient to constitute continuing treatment for the purposes of this chapter.
- (b) The term “inpatient care” is the care of a patient in a hospital, hospice, or residential medical care facility for the duration of one overnight period or longer or any subsequent treatment in connection with such inpatient care.
- (c) The term “incapacity” means inability to work, attend school, or perform other regular daily activities due to the serious health

condition, treatment of the serious health condition, or recovery from the serious health condition.

- (d) Conditions for which cosmetic treatments are administered are not serious health conditions; provided, that procedures related to an individual's gender transition or restorative surgery following surgery or treatments for diseases or injury shall not be considered cosmetic treatments for the purposes of this subparagraph.
- (e) A serious health condition involving continuing treatment by a health care provider means any one or more of the following:
  - (1) A period of incapacity of more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:
    - (A) Treatment of two (2) or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider. For the purposes of this sub-subparagraph, "extenuating circumstances" means circumstances beyond an individual's control that prevent the follow-up visit from occurring as planned by the health care provider;
    - (B) The first, or only, in-person treatment visit within ten (10) days after the first day of incapacity if extenuating circumstances exist; or
    - (C) Treatment by a health care provider on at least one (1) occasion, which results in a regimen of continuing treatment under the supervision of the health care provider;
  - (2) Any period of incapacity or treatment, including prenatal care, for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - (A) Requires two (2) or more periodic visits annually for treatment by a health care provider or by a nurse under direct supervision of a health care provider;

- (B) Continues over an extended period of time, which shall include recurring episodes of a single underlying condition; and
  - (C) May cause episodic rather than a continuing period of incapacity;
- (3) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. The family member of an eligible individual must be under continuing supervision of, but need not be receiving active treatment by, a health care provider; or
  - (4) Any period of absence to receive multiple treatments (including any period of recovery from the treatments) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
    - (A) Restorative surgery after an accident or other injury; or
    - (B) A condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment.

**“Wages”** – shall have the same meaning as provided in Section 1(3) of the District of Columbia Unemployment Compensation Act, approved August 28, 1935 (49 Stat. 946; D.C. Official Code § 51-101(3)); provided, that the term “wages” also includes self-employment income earned by a self-employed individual who has opted into the paid-leave program established pursuant to this chapter.

**“Weekly benefit amount”** – means the amount calculated using the procedure described in Subsection 3503.1(b).

**“Workweek”** – means the number of days within a calendar week provided by the indication made pursuant to Subsection 3506.5(b).

Comments on this proposed rulemaking should be submitted, in writing, within thirty (30) days of the date of the publication of this notice in the *D.C. Register* to the Department of Employment Services, 4058 Minnesota Avenue NE, Suite 4500, Washington, DC, 20019, or via email to [does.opfl@dc.gov](mailto:does.opfl@dc.gov). Additional copies of these proposed rules are available at the above address.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****NOTICE OF PROPOSED RULEMAKING****Z.C. Case No. 18-18****(Text Amendment – 11 K DCMR)****(To Establish a Northern Howard Road (NHR) zone as a new Chapter 10 in Subtitle K)**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2012 Rep1.)), hereby gives notice of its intent to amend Subtitle K (Special Purpose Zones) of Title 11 (Zoning Regulations of 2016) of the District of Columbia Municipal Regulations (DCMR).

Substantively, the Commission proposes to create a new Special Purpose Zone in Subtitle K, known as the Northern Howard Road (NHR) zone, intended for properties along the northernmost stretch of Howard Road, S.E., within the area between Poplar Point, the Suitland Parkway, and the Anacostia Freeway/I-295. The NHR zone would apply to a single large area that would benefit from a cohesive, self-contained set of regulations to guide site design, building height and bulk, land uses, and other aspects of development. The NHR zone would encourage high density development in conformance with the Comprehensive Plan and ensure a mix of uses with a substantial affordable housing component and a high degree of sustainability and pedestrian and bicycle mobility. At present, only one zone, the NHR zone, would be available but other zones could, if necessary, be created in the future to apply to other Comprehensive Plan land use designations in the vicinity.

To ensure mixed-use development in the NHR zone, the Commission proposes a minimum 2.5 residential floor area ratio (FAR) within an overall maximum 9.0 FAR, with flexibility allowed to satisfy this minimum residential FAR across a combination of lots subject to specific conditions. The NHR zone would also allow building heights up to 130 feet and a maximum lot occupancy of one hundred percent (100%). These height and density limits are higher than those of the current MU-14 zoning governing all lots fronting on Howard Road, S.E. that would be eligible for the NHR zone. This increased height and density is more consistent with that allowed in most areas in downtown Washington and in the Central Employment Area (CEA) that have similar Comprehensive Plan designations to the proposed area of the NHR zone.

The Commission proposes a minimum of fifteen percent (15%) Inclusionary Zoning (IZ) for all residential development in the NHR zone, a significant increase over the eight percent (8%) minimum standard for buildings at this height and FAR that utilize steel and concrete construction. These IZ units would be set-aside for households earning equal to or less than fifty percent (50%) and sixty percent (60%) of the Median Family Income (MFI), with at least twenty-five percent (25%) of the IZ units being three- (3)-bedroom units. Any affordable housing generated in excess of that IZ set-aside would be required to be reserved for households earning equal to or less than sixty percent (60%) of MFI.

All buildings in the NHR zone would require Commission design review approval to promote the goals of the NHR zone, including providing a mix of uses that activate the streetscape,

encouraging superior architecture and open space design, and promoting a pedestrian and bike-friendly streetscape. The mandatory design review process provides for an expanded involvement by the public, Advisory Neighborhood Commissions (ANCs), and District agencies in the initial design planning for buildings in the NHR zone.

On October 5, 2018, the Office of Planning (OP) filed a report with the Office of Zoning that served as a petition proposing text amendments to Subtitle K. On October 22, 2018, the Commission voted to set down the petition for a public hearing, which was scheduled for March 14, 2019. OP filed its Hearing Report on March 4, 2019 as required by Subtitle Z § 400.6. After hearing testimony at the March 14, 2019 public hearing from OP and the public, including ANCs 8A and 8C, the Commission asked OP to revise the proposed text amendment to address the issues raised by the public and members of the Commission at the hearing, specifically the possibilities of requiring setbacks on upper floors and of an alternative review procedure to the design review.

OP submitted a Supplemental Report on April 25, 2019, that recommended no text changes because OP believed the design review procedure was appropriately robust as it was based on the Capitol Gateway (CG) zone's design review which the Commission had used successfully. OP did not recommend upper setbacks because of the lack of a view needing to be specifically protected and so the Commission's design review authority was sufficient to ensure a particular project met the design goals of the NHR zone. At the continued hearing held on May 2, 2019, the Commission requested supplemental filings by OP, ANCs 8A and 8C, and the owner of some of the property in the area identified for the NHR zone, to address further issues raised at the continued hearing.

OP proposed revisions to the text amendment in its Second Supplemental Report submitted on May 24, 2019, including requiring additional supporting information on community outreach for each design review application and establishing that any affordable units proposed in excess of those required amount be reserved at a maximum sixty percent (60%) MFI level. OP's Second Supplemental Report also noted that ANCs 8A and 8C had proposed increasing the mandatory IZ set-aside from ten percent (10%) to fifteen percent (15%). At a June 6, 2019 special public meeting, the Commission took proposed action to adopt OP's revised text, with two (2) changes: i) incorporating the ANCs' proposed increase in IZ and OP's suggested changes to the IZ language; and ii) incorporate the text proposed by OP in the related NHR map amendment case (Z.C. Case No. 18-19) that imposed additional requirements specific to the properties proposed to be rezoned into the NHR zone.

In response to a request from OP for clarification on how to apply the increased fifteen percent (15%) IZ set-aside, specifically the interaction with the original maximum MFI thresholds that were deeper than the standard IZ requirements and so potentially could limit development in the NHR zone, the Commission further deliberated at a July 8, 2019 public meeting and took revised proposed action to retain the originally proposed MFI thresholds, but reduce the amount of the increased IZ set-aside from fifteen percent (15%) to twelve percent (12%).

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The following amendments to Title 11 DCMR are proposed (additions are shown in **bold and underlined** text and deletions are shown in ~~strikethrough~~ text):

Title 11-K DCMR, SPECIAL PURPOSE ZONES, is amended by adding a new Chapter 10, NORTHERN HOWARD ROAD (NHR) ZONE, as follows:

**CHAPTER 10 NORTHERN HOWARD ROAD (NHR) ZONE**

**1000**      **GENERAL PROVISIONS (NHR)**

**1000.1**      **The Northern Howard Road (NHR) zone is intended to be applied to a defined geographic area including the portions of Squares 5860 and 5861 north of Interstate 295.**

**1000.2**      **The purposes of the Northern Howard Road (NHR) zone are to:**

- (a) Assure development of the area with a mixture of residential and commercial uses, and a suitable height, bulk, and design of buildings, as generally indicated in the Comprehensive Plan;**
- (b) Encourage a variety of visitor-related uses, such as retail, service, and entertainment;**
- (c) Provide for increased height and density associated with increased affordable housing;**
- (d) Encourage superior architecture and design in all buildings and publicly accessible outdoor spaces;**
- (e) Require preferred ground-level retail and service uses along Howard Road, S.E.;**
- (f) Provide for the development of Howard Road, S.E. as a pedestrian- and bicycle-friendly street, with street-activating uses, and connections to metro and the broader neighborhood; and**
- (g) Encourage the inclusion of a bicycle track along Howard Road.**

**1000.3**      **Where there are conflicts between this chapter and other chapters or subtitles of this title, the provisions of the NHR zone shall govern.**

**1000.4**      **Development in the NHR zone shall be in accordance with the development standards of this chapter.**



1000.5 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15 and the height and story limitations specified in this chapter.

1001 DEVELOPMENT STANDARDS (NHR)

1001.1 The NHR zone is intended to permit high-density mixed-use development generally in the vicinity of the Anacostia Metrorail Station along Howard Road, S.E.; encourage a variety of support and visitor-related uses, such as retail, service, and entertainment uses; provide for increased height and bulk of buildings with increased affordable housing; and provide for development of Howard Road, S.E. as an active, pedestrian-oriented street with active ground floor uses.

1001.2 The maximum permitted density in the NHR zone is 9.0 FAR, except as provided in Subtitle K § 1009.

1001.3 A building on a lot in the NHR zone shall provide a minimum residential FAR of 2.5 on the lot unless modified through the provisions of Subtitle K § 1009 below. Residential FAR consists exclusively of uses that fall within the “Residential” Use Category defined in Subtitle B § 200.2.

1001.4 The maximum permitted building height, not including the penthouse, in the NHR zone shall be:

<u>Street Right of Way Width</u>	<u>Maximum Permitted Building Height, Not Including Penthouse</u>
<u>Greater than or equal to 110 ft.</u>	<u>130 feet</u>
<u>Less than 110 ft. but greater than or equal to one 100 ft.</u>	<u>120 feet</u>
<u>Less than 100 ft. but greater than or equal to 90 ft.</u>	<u>110 feet</u>
<u>Less than 90 ft.</u>	<u>No taller than the width of the street right of way, plus 20 feet</u>

1001.5 The maximum permitted height of a penthouse in the NHR zone shall be twenty feet (20 ft.); and the maximum number of stories within the penthouse shall be one (1), plus a mezzanine, except that a second story for penthouse mechanical space shall be permitted.

1001.6 The height and density limits of Subtitle K § 1001 shall serve as the maximum permitted under a planned unit development.

1001.7 The maximum permitted lot occupancy in the NHR zone shall be one hundred percent (100%).

**1001.8** No side yard is required for the principal building; however, any side yard provided on any portion of the principal building shall be at least two inches (2 in.) per one foot (1 ft.) of height, and no less than five feet (5 ft.).

**1001.9** A minimum rear yard of two and one-half inches (2.5 in.) per one foot (1 ft.) of vertical distance measured from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than twelve feet (12 ft.) shall be provided, subject to the following conditions:

- (a)** A horizontal plane may be established at twenty feet (20 ft.) above the mean finished grade at the middle of the rear of the structure for the purpose of measuring rear yards;
- (b)** A rear yard is not required to be provided below a horizontal plane as described in Subtitle K §1001.9(a) above;
- (c)** Where a lot abuts an alley, the rear yard may be measured from the center line of the alley to the rear wall of the building or other structure; and
- (d)** Where a lot does not abut an alley, the rear yard shall be measured from the rear lot line to the rear wall of the building or other structure.

**1001.10** In the case of a corner lot, a court complying with the width requirements for a closed court may be provided in lieu of a required rear yard. For the purposes of this section, the required court shall be provided above a horizontal plane beginning not more than twenty feet (20 ft.) above the curb grade opposite the center of the front of the building and the width of the court shall be computed for the entire height of court.

**1001.11** A court is not required in the NHR zone, but where it is provided, it shall have the following minimum dimensions:

<u>Type of Structure</u>	<u>Minimum Width Open Court</u>	<u>Minimum Width Closed Court</u>	<u>Minimum Area Closed Court</u>
<u>Residential, more than 3 units</u>	<u>4 in./ft. of height of court; 10 ft. minimum</u>	<u>4 in./ft. of height of court; 15 ft. minimum</u>	<u>Twice the square of the required width of court dimension; 350 sq. ft. minimum</u>
<u>Non-Residential and Lodging</u>	<u>2.5 in./ft. of height of court; 6 ft. minimum</u>	<u>2.5 in./ft. of height of court; 12 ft. minimum</u>	<u>Twice the square of the required width of court dimension; 250 sq. ft. minimum</u>

**1001.12** The minimum required Green Area Ratio for the NHR zone shall be 0.2.

- 1002**            **INCLUSIONARY ZONING (NHR)**
- 1002.1**           **The Inclusionary Zoning (IZ) requirements, and the available IZ modifications to certain development standards, shall apply to the NHR zone as specified in Subtitle C, Chapter 10, and as modified by this chapter, which shall govern in any conflict with the provisions of Subtitle C, Chapter 10.**
- 1002.2**           **No bonus density, as made available in Subtitle C § 1002, shall be available in the NHR zone.**
- 1002.3**           **Residential development in the NHR zone shall set-aside for IZ the following square footage:**
- (a)    Twelve percent (12%) of the gross floor area dedicated to residential use, excluding penthouse habitable space; and**
- (b)    The equivalent of eight percent (8%) of the gross floor area of any residential penthouse habitable space.**
- 1002.4**           **Inclusionary units resulting from the set-aside required by Subtitle K § 1002.3 shall be reserved as follows:**
- (a)    At least twenty-five percent (25%) of the set-aside required by Subtitle K § 1002.3(a) shall be reserved for households earning equal to or less than fifty percent (50%) of the Median Family Income (MFI), with the remainder reserved for households earning equal to or less than sixty percent (60%) of the MFI; and**
- (b)    One hundred percent (100%) of the set-aside required by Subtitle A § 1002.3(b) shall be reserved for households earning equal to or less than fifty percent (50%) of the MFI.**
- 1002.5**           **A minimum of twenty-five percent (25%) of the total IZ set-aside requirement shall be three-bedroom units.**
- 1002.6**           **Any non-residential penthouse habitable space shall be subject to the affordable housing production requirements of Subtitle C § 1505.**
- 1002.7**           **Any affordable housing generated in excess of that required by Subtitle K § 1002.3(a) shall be reserved for households earning equal to or less than sixty percent (60%) of the MFI.**

**1003**      **USE PERMISSIONS (NHR)**

**1003.1**      **The use permissions for the NHR zone are those specified for MU-Use Group F; provided that buildings, structures, and uses with frontage on a Designated Street of Subtitle K § 1004 shall provide the ground floor uses specified in Subtitle K § 1004.**

**1004**      **DESIGNATED STREETS (NHR)**

**1004.1**      **For the purpose of this chapter any portion of Howard Road, S.E. (both sides of the street) in the NHR zone shall be a Designated Street.**

**1004.2**      **A building, structure, or use with frontage on a Designated Street shall devote one hundred percent (100%) of its ground floor street frontage along the Designated Street, except for space devoted to building entrances or required for fire control, to the following preferred use categories:**

- (a)    Arts, design, and creation;**
- (b)    Daytime care;**
- (c)    Eating and drinking establishments;**
- (d)    Education, public or private;**
- (e)    Entertainment, assembly, and performing arts;**
- (f)    Medical Care;**
- (g)    Retail; and**
- (h)    Service, general or financial.**

**1004.3**      **Buildings and structures with frontage on a Designated Street must comply with the following design requirements:**

- (a)    The ground floor shall have a minimum clear height of fourteen feet (14 ft.), for a continuous depth of at least thirty-six feet (36 ft.) from the building line on the Designated Street;**
- (b)    The ground story shall devote at least fifty percent (50%) of the surface area facing a designated street to display windows or pedestrian entrances having clear low-emissivity glass, and ensure that the view through the display windows and pedestrian entrances is not blocked for at least ten feet (10 ft.) in from the building face;**

- (c) Ground floor pedestrian entrances, or areas where a future ground floor entrance could be installed without structural changes, shall be located no more than an average distance of forty feet (40 ft.) apart on the facade facing the designated primary or secondary street segment; and
- (d) No direct vehicular garage or loading entrance or exit shall be permitted to a new building or structure.

1005      ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES (NHR)

1005.1      For all properties within the NHR zone, all proposed buildings and structures, or any proposed exterior renovation to any existing buildings or structures that would result in a substantial alteration of the exterior design, shall be subject to review and approval by the Zoning Commission in accordance with the following provisions.

1005.2      In addition to proving that the proposed use, building, or structure meets the standards set forth in Subtitle X, Chapter 6, and the relevant provisions of this chapter, an applicant requesting approval under this section shall prove that the proposed building or structure, including the architectural design, site plan, landscaping, sidewalk treatment, and operation, will:

- (a) Help achieve the objectives of the NHR zone defined in Subtitle K § 1000.1;
- (b) Help achieve the desired use mix, with the identified preferred uses specifically being residential, office, entertainment, retail, or service uses;
- (c) Provide streetscape connections for future development on adjacent lots and parcels, and be in context with an urban street grid;
- (d) Minimize conflict between vehicles, bicycles, and pedestrians;
- (e) Minimize unarticulated blank walls adjacent to public spaces through facade articulation;
- (f) Minimize impact on the environment, as demonstrated through the provision of an evaluation of the proposal against LEED certification standards; and
- (g) Promote safe and active streetscapes through building articulation, landscaping, and the provision of active ground level uses.

**1005.3** **Each application for review under this section shall provide a report on the following items as part of the initial submission:**

- (a) **Coordination by the applicant with the Department of Employment Services (DOES) regarding apprenticeship and training opportunities during construction and operation at the subject site, and the provision of any internship or training opportunities during construction and operation at the subject site, either with the applicant or with contractors working on the project independent of DOES;**
- (b) **Efforts by the applicant to include local businesses, especially Wards 7 and 8 businesses, in contracts for the construction or operation of the proposed project;**
- (c) **Efforts by the applicant to provide retail or commercial leasing opportunities to small and local businesses, especially Ward 8 businesses, and efforts to otherwise encourage local entrepreneurship and innovation; and**
- (d) **Coordination by the applicant with the State Archaeologist and any plans to study potential archeological resources at the subject site, and otherwise recognize local Anacostia history.**

**1005.4** **The applicant shall also provide evidence that the information required by Subtitle K § 1005.3 has been served on any ANC on or adjacent to the NHR zone.**

**1006** **RELIEF FROM DEVELOPMENT STANDARDS AND USE AND DESIGN REQUIREMENTS (NHR)**

**1006.1** **The Zoning Commission may grant special exception relief from the development standards of this chapter and from the Designated Street use and design standards of this chapter, subject to the standards of Subtitle X, Chapter 9 and to the applicable conditions of this chapter and provided that the applicant demonstrates the special exception relief would result in a design that still complies with the purposes of this chapter.**

**1006.2** **Requested relief that does not comply with the applicable conditions or limitations for a special exception as set out in this chapter shall be processed as a variance.**

**1006.3** **The Zoning Commission may grant special exception relief, pursuant to Subtitle X, Chapter 9, from the rear yard requirements of this chapter, provided:**

- (a) No apartment window shall be located within forty feet (40 ft.) directly in front of another building;
- (b) No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;
- (c) In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards; and
- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas.

1006.4 The Zoning Commission may grant special exception relief, pursuant to Subtitle X, Chapter 9, from the driveway prohibition of Subtitle K § 1006.1(d), subject to the following criteria:

- (a) The applicant shall demonstrate that there is no practical alternative means of serving the parking, loading, or drop-off needs of the building to be served by the proposed driveway, such as signage approved by DDOT that would direct vehicles to an alternative entrance point within the same square;
- (b) The vehicular entrance will not impede the flow of pedestrian traffic on designated primary street frontage; and
- (c) The driveway that would access the proposed parking or loading entrance or exit is not inconsistent with DDOT landscape plans for the public rights of way on the designated street frontage, to the extent that such plans exist at the time of the special exception application.

1007 PARKING AND LOADING REGULATIONS (NHR)

1007.1 This section provides conditions and requirements related to parking spaces and loading, including location and access.

1007.2 Vehicle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 7.

1007.3 Bicycle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 8.

1007.4 Loading shall be provided in accordance with the requirements of Subtitle C, Chapter 9.

**1008**            **SUSTAINABILITY (NHR)**

**1008.1**            **Each building constructed or substantially improved shall earn certification at the LEED v4.1 for New Construction Gold level, provided that prior to receipt of the first certificate of occupancy for the new construction or substantial improvement, the applicant shall submit to the Department of Consumer and Regulatory Affairs a financial security that is compliant with the provisions of § 6 of the Green Building Act of 2006, as amended (D.C. Official Code § 6-1451.05).**

**1008.2**            **Each building constructed or substantially improved shall have an on-site renewable energy system installed and operating prior to receipt of the first certificate of occupancy for the new construction or substantial improvement, which renewable energy system shall generate at least one percent (1%) of the total energy estimated to be needed to operate the building as calculated in the energy model submitted with the building permit application to the Department of Consumer and Regulatory Affairs.**

**1009**            **COMBINED LOT (NHR)**

**1009.1**            **Two (2) or more lots in the NHR zone may be combined for the purpose of achieving the minimum residential FAR required for all of the lots, provided that the total density limits of the zone shall not be exceeded, except that the maximum floor area on any one (1) lot in the combined lot shall not exceed 10.0 FAR.**

**1009.2**            **No allocation of gross floor area shall be effective unless an instrument is filed with the Zoning Administrator and recorded by the Recorder of Deeds in the land records against all lots included in the combined lot development.**

**1009.3**            **The instrument shall be in the form of a declaration of covenants that:**

- (a)    Is signed by the owners of all affected lots;**
- (b)    Runs with the land in perpetuity;**
- (c)    Burdens all lots involved in the allocation of gross floor area; and**
- (d)    States the maximum permitted gross floor areas for all uses in all lots, the maximum allowed gross floor area for nonresidential uses in all lots and the gross floor area of nonresidential uses allocated. The covenant shall further state that, after the transfer, the combined lots conform with the maximum gross floor area limitations.**



- 1009.4** **The declaration of covenants shall also contain a written statement by the Director of the Office of Planning attesting to:**
- (a) **The accuracy of the computations with respect to the amount of residential and nonresidential uses allocated; and**
- (b) **Whether, after the transfer, the combined lots will conform with the maximum gross floor area limitations for the lots before any such transfer.**
- 1009.5** **The declaration of covenants shall expressly state that it may be amended or terminated only with the prior approval of the Zoning Administrator.**
- 1009.6** **The declaration of covenants shall be approved in content by the Zoning Administrator, who may, in his or her discretion, request the Office of the Attorney General to undertake a legal sufficiency review.**
- 1010** **DEVELOPMENT ON LOTS 97, 1025-1031, 1036-1037 IN SQUARE 5860 AND ON LOT 991 IN SQUARE 5861**
- 1010.1** **Any new building constructed on Lots 97, 1025-1031, or 1036-1037 in Square 5860 or on Lot 991 in Square 5861, shall comply with the following provisions, which shall govern in the event of conflict with other provisions of this chapter:**
- (a) **Rooftop solar panels shall be constructed on each building to generate one hundred seventy-eight kilowatt hours (178 kWh) per 1,000 gross square feet of building area;**
- (b) **All inclusionary units set-aside at fifty percent (50%) of the Median Family Income (MFI) shall be three- (3)-bedroom units;**
- (c) **One-third (1/3) of all inclusionary units set-aside at sixty percent (60%) of the MFI shall be three-bedroom units;**
- (d) **Each building shall provide a stormwater capacity to withstand a one and seven-tenths inch (1.7") stormwater event; and**
- (e) **No building shall be constructed within the five hundred- (500)-year flood plain.**

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS)

at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4<sup>th</sup> Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to [zcsubmissions@dc.gov](mailto:zcsubmissions@dc.gov); or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at [Sharon.Schellin@dc.gov](mailto:Sharon.Schellin@dc.gov). Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2019-071  
August 1, 2019

**SUBJECT:** Reappointment and Appointment – District of Columbia Developmental Disabilities Fatality Review Committee

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with Mayor's Order 2009-225, dated December 22, 2009, as amended by Mayor's Order 2013-154, dated August 26, 2013, it is hereby **ORDERED** that:

1. **LAURA HARTMANN-VILLALTA**, is appointed as a member of the community who works for an organization that advocates for those with intellectual disabilities in the District member to the District of Columbia Developmental Disabilities Fatality Review Committee (the "**Committee**"), for a term to end March 7, 2022.
2. **MICHAELA ZAJICKE-FARBER**, is reappointed as a faculty member from a school of Social Work at a college or university located in the District member of the Committee, for a term to end March 7, 2022.
3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
 \_\_\_\_\_  
 MURIEL BOWSER  
 MAYOR

ATTEST:   
 \_\_\_\_\_  
 KIMBERLY A. BASSETT  
 SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, AUGUST 14, 2019  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson  
Members: Mike Silverstein,  
James Short, Bobby Cato, Rema Wahabzadah, Rafi A. Crockett

**Protest Hearing (Status)** **9:30 AM**  
**Case # 19-PRO-00064;** Po Boy Jim 2, LLC, t/a Po Boy Jim 2, 1934 9th Street  
NW, License #105468, Retailer CR, ANC 1B  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 19-PRO-00050;** Betty's Gojo Restaurant and Lounge, LLC, t/a Betty's  
Gojo, 7616 Georgia Ave NW, License #102500, Retailer CR, ANC 4A  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 19-PRO-00051;** E and K, Inc., t/a Champion Kitchen, 7730 Georgia Ave  
NW, License #103055, Retailer CR, ANC 4A  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 19-PRO-00054;** Cook's Group, Inc., t/a Tequila & Mezcal Restaurant  
Bar, 3475 14th Street NW, License #112331, Retailer DR, ANC 1A  
**Substantial Change (Request a Class Change from DR to CR)**

**Protest Hearing (Status)** **9:30 AM**  
**Case # 19-PRO-00085;** Express Convenience Store, LLC, t/a Express,  
Convenience Store, 2031 Benning Road NE, License #113544, Retailer B, ANC  
7D  
**Application for a New License**

Board's Calendar

August 14, 2019

**Protest Hearing (Status)**

**9:30 AM**

**Case # 19-PRO-00036;** Trump Old Post Office, LLC, t/a Trump International  
Hotel Washington, D.C., 1100 Pennsylvania Ave NW, License #100648  
Retailer CH, ANC 2C

**Application to Renew the License**

*This hearing has been continued to September 18, 2019 at 11:00 am. See  
Board Order No. 2019-580.*

**Fact Finding Hearing\***

**10:00 AM**

Fay L. Deems

**Application for a Manager's License**

**Show Cause Hearing\***

**11:00 AM**

**Case # 18-251-00226;** Jaime T. Carillo, t/a Don Jaime, 3209 Mt. Pleasant Street  
NW, License #21925, Retailer CT, ANC 1D

**Interfered with an Investigation**

**BOARD RECESS AT 12:00 PM**

**ADMINISTRATIVE AGENDA**

**1:00 PM**

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

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

**NOTICE OF MEETING  
CANCELLATION AGENDA**

**WEDNESDAY, AUGUST 14, 2019  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-082836 – **Hotel Arboretum** – Retail – C – Hotel – 1917 Bladensburg Road, NE  
[Licensee did not pay Safekeeping fee within 30 days.]

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

**NOTICE OF MEETING  
INVESTIGATIVE AGENDA**

**WEDNESDAY, AUGUST 14, 2019  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

**On Wednesday, August 14, 2019 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations”.**

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1. Case# 19-CMP-00084, Le Pain Quotidien, 2815 M Street N.W., Retailer CR, License # ABRA-077337

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2. Case# 19-CMP-00080, Hill Prince, 1337 H Street N.E., Retailer CT, License # ABRA-104782

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3. Case# 19-CC-00077, Thai Tanic Restaurant/Baan Thai, 1326 14<sup>th</sup> Street N.W., Retailer CR, License # ABRA-060559

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4. Case# 19-CC-00084, San Antonio Bar & Grill III, 3908 12<sup>th</sup> Street N.E., Retailer CT, License # ABRA-079523

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5. Case# 19-CC-00086, Jaleo, 480 7<sup>th</sup> Street N.W., Retailer CR, License # ABRA-019105

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6. Case# 19-CMP-00103, Maggiano’s, 5333 Wisconsin Avenue N.W., Retailer CR, License # ABRA-072256

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7. Case# 19-CC-00093, J&D Market, 2201 Minnesota Avenue S.E., Retailer B, License # ABRA-103723

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8. Case# 19-MGR-00010, ABC Manager, Ashager Deruso, License # ABRA-107672

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9. Case# 19-CMP-00100, Tacos El Chilango, 1119 V Street N.W., Retailer CR, License # ABRA-090369

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10. Case# 19-CC-00092, Sun's Gallery, 600 Maryland Avenue S.W., Retailer B, License # ABRA-060306

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11. Case# 19-MGR-00011, Myagmar Byambadorj, ABC Manager, License # ABRA-094911

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12. Case# 19-CC-00082, Menomale LLC, 2711 12<sup>th</sup> Street N.E., Retailer VR, License # ABRA-088564

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13. Case# 19-MGR-00009, Jose Soler, ABC Manager, License # ABRA-110696

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ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, AUGUST 14, 2019 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 1A. SMD 1A06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Ossobuco Restaurant*, 3418 11<sup>th</sup> Street NW, Retailer CT, License No. 113277.

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2. Review Application for Safekeeping of License – Original Request. ANC 6E. SMD 6E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Logan Circle Liquors*, 1018 Rhode Island Avenue NW, Retailer A Liquor Store, License No. 086950.

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3. Review Application for Class Change from Class B 25% to Class B Retailer. ANC 8A. SMD 8A05. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *New Seven Market*, 1406 Good Hope Road SE, B 25%, License No. 113576.

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4. Review Request to Expand Sidewalk Café seating from 38 seats to 68 seats. ANC 2B. SMD 2B03. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Raku-Ya*, 1900 Q Street NW, Retailer C Restaurant, License No. 023943.

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5. Review Application for Change of Hours. *Approved Hours of Operation for Inside Premises and Sidewalk Café*: Sunday-Saturday 10am to 10pm. *Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Inside Premises and Sidewalk Café*: Sunday-Saturday 8am to 10pm. ANC 3C. SMD 3C01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Woodley Café*, 2619 Connecticut Avenue NW, Retailer CR, License No. 076441.

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6. Review Application for Entertainment Endorsement to provide Live Entertainment in the class C restaurant inside of a full-service grocery store. ***Proposed Hours of Live Entertainment Indoors Only***: Sunday-Saturday 8am to 1am. ANC 6C. SMD 6C06. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Streets Market***, 51 M Street NE, Retailer CR, License No. 108842.
- 

7. Review Application for Tasting Permit. ANC 6E. SMD 6E04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Sane Wine & Spirits***, 1201 5<sup>th</sup> Street NW, Retailer A Liquor Store, License No. 107464.
- 

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

**CARLOS ROSARIO INTERNATIONAL PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Student Information System**

The Carlos Rosario School is looking to solicit proposals for a new Student Information System. For further information and full RFP please contact [gluna@carlosrosario.org](mailto:gluna@carlosrosario.org). Proposals are due by 4:00 pm on August 16, 2019.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CHILD AND FAMILY SERVICES AGENCY  
NOTICE OF FUNDING AVAILABILITY (NOFA)  
FY 2020 Family Preservation Project**

**Background Information:** Pursuant to the *Child and Family Services Agency Prevention Services Grants Act of 2019*, D.C. Law 17-199, (D.C. Law 2-22; D.C. Official Code § 4-1303.01 *et seq.*), the District of Columbia Child and Family Services Agency (“CFSA”) invites qualified applicants to submit applications for grant funding to develop and implement a program that provides legal advocacy for families at risk of involvement with CFSA, the “Family Preservation Project.” The Family Preservation Project (FPP) will provide critical legal advocacy and, if possible, social work services to low-income families at risk of entering the abuse and neglect system and potentially having a child removed from the home. The FPP aims to prevent unnecessary removals and foster care placements, to minimize the emotional trauma caused by removal, to keep more children with their families when those families can care for them, and to allow the District’s foster care system to focus its resources on children who truly need its protection.

**Program Scope:** The Child and Family Services Agency (CFSA) investigates reports of child abuse and neglect and provides child protection. Services include foster care, adoption, and supportive community-based services to enhance the safety, permanence, and well-being of abused, neglected, and at-risk children and their families in the District of Columbia. We seek to achieve the highest quality of community-based services, to increase the number of families who receive community-based preventive and support services, and to expand the network of resources providing services to at-risk children and their families.

The Family Preservation Project will provide critical legal advocacy and social work services to low-income families at risk of entering the child welfare system and potentially having a child removed from the home. The successful Applicant shall be responsible for coordinating legal support for parents and caregivers in an effort to prevent unnecessary removals and foster care placement, minimize the emotional trauma caused by removal and to provide an opportunity for children to remain with their parents, or with family members capable of caring for them when parents are not.

**Eligibility Criteria:**

- Applications will be accepted only from legal clinics or law firms which meet established criteria
- Demonstrate ability to meet the needs identified in this RFA, and who are able to commit to implementing the grant requirements over the specified timeframes.
- Organizations may partner together to offer separate but coordinated components of the program but must identify a Lead Applicant.

Headquarters: 200 I Street, SE ■ Washington, D.C. 20003 ■ 202-442-6100  
[www.cfsa.dc.gov](http://www.cfsa.dc.gov) ■ <http://dc.mandatedreporter.org> ■ [www.adoptdckids.org](http://www.adoptdckids.org)

**Release Date of RFA:** Friday August 9, 2019

**Availability of RFA:** The RFA will be posted on Ariba website ([www.ocp.dc.gov](http://www.ocp.dc.gov)) & on the Districts Grant Clearinghouse Website, go to [www.opgs.dc.gov](http://www.opgs.dc.gov). Select the “District Grants Clearinghouse” link under the “Information” header.

**Amount of Awards:** Eligible organizations can be awarded up to **\$200,000**.

**Length of Awards:** Grant awards are for FY 2020  
October 1, 2019 – September 30, 2020

**CFSA Contact:** Markeeta Barnes, Contract Specialist  
Phone: 202-724-7517  
Email: [Markeeta.barnes@dc.gov](mailto:Markeeta.barnes@dc.gov)

**Deadline for Electronic Submissions:** 2:00pm on Friday August 30, 2019 via electronic submission

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CHILD AND FAMILY SERVICES AGENCY  
NOTICE OF FUNDING AVAILABILITY (NOFA)  
FY 2020 Matched Savings Program**

**Background Information:** Pursuant to the *Child and Family Services Grant-Making Amendment Act of 2016, effective October 8, 2016 (D.C. Law 21-160; D.C. Official Code § 1-328.04)*; the District of Columbia Child and Family Services Agency (“CFSA”) invites qualified applicants to submit applications for grant funding to develop and implement an evidence-based home visiting program model designed to work with overburdened families who are at-risk for adverse childhood experiences, including child maltreatment. The proposed home visiting model will target families who may have histories of trauma, intimate partner violence, and mental health and/or substance abuse issues. Services will begin prenatally or right after the birth of a baby and are offered voluntarily, intensively and over the long-term (3 to 5 years after the birth of the baby).

**Program Scope:** Older youth in foster care have at their disposal a team of specialists with specific areas of expertise that can help them through their transition-related challenges. The Market Matched Savings Account program will assist with youth’s transition to independence by creating opportunities to increase knowledge of finances as well as their savings and wealth. The program will work with youth in foster care between the ages of 15-21. The goal of the program is to provide money management training that covers credit, asset building, and budgeting that will ultimately assist youth who are transitioning to independence and adulthood.

A key strategy toward achieving OYE’s mission is to empower youth to take ownership and control of their own transition plans and one of those ways is through Finances and Money Management. Finances and Money Management addresses skill areas regarding financial literacy, including budgeting, banking, savings, credit, and leveraging financial resources for long-term planning. The ultimate goal of the program is to assist youth to save and offer a match to what they save affording them a jumpstart to their successful transition from care.

**Eligibility Criteria:**

- Applications will be accepted only from non-profit, community-based organizations which meet established criteria, demonstrate ability to meet the needs identified in this RFA, and who are able to commit to implementing the program measures over the grant period. Organizations may partner together to offer separate but coordinated components of the program but must identify a lead Applicant.

**Release Date of RFA:** Friday August 9, 2019

**Availability of RFA:** The RFA will be posted on Ariba website ([www.ocp.dc.gov](http://www.ocp.dc.gov)) & on the Districts Grant Clearinghouse Website, go to [www.opgs.dc.gov](http://www.opgs.dc.gov). Select the “District Grants Clearinghouse” link under the “Information” header.

**Amount of Awards:** Eligible organizations can be awarded up to **\$120,000**.

**Length of Awards:** Grant awards are for FY 2020

October 1, 2019 – September 30, 2020

**CFSA Contact:** Markeeta Barnes, Contract Specialist

Phone: 202-724-7517

Email: [Markeeta.barnes@dc.gov](mailto:Markeeta.barnes@dc.gov)

**Deadline for Electronic Submissions:** 2:00pm on Friday September 6, 2019 via electronic submission

Headquarters: 200 I Street, SE ■ Washington, D.C. 20003 ■ 202-442-6100  
[www.cfsa.dc.gov](http://www.cfsa.dc.gov) ■ <http://dc.mandatedreporter.org> ■ [www.adoptdckids.org](http://www.adoptdckids.org)

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

## NOTICE OF SUBSTANTIAL UNDO ECONOMIC HARDSHIP DETERMINATION

Address:	Square:	Lot:
4609 8 <sup>th</sup> Street, NW	3142	0027

Dear Sir/Madam:

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Hardship for the above property for real property tax year for **FY 2018**, for the following reasons:

*You provided sufficient evidence to support your extraordinary circumstances and hardship. Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, "A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*

*(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship."*

DCRA will immediately notify the Office of Tax and Revenue (OTR) to reclassify the subject property as exempt or Class 1/Class 2.

To learn more about the Vacant Buildings registration process or inspection requirements, please call (202) 442-4332 or visit [www.dcr.dc.gov](http://www.dcr.dc.gov).

If you have questions regarding this decision please contact Theresa Hollins, Support Specialist at (202) 442-4377.

Sincerely,  
Donald Sullivan,  
Program Manager  
Vacant Building Enforcement



## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

## NOTICE OF SUBSTANTIAL UNDO ECONOMIC HARDSHIP DETERMINATION

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To learn more about the Vacant Buildings registration process or inspection requirements, please call (202) 442-4332 or visit [www.dcr.dc.gov](http://www.dcr.dc.gov).

If you have questions regarding this decision please contact Theresa Hollins, Support Specialist at (202) 442-4377.

Sincerely,  
Donald Sullivan,  
Program Manager  
Vacant Building Enforcement

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

## NOTICE OF SUBSTANTIAL UNDO ECONOMIC HARDSHIP DETERMINATION

Address:	Square:	Lot:
726 Webster Street, NW	3137	0072

Dear Sir/Madam:

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Substantial Undo Economic Hardship for the above property for real property tax year **FY 2018**, for the following reasons: **you provided sufficient evidence to support your extraordinary circumstances and hardship.**

*Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, “A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*

*(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship.”*

DCRA will immediately notify the Office of Tax and Revenue (OTR) to reclassify the subject property as exempt or Class 1/Class 2.

To learn more about the Vacant Buildings registration process or inspection requirements, please call (202) 442-4332 or visit [www.dcr.dc.gov](http://www.dcr.dc.gov).

If you have questions regarding this decision please contact Theresa Hollins, Support Specialist at (202) 442-4377.

Sincerely,  
Donald Sullivan,  
Program Manager  
Vacant Building Enforcement

## DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

## NOTICE OF VACANT BUILDING ENFORCEMENT

Address:	Square:	Lot:
4829 Astor Place SE	5332	0023

The Real Property Tax Appeals Commission (RPTAC) reviewed the Petitioner's testimony and granted the Special Exemption for tax year 2015.

Based on the RPTAC ruling, the property is exempt from the vacant tax rate for the 2015 tax year.

Inquiries should be directed to Donald Sullivan, Program Manager, Vacant Building Enforcement, Department of Consumer and Regulatory Affairs: 202-520-2995, Donald.sullivan@dc.gov.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS  
LICENSING AND PERMITTING DIVISION  
OFFICE OF THE SURVEYOR**

**NOTICE OF AN OPPORTUNITY TO SUBMIT COMMENTS  
ON THE PROPOSED MODIFICATION OF THE PLAN  
OF THE PERMANENT SYSTEM OF HIGHWAYS**

The District of Columbia Office of the Surveyor, pursuant to Section 9-101.06 of the D.C. Official Code, gives notice of an opportunity to submit comments on the proposal to remove the unimproved and unused portion of Anacostia Avenue N.E., Parcel 185/38, Lot 806 and a portion of Eastern Avenue, N.E., in Square 5113, from the Plan of Permanent System of Highways.

A map showing the proposed modification is in the file in the Office of the Surveyor at 1100 4<sup>th</sup> Street SW, Room E-320, Washington DC 20024. The file number is S.O. 19-47912. This map may be examined during business hours, from 8:30 am to 4:15pm Monday through Friday.

Persons wishing to submit comments should mail them to the Office of the Surveyor. Copies of comments will be submitted to the Council of the District of Columbia.

For further information, you may contact Roland F. Dreist, Jr., Surveyor of the District of Columbia at (202)442-4699.

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

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

**VACANT: 1C04**

Petition Circulation Period: **Monday, August 12, 2019 thru Tuesday, September 3, 2019**

Petition Challenge Period: **Friday, September 6, 2019 thru Thursday, September 12, 2019**

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

**D.C. Board of Elections  
1015 Half Street, SE, Room 750  
Washington, DC 20003**

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

DISTRICT OF COLUMBIA  
BOARD OF ELECTIONS

**Certification of Filling a Vacancy  
In Advisory Neighborhood Commission**

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Christopher Ede-Calton  
Single-Member District **1B05**

Jeremy L. Del Moral  
Single-Member District **3D10**

**DEPARTMENT OF ENERGY AND ENVIRONMENT****PUBLIC NOTICE****AIR QUALITY TITLE V OPERATING PERMIT AND GENERAL PERMIT FOR THE ARCHITECT OF THE CAPITOL, HOUSE OFFICE BUILDINGS JURISDICTION**

Notice is hereby given that the Architect of the Capitol, House Office Buildings Jurisdiction has applied for a Title V air quality permit pursuant to the requirements of Title 20 of the District of Columbia Municipal Regulations, Chapters 2 and 3 (20 DCMR Chapters 2 and 3) to operate the following emission units and miscellaneous sources of air emissions at the House Office Buildings, located at House Office Buildings, Washington DC 20515:

<b>Emission Units</b>			
<b>Emission Unit ID</b>	<b>Stack ID</b>	<b>Emission Unit Identification</b>	<b>Description</b>
Paint Booth	PB	--	Non-Auto Body Paint Booth located at West House Underground Garage
Emergency Generator 1	FORD1	Caterpillar Model No. 3508-DI generator set located at Ford House Office Building	650 kWe generator set powered by a 927 hp diesel engine, installation date: 1985 (non-NSPS)
Emergency Generator 2	FORD2	Caterpillar Model No. 3508-DITA generator set located at Ford House Office Building	900 kWe generator set powered by a 1,220 hp diesel engine, installation date: 1992 (non-NSPS)
Emergency Generator A	RAYA	Cummins Model No. VT12 generator set located at Rayburn House Office Building	300 kWe generator set powered by a 480 hp diesel engine, installation date: 1962 (non-NSPS)
Emergency Generator B	RAYB	Detroit Model No. G81R0837K36 generator set located at Rayburn House Office Building	505 kWe generator set powered by a 765 hp diesel engine, installation date: 2002 (non-NSPS)
Emergency Generator 1	CAN1	MTU Model No. 16V4000 G43 generator set located at Cannon House Office Building	2,000 kWe generator set powered by a 3,058 hp diesel engine, installation date: 2015 (NSPS)
Emergency Generator 3	FORD3	Caterpillar Model No. 3054C generator set located at Ford House Office Building	60 kWe generator set powered by a 94.5 hp diesel engine, installation date: 2007 (NSPS)
Emergency Generator 1	LONG1	MTU Model No. 16V2000 G85 R163-8A36 generator set located at Longworth House Office Building	1,000 kWe generator set powered by a 1,495 hp diesel engine, installation date: 2007 (NSPS)

Emergency Generator 2	LONG2	MTU Model No. 16V2000 G85 R163-8A36 generator set located at Longworth House Office Building	1,000 kWe generator set powered by a 1,495 hp diesel engine, installation date: 2007 (NSPS)
Emergency Generator 1	ON1	Cummins Model No. QSK23-G7 NR2 generator set located at O'Neill House Office Building	750 kWe generator set powered by a 1,220 hp diesel engine, installation date: 2012 (NSPS)
Emergency Generator 2	ON2	Cummins Model No. QSX15-G9 generator set located at O'Neill House Office Building	400 kWe generator set powered by a 755 hp diesel engine, installation date: 2012 (NSPS)
Emergency Generator C	RAYC	MTU Model No. 16V4000 DS2000 generator set located at West House Underground Garage	2,000 kWe generator set powered by a 3,058 hp diesel engine, installation date: 2019 (NSPS)
Emergency Generator D	RAYD	MTU Model No. 16V4000 DS2000 generator set located at West House Underground Garage	2,000 kWe generator set powered by a 3,058 hp diesel engine, installation date: 2019 (NSPS)

Miscellaneous Activities:

1. Eleven (11) Aboveground Storage Tanks (ASTs) for diesel;
2. Three (3) Underground Storage Tanks (USTs) for diesel;
3. One (1) carpentry shop dust collector;
4. One (1) metal shop dust collector; and
5. One (1) 600 gallon capacity underground storage tank for gasoline.

The contact person for the facility is Ms. Mamie Bittner at (202) 228-1793 or [communications@aoc.gov](mailto:communications@aoc.gov).

The following is an estimate of overall potential emissions from the facility:

<b>FACILITY-WIDE EMISSIONS SUMMARY [TONS PER YEAR]</b>	
<b>Pollutants</b>	<b>Potential Emissions</b>
Oxides of Sulfur (SO <sub>x</sub> )	0.34
Oxides of Nitrogen (NO <sub>x</sub> )	52.06
Particulate Matter (PM/PM10)	1.28
Volatile Organic Compounds (VOCs)	10.03
Carbon Monoxide (CO)	9.62
Total Hazardous Air Pollutants (HAPs)	3.21

This facility has the potential to emit 52.06 tons per year of oxides of nitrogen (NO<sub>x</sub>). The value for this criteria pollutant exceeds the major source threshold in the District of Columbia of 25



TPY of NO<sub>x</sub>. Because potential emissions of NO<sub>x</sub> exceed the relevant major source threshold, pursuant to 20 DCMR 300.1(a), the source is subject to Chapter 3 and must obtain an operating permit in accordance with that regulation and Title V of the federal Clean Air Act.

The Department of Energy and Environment (DOEE) has reviewed the permit application and related documents and has made a preliminary determination that the applicant meets all applicable air quality requirements promulgated by the U.S. Environmental Protection Agency (EPA) and the District. Therefore, draft permit No. 052 has been prepared.

The application, the draft permit and associated Fact Sheet and Statement of Basis, and all other materials submitted by the applicant [except those entitled to confidential treatment under 20 DCMR 301.1(c)] considered in making this preliminary determination are available for public review during normal business hours at the offices of the Department of Energy and Environment, 1200 First Street NE, 5<sup>th</sup> Floor, Washington DC 20002. Copies of the draft permit and related fact sheet are available at <http://doee.dc.gov/service/public-notice-hearings>.

A public hearing on this permitting action will not be held unless DOEE has received a request for such a hearing within 30 days of the publication of this notice. Interested parties may also submit written comments on the permitting action.

Comments on the draft 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, 5<sup>th</sup> Floor  
Washington, DC 20002  
[stephen.ours@dc.gov](mailto:stephen.ours@dc.gov)

**No comments or hearing requests submitted after September 9, 2019 will be accepted.**

For more information, please contact Thomas Olmstead at (202) 535- 2273 or [thomas.olmstead@dc.gov](mailto:thomas.olmstead@dc.gov).

**FRIENDSHIP PUBLIC CHARTER SCHOOL****NOTICE OF REQUEST FOR PROPOSALS**

Friendship Public Charter School is seeking bids from prospective candidates to provide:

- Implementation and configuration or design and build a business intelligence and data warehousing solution. The solution should automate ETL and reporting processes from multiple transactional systems, currently housing data including but not limited to student information, discipline, attendance, and assessments.
- Educational curriculum and resource materials and subscriptions for teachers and students grades pre K-12.

The full scope of work will be posted in a competitive Request for Proposal, RFP, which can be found on FPCS website at: <https://www.friendshipschools.org/procurement/>. Proposals are due no later than 4:00 P.M., EST, Friday, August 23, 2019. No proposals will be accepted after the deadline. Address all questions to [ProcurementInquiry@friendshipschools.org](mailto:ProcurementInquiry@friendshipschools.org)

**DEPARTMENT OF HEALTH CARE FINANCE  
NOTICE OF PUBLIC MEETING**

**Department of Health Care Finance Pharmacy and Therapeutics Committee**

The Department of Health Care Finance (DHCF) Pharmacy and Therapeutics Committee (Committee), pursuant to the requirements of Mayor's Order 2007-46, dated January 23, 2007, hereby announces a public meeting of the Committee to obtain input on the review and maintenance of a Preferred Drug List (PDL) for the District of Columbia. The meeting will be held **Thursday, September 5, 2019 at 2:30 PM at 441 Fourth Street NW, Washington, DC 20001, on the 10<sup>th</sup> Floor in the Main Street Conference Room 1028.** Please note that government issued ID is needed to access the building. Use the North Lobby elevators to access the 10<sup>th</sup> floor.

The Committee will receive public comments from interested individuals on issues relating to the topics or class reviews to be discussed at this meeting. The clinical drug class review for this meeting will include:

Alzheimer's Agents	Cytokine and CAM Antagonists
Antibiotics, GI	Fluoroquinolones, Oral
Anticonvulsants	Immunosuppressants, Oral
Antidepressants, Others	Macrolides and Ketolides
Antidepressants, SSRIs	Movement Disorders ( <i>tentative</i> )
Antifungals, Oral	Multiple Sclerosis Agents
Antifungals, Topical	Neuropathic Pain
Antiparkinson's Agents	Sedative Hypnotics
Antipsychotics	

Any person or organizations who wish to make a presentation to the DHCF P&T Committee should furnish his or her name, address, telephone number, and name of organization represented by calling (202) 442-9076 **no later than 4:45pm on Wednesday, August 28, 2019.** The person or organization may also submit the aforementioned information via e-mail to Charlene Fairfax ([charlene.fairfax@dc.gov](mailto:charlene.fairfax@dc.gov)).

An individual wishing to make an oral presentation to the Committee will be limited to three (3) minutes. A person wishing to provide written information should supply twenty (20) copies of the written information to the Committee **no later than 4:45pm on Wednesday, August 28, 2019. Handouts are limited to no more than two standard 8½ by 11 inch pages of "bulleted" points (or one page front and back).** The ready-to-disseminate, written information can also be mailed **to arrive no later than Wednesday, August 28, 2019** to:

Department of Health Care Finance  
Attention: Charlene Fairfax, RPh, CDE  
441 4<sup>th</sup> Street NW, Suite 900 South  
Washington, DC 20001

**DEPARTMENT OF HEALTH (DC HEALTH)  
HIV/AIDS, Hepatitis, STD & TB Administration (HAHSTA)  
NOTICE OF FUNDING AVAILABILITY (NOFA)**

**HAHSTA\_FBH\_07.26.19 (RFA)  
Facility Based Housing (Transitional and Emergency)**

**Rescinded**

**This notice supersedes the notice published in DC Register on July 12, 2019 Vol 66/28**

The District of Columbia, Department of Health (DC Health) is soliciting applications from qualified applicants to services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of the Department of Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

**General Information:**

Funding Opportunity Title:	FY 2019 HOPWA Facility Based Housing with Supportive Services
Funding Opportunity Number:	FO-HAHSTA-PG-00191-001
Program RFA ID#:	HAHSTA_RFA_FBH_07.26.19
Opportunity Category:	Competitive
DC Health Administrative Unit:	HIV/AIDS, Hepatitis, STD, and Tuberculosis Administration
DC Health Program Bureau	Capacity Building, Housing and Community Partnerships Division
Program Contact:	Sherita J. Grant, Housing Coordinator <a href="mailto:Sherita.grant@dc.gov">Sherita.grant@dc.gov</a> 202-671-5062
Program Description:	The HIV/AIDS, Hepatitis, STD, and Tuberculosis Administration is soliciting applications from qualified organizations to provide services for Facility Based Housing with Supportive Services. Under Facility Based Housing is Transitional and Emergency housing. Transitional Housing is to provide housing for up to 24 months. Emergency Housing is to provide housing for 60 days within a six month period. With these housing services, Supportive Services will consist of only Intensive Case Management. All participants will be provided intensive case management within the respective agencies. Case Managers will have to be at least a License Graduate Social Worker (LGSW) to qualify for the case management position. Additionally, your agency can have a peer navigator to assist clients with reaching the goals in their housing plans.

Eligible Applicants	Not- for profit organizations and government agencies. All applicants must have locations in the District of Columbia, Prince George's, Charles or Calvert counties.
Anticipated # of Awards:	Approximately 6
Anticipated Amount Available:	\$2,500,000.00
Floor Award Amount:	\$400,000.00
Ceiling Award Amount:	N/A

### Funding Authorization

Legislative Authorization	AIDS Housing Opportunity Act, Public Law 101-624
Associated CFDA#	14.241
Associated Federal Award ID#	DCH18-F001
Cost Sharing / Match Required?	No
RFA Release Date:	July 26, 2019
Pre-Application Meeting Date)	Thursday, August 1, 2019
Pre-Application Meeting (Time)	1:00pm
Pre-Application Meeting	899 North Capitol Street, NE Washington, DC 20002
Letter of Intent Due date:	COB August 7, 2019
Application Deadline Date:	August 23, 2019
Application Deadline Time:	6:00 PM
Links to Additional Information about this Funding Opportunity	DC Grants Clearinghouse <a href="http://opgs.dc.gov/page/opgs-district-grants-clearinghouse">http://opgs.dc.gov/page/opgs-district-grants-clearinghouse</a> . DC Health EGMS <a href="https://dcdoh.force.com/GO_ApplicantLogin2">https://dcdoh.force.com/GO_ApplicantLogin2</a>

#### Notes:

1. DC Health reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a DUNS #, Tax ID#, be registered in the federal Systems for Award Management (SAM) and the DC Health Enterprise Grants Management System (EGMS)
5. Contact the program manager assigned to this funding opportunity for additional information.
6. DC Health is located in a secured building. Government issued identification must be presented for entrance.

**KINGSMAN ACADEMY PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS**

Kingsman Academy Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for vendors to provide the following services for SY19.20:

- IT design
- IT construction
- IT design-build services
- Psychological evaluations

**Proposal Submission**

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **5:00 p.m. EST on Friday, August 23, 2019.**

Contact [rfp@kingsmanacademy.org](mailto:rfp@kingsmanacademy.org) for a copy of the Scope of Work. Proposal submissions should be emailed to [rfp@kingsmanacademy.org](mailto:rfp@kingsmanacademy.org). No phone calls.

Government of the District of Columbia  
Public Employee Relations Board

_____ )	
In the Matter of: )	
Local 1199, Service Employees )	
International Union )	
Complainant )	PERB Case No. 19-CU-01
v. )	Opinion No. 1714
District of Columbia )	
Department of Behavioral Health )	
Respondent )	
_____ )	

**DECISION AND ORDER ON COMPENSATION UNIT DETERMINATION**

On October 3, 2018, Local 1199, Service Employees International Union (Union) filed an Unopposed Petition for Compensation Unit Determination (Petition) to designate Compensation Unit 1 as the appropriate compensation unit for a bargaining unit at the Department of Behavioral Health (Agency). Pursuant to Board Rule 503.4, a notice was posted at the Agency for fourteen (14) consecutive days. No comments regarding the notice were received by the Board.

This Union was originally certified as the representative for this bargaining unit in 1992 and the Board, at that time placed the bargaining unit in Compensation Unit 1.<sup>1</sup> For the reasons stated herein, the Board rules that this bargaining unit should be placed in Compensation Unit 1.

In 1992, the Union was certified to represent all licensed social workers at the District of Columbia Department of Human Services, Commission on Mental Health Services.<sup>2</sup> The Commission became the Department of Mental Health which then became the Department of Behavioral Health.<sup>3</sup> The Union and the Agency recently filed, and the Board granted, a joint petition for unit modification in order to update the bargaining unit description.<sup>4</sup> The Union is currently the certified exclusive bargaining representative for:

<sup>1</sup> *District 1199E-DC of the National Union of Hospital and Health Care Employees, SEIU and District of Columbia Commission on Mental Health Services, Department of Human Services*, Cert. No. 68, PERB Case No. 90-R-06 (1992).

<sup>2</sup> *Id.*

<sup>3</sup> Petition at 1-2.

<sup>4</sup> *See Local 1199, SEIU and DBH*, 66 D.C. Reg. 5738, Slip Op No. 1703, PERB Case No. 19-UM-01 (2018).

Decision and Order  
PERB Case No. 19-CU-01  
Page 2

All licensed Social Workers employed by the Department of Behavioral Health, excluding all other classifications of workers, all other classifications of Social Workers, 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.

When the Union was originally certified in 1992, the Board ruled that the bargaining unit be placed in Compensation Unit 1.<sup>5</sup> Regardless of this determination by the Board, for several years the Agency bargained compensation-related matters for social workers separately from Compensation Unit 1.<sup>6</sup> According to the Union, the parties may have agreed to bargain independently because the Agency is not under the personnel authority of the Mayor. The Union would like to now be recognized as part of Compensation Unit 1 since currently Compensation Units 1 and 2 include employees of agencies not within the personnel authority of the Mayor.<sup>7</sup>

The Board authorizes compensation units pursuant to D.C. Official Code § 1-617.16(b), which provides:

In determining an appropriate bargaining unit for negotiations concerning compensation, the Board shall authorize broad units of occupational groups so as to minimize the number of different pay systems or schemes. The Board may authorize bargaining by multiple employers or employee groups as may be appropriate.

The Board recognizes a two-part test from this provision to determine an appropriate compensation unit: (1) the employees of the proposed unit comprise broad occupational groups; and (2) the proposed unit minimizes the number of different pay systems or schemes.<sup>8</sup>

The Board has previously ruled that single-agency compensation units are not consistent with the requirement for “broad occupational groups” unless there is clear statutory authority for establishing a separate compensation unit, or where there are unique pay schedules.<sup>9</sup> The bargaining unit consists of 80 employees, all of whom are social workers.<sup>10</sup> The Union is not asking to be placed in a single-agency compensation unit, but rather in Compensation Unit 1 which already contains broad occupational groups. Furthermore, the Board already found this

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<sup>5</sup> Petition at 2.

<sup>6</sup> Petition at 2.

<sup>7</sup> Petition at 2.

<sup>8</sup> *AFSCME, D.C. Council 20, Local 2401 v. D.C. Pub. Schs.*, 59 D.C. Reg. 4954, Cert. No. 962 at p. 3, PERB Case No. 08-CU-01 (2009).

<sup>9</sup> *International Brotherhood of Teamsters, Local 246 v. D.C. Department of Corrections*, 34 D.C. Reg. 3495, Slip Op. No. 152, PERB Case No. 85-RC-07 (1987); *D.C. Water and Sewer Authority v. American Federation of Government Employees, et al.*, Slip Op. No. 1308, PERB Case Nos. 96-UM-07, 07-UM-01, 07-UM-03, and 07-CU-01 (August 15, 2012); *Service Employees International Union, Local 722 v. D.C. Department of Human Services/Home Services Bureau*, 48 D.C. Reg. 8493, Slip Op. No. 383, PERB Case No. 93-R-01 (1994).

<sup>10</sup> Petition at 3.



Decision and Order  
PERB Case No. 19-CU-01  
Page 3

unit appropriate for Compensation Unit 1 in its 1992 certification.<sup>11</sup> The Board finds that the Petitioners have satisfied the first statutory requirement that the proposed group of employees consists of a broad range of occupational groups.

Petitioners further assert that the Agency is the only personnel authority or agency affected by the petition and, until recently, all of the social workers at the agency were paid under the exact same pay scale as social workers in Compensation Unit 1.<sup>12</sup> The Board finds that placement of the employees in Compensation Unit 1 would minimize the different pay systems or schemes in the District. The Petitioners have satisfied the second statutory requirement.

For the foregoing reasons, the Board grants the Unopposed Petition for Compensation Unit Determination and places the above-referenced bargaining unit in Compensation Unit 1.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. The Petitioner's Unopposed Petition for Compensation Unit Determination is granted.
2. The following employees are placed in Compensation Unit 1:

All licensed Social Workers employed by the Department of Behavioral Health, excluding all other classifications of workers, all other classifications of Social Workers, 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.

3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, and Douglas Warshof.

Washington, D.C.

June 20, 2019

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<sup>11</sup> *District 1199E-DC of the National Union of Hospital and Health Care Employees, SEIU and District of Columbia Commission on Mental Health Services, Department of Human Services*, Cert. No. 68, PERB Case No. 90-R-06 (1992).

<sup>12</sup> Petition 3-4.

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 19-CU-01, Op. No. 1714 was sent by File and ServeXpress to the following parties on this the 28<sup>th</sup> day of June, 2019.

Matthew W. Caspari  
District of Columbia Department of Behavioral Health  
64 New York Avenue, NE  
3<sup>rd</sup> Floor  
Washington, D.C. 20002

Daniel M. Rosenthal  
James & Hoffman, P.C.  
1130 Connecticut Avenue, NW  
Suite 950  
Washington, D.C. 20036

/s/ Sheryl Harrington  
Public Employee Relations Board  
1100 4th Street, SW  
Suite E630  
Washington, D.C. 20024  
Telephone: (202) 727-1822

Government of the District of Columbia  
Public Employee Relations Board

<hr/>		)
In the Matter of:		)
		)
District of Columbia		)
Department of Corrections		)
		)
	Petitioner	)
		)
	v.	)
		)
Fraternal Order of Police/		)
Department of Corrections		)
Labor Committee		)
		)
	Respondent	)
<hr/>		)

PERB Case No. 19-A-05  
Opinion No. 1715

**DECISION AND ORDER**

**I. Introduction**

On February 15, 2019, the District of Columbia Department of Corrections (Agency) filed this Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act, (CMPA) section 1-605.02(6) of the D.C. Official Code. The Agency seeks review of an Arbitration Award (Award) based on the claim that the Arbitrator exceeded his jurisdiction.<sup>1</sup> The Fraternal Order of Police/Department of Corrections Labor Committee (Union) filed a timely Opposition to the Request.

Having reviewed the Arbitrator’s conclusions, the pleadings of the parties and applicable law, the Board concludes that there is no basis to overturn the Arbitrator’s Award. Therefore, the Board denies the Agency’s request.

**II. Statement of the Case**

On May 12 2016, the Agency issued a notice of proposed suspension to four corporals, including the Grievant, for submitting false statements in their incident report regarding a combative inmate.<sup>2</sup> On June 14, 2016, a final decision was issued by the Agency upholding the

<sup>1</sup> Request at 3.

<sup>2</sup> Award at 5.

Decision and Order  
PERB Case No. 19-A-05  
Page 2

suspension.<sup>3</sup> The Grievant and other officers involved in the incident were suspended for nine days.<sup>4</sup> The Union then invoked arbitration on behalf of the Grievant and other officers.

### III. Arbitrator's Award

The parties presented two issues for the Arbitrator to consider: (1) whether the nine day suspensions of the Grievant and others were for just cause and (2) if the suspension was not for just cause then what would be an appropriate remedy.<sup>5</sup> The Arbitrator had to resolve whether the Grievant's incident report constituted (1) knowing or willful reporting of false and misleading information, or (2) purposeful omission of material facts in violation of District Personnel Manual (DPM) section 1605.4(b) or whether the incident report constituted an "accurate report" as required by the Agency's Program Statement 1280.2F, Section 2.<sup>6</sup>

The Arbitrator found that the Agency did not show that the substance of the Grievant's incident report constituted knowing or willful reporting of false and misleading information, or purposeful omission of material facts, in violation of DPM Section 1605.4(b)(4). The Arbitrator also found that the Agency did not show that the report was inaccurate.<sup>7</sup>

As a remedy, the Arbitrator ruled that the Agency must remove references to this discipline from the Grievant's record and the Grievant shall receive back pay and benefits for the days he was suspended.<sup>8</sup> Furthermore, the Arbitrator also found that the Grievant was eligible for a promotion to Sergeant but the promotion was blocked or otherwise delayed because of the suspension on his record. As part of the remedy, the Arbitrator ruled that the Grievant shall be retroactively promoted to whatever dates he would have been promoted if the suspension had not been on his record, and he shall receive accompanying back pay and benefits.<sup>9</sup>

### IV. Positions of the Parties

The Agency argues that the Arbitrator exceeded his authority when he concluded that the Grievant should be retroactively promoted.<sup>10</sup> According to the Agency, Article 19, section A of the parties' collective bargaining agreement (CBA) specifically states that merit staffing and promotions procedures shall be implemented in accordance with the applicable provisions of the DPM as implemented in the DCHR Merit Staffing Plan and the CBA.<sup>11</sup> According to the Agency, by ordering the promotion of the Grievant, the Arbitrator would be adding to and/or modifying the agreement, which the Arbitrator is not empowered to do.

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<sup>3</sup> Award at 6.

<sup>4</sup> Award at 5.

<sup>5</sup> Award at 7.

<sup>6</sup> Award at 14.

<sup>7</sup> Award at 16-17.

<sup>8</sup> Award at 18.

<sup>9</sup> Award at 18.

<sup>10</sup> Request at 4.

<sup>11</sup> Request at 4.

Decision and Order  
PERB Case No. 19-A-05  
Page 3

The Union argues that the Arbitrator did not exceed his authority. According to the Union, the Arbitrator gave effect to the Agency's program statements and policies, which were presented and accepted into evidence.<sup>12</sup> Program Statement 3110.3E states that employees who have been proposed for discipline are to be temporarily bypassed for promotion pending final resolution of action. If the disciplinary process is resolved in favor of the employee, the employee shall be retroactively promoted to the next available promotional vacancy.<sup>13</sup> The Union presented uncontested evidence at the hearing that the Grievant successfully took the promotional examination for a sergeant position prior to the disciplinary proposal.<sup>14</sup> The Union looks to this promotion policy to support its argument that the Arbitrator gave effect to this policy and the CBA which requires that the Grievant be made whole.<sup>15</sup>

## V. Discussion

The Board's authority to review an arbitration award is narrow. The Board is permitted to modify or set aside an arbitration award "only if the arbitrator was without, or exceeded, his or her jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means."<sup>16</sup>

### A. The Arbitrator Did Not Exceed His Authority

To determine if an arbitrator has exceeded his jurisdiction and/or was without authority to render an award, the Board evaluates "whether the award draws its essence from the collective bargaining agreement." The U.S. Court of Appeals for the Sixth Circuit, in *Michigan Family Res., Inc. v. Serv. Emp. Int'l Union, Local 517M*,<sup>17</sup> provided the following standard to determine if an award "draws its essence" from a collective bargaining agreement:

[1] Did the arbitrator act 'outside his authority' by resolving a dispute not committed to arbitration?; [2] Did the arbitrator commit fraud, have a conflict of interest or otherwise act dishonestly in issuing the award?; [a]nd [3] [I]n resolving any legal or factual disputes in the case, was the arbitrator "arguably construing or applying the contract?" So long as the arbitrator does not offend any of these requirements, the request for judicial intervention should be resisted even though the arbitrator made "serious," "improvident" or "silly" errors in resolving the merits of the dispute.

Here there is no evidence the Arbitrator resolved any disputes other than the specific issues the parties placed before him. Neither party argues that the Arbitrator committed fraud, had a conflict of interest, or otherwise acted dishonestly in issuing the award. Though the Agency argues that the Arbitrator is adding to/or modifying the parties' CBA by promoting the

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<sup>12</sup> Opposition at 4.

<sup>13</sup> Opposition at 5.

<sup>14</sup> Opposition at 6.

<sup>15</sup> Opposition at 4-5.

<sup>16</sup> D.C. Official Code § 1-605.02(6)

<sup>17</sup> 475 F.3d 746, 753 (6<sup>th</sup> Cir. 2007).

Decision and Order  
PERB Case No. 19-A-05  
Page 4

Grievant retroactively, the Board has previously stated, “an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties’ collective bargaining agreement.”<sup>18</sup> The Agency has not presented anything in the CBA which restricts the Arbitrator’s ability to make the Grievant whole. The promotion is the result of an application of the Agency’s own policies and CBA as interpreted by the Arbitrator. When parties submit a matter to arbitration, they appoint the Arbitrator to be the reader and interpreter of their CBA. The Board cannot substitute the Agency’s competing interpretation for that of the duly appointed Arbitrator.<sup>19</sup>

The Union has requested that the Board grant attorneys’ fees and costs incurred in defending against this matter.<sup>20</sup> Section 1-617.13 of the D.C. Official Code does not authorize the Board to award attorneys’ fees.<sup>21</sup> Therefore the request is denied.

## VI. Conclusion

The Board rejects the Agency’s arguments and finds no grounds to modify, set aside, or remand the Remand Award. Accordingly, the Agency’s Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

## ORDER

### IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
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 Ann Hoffman, Mary Anne Gibbons, and Douglas Warshof.

June 20, 2019

Washington, D.C.

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<sup>18</sup> *District of Columbia Metropolitan Police Department and Fraternal Order of Police/Metropolitan Police Department Labor Committee*, - D.C. Reg. -, Slip Op. No. 933, PERB Case No. 07-A-08 (2008).

<sup>19</sup> *University of the District of Columbia Faculty Association v. University of the District of Columbia*, 64 D.C. Reg. 7617, Slip Op No. 1627, PERB Case No. 17-A-05 (2017).

<sup>20</sup> Opposition at 7.

<sup>21</sup> See, *American Federation of Government Employees, Local 2725 v. District of Columbia Department of Health*, 59 D.C. Reg. 6003, Slip Op. No. 1003, PERB Case No. 09-U-65 (2012); *International Brotherhood of Police Officers, Local 1445, AFL-CIO/CLC v. District of Columbia General Hospital*, 39 D.C. Reg. 9633, Slip Op. No. 322, PERB Case No. 91-U-14 (1992); *University of the District of Columbia Faculty Association NEA v. University of the District of Columbia*, 38 D.C. Reg. 2463, Slip Op. No. 272, PERB Case No. 90-U-10 (1991).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 19-A-05, Op. No. 1715 was sent by File and ServeXpress to the following parties on this the 28<sup>th</sup> day of June, 2019.

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## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFFELECTRIC TARIFF 2019-02, IN THE MATTER OF THE PROPOSAL OF THE POTOMAC ELECTRIC POWER COMPANY TO AMEND ITS GENERAL TERMS AND CONDITIONS TARIFF, P.S.C.-D.C. No. 1

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 District of Columbia Official Code,<sup>1</sup> of its final action taken in the above-captioned proceeding.

2. On February 8, 2019, the Potomac Electric Power Company (Pepco) and the Office of the People's Counsel (OPC) submitted a tariff filing amending Section 10(e)(1) of the General Terms and Conditions of Pepco's Tariff to clarify that a customer is responsible for costs associated with work performed by Pepco in order for the customer to repair certain customer-owned equipment.<sup>2</sup> On June 5, 2019, Pepco and OPC filed an Updated Tariff Amendment requesting Commission approval of a revision to Section 10(e)(1) to include language that Pepco will provide a cost estimate to the customer in reference to this work.<sup>3</sup> The proposed tariff amends the following tariff page:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1**  
**(Previous) Original Page No. 39**  
**(Proposed) First Revised Page No. 39.1**

The Updated Tariff Amendment states:

When a Customer requests that the Company deenergize the Customer's service connection to enable the repair, replacement, alteration, or modification of customer-owned components of an existing service connection, the Customer will be solely responsible for the costs associated with the provision of such service by the Company. The Company shall provide the Customer an estimate of the costs of providing the service to deenergize the Customer's service connection.<sup>4</sup>

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<sup>1</sup> D.C. Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.).

<sup>2</sup> *Electric Tariff 2019-02, In the Matter of the Joint Motion of Potomac Electric Power Company and the Office of the People's Counsel for the District of Columbia to Amend Pepco's General Terms and Conditions for Furnishing Electric Service in the District of Columbia (Electric Tariff 2019-02)*, The Joint Motion of the Potomac Electric Power Company and the Office of the People's Counsel for the District of Columbia to Amend Pepco's General Terms and Conditions for Furnishing Electric Services in the District of Columbia, filed February 8, 2019.

<sup>3</sup> *Electric Tariff 2019-02*, Updated Tariff Amendment, filed June 5, 2019.

<sup>4</sup> Updated Tariff Amendment at Proposed First Revised Page No. 39.1.



3. On May 17, 2019, the Commission published a Notice of Proposed Tariff (NOPT) in the *D.C. Register* inviting public comment on Pepco's initial tariff amendment.<sup>5</sup> On June 14, 2019, the Commission published an updated NOPT superseding the previous NOPT.<sup>6</sup> No comments were filed in response to the NOPTs. The Commission at its regularly scheduled Open Meeting held on July 31, 2019, took final action approving Pepco's tariff amendment to Section 10(e)(l) clarifying the customer's cost responsibility in the event Pepco has to deenergize the customer's service connection, per customer request, to enable repair, replacement, alteration and modification of customer-owned components, effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

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<sup>5</sup> 66 *D.C. Reg.* 006261-006262 (May 17, 2019).

<sup>6</sup> 66 *D.C. Reg.* 007303-007304 (June 14, 2019).

**TWO RIVERS PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Special Education Comprehensive Assessments and Interventions**

Two Rivers Public Charter School is seeking companies to provide comprehensive psychological assessments and therapeutic interventions for students. Providers must be able to complete evaluations and provide written assessments within 30-40 calendar days. Two Rivers may choose to work with one or more companies. Individuals are welcome to apply as independent contractors. For a copy of the RFP, please email Mary Gornick at [procurement@tworiverspcs.org](mailto:procurement@tworiverspcs.org).

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

**Application No. 19982 of Montello 1723 LLC**, as amended<sup>1</sup> pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and under Subtitle G §§ 409, 1200 and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2, to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone at premises 1723 Montello Avenue, N.E. (Square 4052, Lot 180).

**HEARING DATES:** April 17, 2019<sup>2</sup>; May 22, 2019  
**DECISION DATE:** May 22, 2019

**DECISION AND ORDER**

Montello 1723 LLC (the “**Applicant**”) filed an application with the Board of Zoning Adjustment (the “**Board**”) on January 31, 2019 for a special exception under Subtitle C § 703 of Title 11 of the DCMR (the “**Zoning Regulations**”, to which all references are made unless otherwise specified) for relief from the minimum parking requirements of Subtitle C § 701.5 and special exceptions pursuant to Subtitle G §§ 409, 1200, and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2 (the “**Application**”), to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone at premises 1723 Montello Avenue, N.E. (Square 4052, Lot 180) (the “**Property**”). For the reasons explained below, the Board voted to **APPROVE** the Application.

**FINDINGS OF FACT**

**Notice of Application and Notice of Public Hearing**

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning (“**OZ**”) sent notice of the Application and the April 17, 2019 hearing by a March 13, 2019 letter to the Applicant; Advisory Neighborhood Commission (“**ANC**”) 5D, the ANC for the area within which the subject property is located, the single-member district ANC 5D02, and the Office of ANCs; the Office of Planning (“**OP**”) and the District Department of Transportation

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<sup>1</sup> The Applicant amended the application (Exhibit (“**Ex.**”) 50A) by removing the request for a variance from the nonconforming structure requirements of Subtitle C § 202.2 after discussions with OP and the Zoning Administrator. The Applicant also revised the number of units from seven to eight (Ex. 36).

<sup>2</sup> The hearing was postponed from April 17, 2019 to May 22, 2019 at the request of the Applicant.

(“DDOT”); the Councilmember for Ward 5, the Chairman of the Council, and the At-Large Councilmembers; and the owners of all property within 200 feet of the Property. (Ex. 16-28.) OZ also published notice of the April 17, 2019 public hearing in the *D.C. Register* on February 22, 2019 (66 DCR 2307) as well as through the calendar on OZ’s website.

2. Pursuant to Subtitle G § 1201.1(e) on May 17, 2019, OZ sent notice of the Application and the May 22, 2019 hearing to the District of Columbia Housing Authority (“DCHA”).

### **Party Status**

3. The Applicant and ANC 5D were automatically parties in this proceeding per Subtitle Y § 403.5. No request for party status was filed.

### **The Property**

4. The Property contains 1,278 sq. ft. of land area. (Ex. 41.)
5. The Property is rectangular and is bounded by Montello Avenue N.E. to the west and Simms Place N.E. to the south. (Ex. 48A.)
6. The Property borders a mixed-use row building to the north and an apartment house to the east. (Ex. 8.)
7. The surrounding neighborhood is comprised of residential and mixed-use row buildings. (Ex. 41.)
8. The Property is currently improved with a one-story vacant commercial building (the “**Building**”). (Ex. 8.)
9. The Building occupies 100% of the lot. (Ex. 8.)
10. The Building has no rear yard. (Ex. 8.)
11. The Property is located in the MU-4 Zone. (Ex. 8.)
12. The purpose and intent of the MU-4 Zone is to permit moderate density mixed-use development, including housing, with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)
13. The Property has a walk score of 83 according to WalkScore.com. (Ex. 8.)
14. The Property is 16 feet from the Montello Avenue and Simms Place Metrobus stop, half a mile from the nearest Capital BikeShare station, eight-tenths of a mile from the H Street Streetcar, and nine-tenths of a mile from the nearest ZipCar location on Bladensburg Road and 14<sup>th</sup> Street, N.E. (Ex. 14.)

**The Application**

15. The Application proposes to renovate the Building, construct a two-story and penthouse addition for a total of three stories (the “**Addition**,” and collectively with the Building, the “**Project**”).
16. The Project will be used as an eight-unit apartment house and will participate in Inclusionary Zoning (“**IZ**”). (Ex. 8 and 36.)
17. The Application proposed to continue the Building’s existing 100% lot occupancy in the Addition, with all three floors at 100% lot occupancy. (Ex. 8.)
18. A maximum of 75% lot occupancy is permitted in the MU-4 Zone for buildings participating in IZ. (Subtitle G § 404.1.)
19. The Project will have no rear yard. (Ex. 8.)
20. A minimum rear yard of 15 feet is required in the MU-4 Zone. (Subtitle G § 405.2.)
21. The Application proposed to provide no parking on the Property due to the existing 100% lot occupancy of the Building. (Ex. 8.)
22. The Application’s proposed eight units would require a minimum of one parking space on the Property (Ex. 8.)
23. The Project is compliant with the MU-4 requirements for height and FAR. (Ex. 50A.)
24. None of the proposed apartment windows will be located within 40 feet directly in front of another building. (Ex. 12.)

**Zoning Relief**

25. The Application requested the following zoning relief:
  - a. A special exception under Subtitle G §§ 409 and 1200 from the maximum 75% lot occupancy permitted by Subtitle G § 404.1 to authorize providing 100% lot occupancy. (Ex. 8.)
  - b. A special exception under Subtitle G §§ 409 and 1201 from the required 15-foot rear yard required by Subtitle G § 405.2 to authorize providing no rear yard. (Ex. 8.)
  - c. A special exception under Subtitle C § 703 from the one parking space required under minimum parking requirements of Subtitle C § 701.5. (Ex. 8.)

**DDOT Report**

26. DDOT submitted a report dated April 5, 2019 (the “**DDOT Report**”). (Ex. 40.)
27. The DDOT Report concluded that the Application would have only minor transportation impacts by reducing the availability of on-street public parking and increasing the number of vehicular, transit, pedestrian, and bicycle trips. The DDOT Report did not note any concerns regarding loading, additional parking or service issues.
28. To mitigate these potential minor negative impacts, DDOT recommended the implementation of a Traffic Demand Management Plan (the “**TDM Plan**”), including:
  - a. Providing new residents with a “Welcome Package” including information about available transit options.
  - b. Providing a one-year bikeshare membership to initial owners.
  - c. Installing a TransitScreen in the building to display real-time transportation information.

**OP Report**

29. OP submitted a report dated April 5, 2019 (the “**OP Report**”) recommending approval of the Application subject to the conditions proposed by TDM Plan in the DDOT Report. (Ex. 41.)
30. The OP Report concluded that the small size of the property, the lack of alley access, and the existing 100% lot occupancy of the Building, the Applicant would be unable to provide on-site parking on-site without losing at least one residential unit. (Ex. 41.)
31. The OP Report noted that the Applicant has also requested variance relief from Subtitle C § 202.2 to allow an addition to a non-conforming building but had subsequently informed OP of its intent to amend this relief to a special exception. OP discussed the relief with the Zoning Administrator who confirmed that no relief was required from Subtitle C § 202.2 in this case.
32. The OP Report noted that the windows in the second bedrooms of Units 4, 6, and 8 would be considered “at risk” under the Construction Codes. (Ex. 41.)

**ANC Report**

33. ANC 5D submitted a written report (the “**ANC Report**,” Ex. 56) stating that the Applicant had presented the Application to the surrounding neighborhood at an ANC Community meeting on May 14, 2019, having previously met with the ANC a total of seven times to discuss the Application. At that May 14, 2019 public meeting, which had been duly noticed and scheduled and at which a quorum was present, the ANC voted to

conditionally support the Application, with two concerns. The ANC Report expressed the concern that the proposed units were “extremely and unreasonably small” and noted that in discussions with the Applicant, the ANC had requested that the number of units be reduced to allow for larger units. The ANC Report also expressed a concern that the three “at-risk” windows might not provide the required access for D.C. Fire and Emergency Medical Services (“FEMS”).

34. The ANC Report requested two conditions be imposed by the Board to address these concerns:
  - a. Reduce the total number of units proposed for the lot in order to increase the square footage for the two and three-bedroom apartments.
  - b. Provide written documentation from the adjacent property owners (1210 Simms Place and 1211 Mt. Olivet Road, N.E.) stating their intent to sign covenants and/or easements to ensure that the three “at-risk” windows proposed for the Project would no longer be at-risk of closure and would have access for FEMS.
35. The ANC Report authorized Keisha Shropshire, Commissioner for 5D02, to testify at the May 22<sup>nd</sup> hearing on behalf of the ANC.

#### **Persons in Support**

36. The Board received three letters in support of the Application from residents of 1239 Simms Place N.E. (Ex. 30-32.) No persons testified in support at the hearing.

#### **Persons in Opposition**

37. The Board received two letters in opposition to the Application. (Ex. 33 and 39.)
38. Marcus Hendrick testified in opposition of the Application at the public hearing. (Ex. 57.) Mr. Hendrick raised concerns regarding the number and size of the proposed units.

#### **Public Hearing**

39. At the hearing on May 22, 2019, Commissioner Shropshire testified as to the ANC’s vote at the May 14<sup>th</sup> meeting, and the rationale for the requested conditions. Commissioner Shropshire stated for the record that the ANC would not be in support of the Application if the proposed conditions were not adopted. (BZA Public Hearing Transcript of May 22, 2019 (“Tr.”) at 27.)
40. Commissioner Shropshire reiterated that the ANC was concerned about what it believed were “extremely and unreasonably small” residential units. (Tr. at 22-23.) The Commissioner also explained that the ANC requested at multiple meetings that the Applicant reduce the number of units in order to increase the size of the units. (Tr. at 35-36.)

41. Commissioner Shropshire also raised the ANC's concerns regarding the "at-risk" windows on the Project's southeast side, adjacent to the neighboring apartment house. The ANC was concerned that these windows posed access problems for FEMS and that they were also at risk of being closed if the adjacent building ever expanded. (Tr. at 23.)
42. In response to the Commissioner's testimony, OP testified that the Zoning Regulations do not include a specific density requirement for the number of units permitted in a multi-family dwelling in the MU-4 Zone other than the maximum Floor Area Ratio ("FAR") requirements. OP further testified that unit size is governed by the Construction Codes Code and not the Zoning Regulations. (Tr. at 31.)
43. With regard to the "at-risk" windows, the Applicant testified that it intends to enter into a covenant with the adjacent property whereby, if the adjacent property ever expands the building the Applicant, or its successors in title, will close the "at-risk" windows. (Tr. at 37-38.) The Applicant further testified that they will provide notice of the presence of the "at-risk" windows in the residential leases and provide tenants of the affected units with additional notice periods and mitigation options in the event the windows ever are closed. (Tr. at 39-40.)

### CONCLUSIONS OF LAW

Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:

- i. will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
- ii. will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
- iii. complies with the special conditions specified in the Zoning Regulations.

For the relief requested by the Application, the "specific conditions" are those of Subtitle C § 703 and Subtitle G §§ 1200 and 1201.

Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).



**Subtitle G §§ 409 and 1200 – Relief from Lot Occupancy Requirements of G § 404.1**

To qualify for a special exception from the lot occupancy requirements of Subtitle G § 404.1 under Subtitle G §§ 409 and 1200, the Applicant must demonstrate that the Application satisfies the conditions of Subtitle G § 1200.4. Specifically, that the Application:

- (a) *Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;*
- (b) *Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps;*

**Subtitle G § 1200.4(a): Harmony with the Zone and Zoning Regulations**

The Board concludes that the proposed development is in harmony with the general purpose and intent of the MU-4 Zone. (Finding of Fact 12.) The surrounding uses are mostly residential in character and the proposed development would be more in keeping with the surrounding uses and a more productive use for the Property than the current underutilized lot and vacant Building.

**Subtitle G § 1200.4(b): No Adverse Effects**

The Board also concludes that the proposed development will not have any adverse effects on the use of the neighboring properties. The existing building on the site is already at 100% lot occupancy and the proposed project will comply with the maximum IZ FAR and height requirements. (Finding of Fact 23.) The Board also notes that it will be similar in height to the surrounding buildings and will not obstruct any windows on the adjoining properties. (Finding of Fact 6.)

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle G §§ 409 and 1200 from the lot occupancy requirements of Subtitle G § 404.1.

**Subtitle G §§ 409 and 1201 – Relief from the Rear Yard Requirements of G § 405.2**

To qualify for a special exception from the minimum rear yard requirements of Subtitle G § 405.2 under Subtitle G §§ 409 and 1201, the Applicant must demonstrate that the Application satisfies the following conditions of Subtitle G § 1201.1:

- (a) *No apartment window shall be located within forty feet (40 ft.) directly in front of another building;*
- (b) *No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall;*

- (c) *In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards;*
- (d) *Provision shall be included for service functions, including parking and loading access and adequate loading area; and*
- (e) *Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if historic district or historic landmark is involved, the Historic Preservation Office.*

**Subtitle G § 1201.1(a): Window Location**

Based on the plans submitted by the Applicant, the Board concludes that the Application satisfies this criterion because no window would be located within forty feet directly in front of another building. (Finding of Fact 24.)

**Subtitle G § 1201.1(b): Office Windows**

The Board concludes that these requirements are not applicable because the proposed development is comprised solely of residential units. (Finding of Fact 16.)

**Subtitle G § 1201.1(c): Sight Lines**

The Board concludes that this requirement is not applicable because the proposed development is parallel to adjacent buildings. (Findings of Fact 5 and 6.)

**Subtitle G § 1201.1(d): Parking and Loading**

The Board concludes that this requirement is satisfied because no additional parking and loading are required because the proposed development is fewer than 50 dwelling units, as asserted by OP. (Ex. 41, p.4.) Further, DDOT did not raise any concerns in its report regarding additional parking and loading requirements. (Finding of Fact 27.)

**Subtitle G § 1201.1(e): District Agency Review**

The Board concludes that this requirement was satisfied as Application was properly referred to all of the appropriate District agencies on March 13, 2019 and May 17, 2019. (Findings of Fact 1 and 2.)

The Board therefore concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle G §§ 409 and 1201.1 from the minimum rear yard requirements of Subtitle G § 405.2.

**Subtitle C § 703 – Relief from Parking Requirements of Subtitle C § 701.5**

To qualify for a special exception from the minimum parking requirements of Subtitle § 701.5 under Subtitle C § 703, the Applicant must demonstrate that the Application satisfies at least one of ten criteria of Subtitle C § 703.2, the criteria of Subtitle C §§ 703.3 and 703.4, and the general special exception criteria of Subtitle X § 901.

The Application asserted it satisfied the following three criteria of Subtitle C § 703.2:

- a) *Due to the physical constraints of the property, the required parking spaces cannot be provided either on the lot or within six hundred feet (600 ft.) of the lot in accordance with Subtitle C § 701.8.*
- b) *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities.*
- c) *Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces.*

Subtitle C § 703.3 - *Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the applicant” and*

Subtitle C § 703.4 - *Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment’s approval.*

**Subtitle C § 703.2: Parking Cannot Be Provided on Site**

The Board concludes that the Application satisfies this requirement because it meets criteria (b) and (c). The Board concludes that the site is well served by alternate means of transportation thereby reducing the need for parking spaces (Subtitle C § 703.2(b)) and that the land use and transportation characteristics of the surrounding neighborhood minimize the need the required on-site parking spaces (Subtitle C § 703.2(c)). (Findings of Fact 13-14.)

**Subtitle C § 703.3: Minimal Reduction**

The Board concludes that the Applicant satisfied these requirements because the Applicant only requested relief from providing the one required parking space. (Finding of Fact 22.)

**Subtitle C § 703.4: TDM Plan**

The Board notes that DDOT accepted Applicant’s TDM Plan and requested that elements of the TDM Plan be incorporated into the Board’s decision as conditions. (Finding of Fact 28.)

Based on the above, the Board concludes that the Applicant has demonstrated that the Application meets the specific conditions for the requested special exception relief under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5.

**General Special Exception Relief – Subtitle X § 901**

The Application, in addition to meeting the specific conditions of the special exceptions from the lot occupancy, rear yard, and minimum parking requirements, must also meet the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties.

The Board concludes that granting the Application's requested special exceptions would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Building meets the intent of the MU-4 Zone to permit moderate density mixed-use development as a four-story apartment building that meets the other development standards of the MU-4 Zone.

The Board concludes that granting the Application's requested special exceptions would not tend to adversely affect the use of neighboring properties because the existing Building has a 100% lot occupancy and no rear yard, the siting of the windows would mitigate any adverse impacts of the requested rear yard relief, and the TDM Plan would mitigate any adverse impacts of the requested parking relief.

**“Great Weight” to the Recommendations of OP**

The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8.)

The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP’s recommendation that the Application be approved, subject to the conditions suggested by DDOT, as discussed above.

**“Great Weight” to the Written Report of the ANC**

The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 5D. (§ 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.) and Subtitle Y § 406.2.) To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).

The Board considered the concerns raised by the ANC Report and as reiterated in the testimony of Commissioner Shropshire. The ANC Report conditioned its support of the Application on the Board adopting both of the ANC's proposed conditions, as Commissioner Shropshire confirmed in her oral testimony at the public hearing. (Finding of Fact 40.)

The Board did not find the ANC's concerns about the number and size of the proposed units and the "at-risk" windows persuasive because these issues do not fall within the Board's authority to regulate. (Tr. at 54.) The Board instead found OP's testimony persuasive that the Construction Codes regulate unit size and at-risk windows and notes the Applicant's proposed mitigation efforts addressed the ANC's concerns regarding the "at-risk" windows. (Finding of Fact 44.) The Board concludes that its authority to impose conditions on a special exception is limited to mitigating potential adverse effects on adjacent properties, not on future residents of the Project. The Board therefore concludes that it cannot adopt the conditions proposed by the ANC Report as these are not legally relevant.

### **DECISION**

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof with respect to the request for special exceptions under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, and under Subtitle G §§ 409, 1200 and 1201 from the lot occupancy requirements of Subtitle G § 404.1 and the rear yard requirements of Subtitle G § 405.2, to construct a two-story addition and penthouse to an existing, one-story commercial building and convert it to an eight-unit apartment house in the MU-4 Zone.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>3</sup> AT EXHIBIT 48A AND WITH THE FOLLOWING CONDITION<sup>4</sup>:**

1. Applicant shall implement the TDM Plan including:

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<sup>3</sup> Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 50A). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board made no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. 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 that would require additional or different zoning relief from that is granted by this order.

<sup>4</sup> At the May 22, 2019 hearing the Board orally adopted an additional condition which would have required the Applicant to include a provision in its leases notifying the tenants about the potential loss of "at-risk" windows in certain units. Upon further review by the Office of the Attorney General, this provision was found to be without legal basis and beyond the Board's power to impose. It is therefore not included as a condition on this order.

- a. Providing each resident with a “Welcome Package” which will include information about the nearby transportation options – ride-sharing, car-sharing, metro and bike-shares.
- b. Offering one-year bikeshare memberships (only for initial owners – not in perpetuity).
- c. Installing a TransitScreen or similar device displaying real time transportation schedules, bike/car share options etc. located within .5 miles of the site.

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Peter A. Shapiro to APPROVE).

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

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

**FINAL DATE OF ORDER:** July 31, 2019

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.

**BZA APPLICATION NO. 19982**

**PAGE NO. 12**

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20006 of T-Mobile Northeast LLC**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use permissions of Subtitle C § 1313.2 and Subtitle C § 1313.6, to erect a monopole in the RA-1 Zone at premises 3675 Ely Place S.E. (Square 5438, Lot 801).

**HEARING DATES:** May 8, 2019 and June 26, 2019

**DECISION DATES:** July 3, 2019 and July 17, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 9.)<sup>1</sup>

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 7F.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on May 21, 2019, at which a quorum was present, the ANC voted 4-2 to support the application. (Exhibit 37.) The ANC Report indicated that Commissioners raised safety concerns about exposure to radiation and raised the importance of employment opportunities for community members within ANC 7F. Under Subtitle Y § 406.2, the Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC. 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). The Board determined that these issues are outside the scope of the Board's review for the special exception application and therefore were not legally relevant. The Board nonetheless considered the ANC's support of the application.

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the application, subject to the Applicant providing information required by Subtitle C § 1313.11.

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<sup>1</sup> The Applicant's self-certification form requests special exception relief under Subtitle C § 1313.2. The Board also determined that, because the Applicant is unable to comply with all of the special exception criteria of Subtitle C § 1313.11, it may nonetheless grant the Application under its authority in Subtitle C § 1313.6.



(Exhibit 30.) OP submitted a supplemental report after the public hearing, recommending the adoption of two conditions that would require the maximum height of be limited to 82 feet and that only one wireless carrier be located on the monopole. (Exhibit 45.) OP's second supplemental report reiterated its support of limiting the proposed monopole to a maximum height of 82 feet. (Exhibit 47.) The Board found that the special exception criteria were met for this application and that, therefore, the adoption of conditions was not necessary.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 31.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the use permissions of Subtitle C § 1313.2 and Subtitle C § 1313.6, to erect a monopole in the RA-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>2</sup> AT EXHIBIT 29.**

**VOTE: 5-0-0** (Carlton E. Hart, Lorna L. John, Lesylleé M. White, and Robert E. Miller (by absentee vote to APPROVE; Frederick L. Hill not participating).

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

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

**FINAL DATE OF ORDER:** July 26, 2019

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<sup>2</sup> Self-Certification: In granting the self-certified relief, the Board 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.

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. 20036 of Mariela Licha Salomon,** pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing principal dwelling unit in the R-1-B Zone at premises 4844 Reservoir Road, N.W. (Square 1387, Lot 74).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 21 (Final Revised); Exhibit 18 (Revised); Exhibit 8 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 3D.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 12, 2019, at which a quorum was present, the ANC adopted a resolution by voting 9-0-0 to support the application. (Exhibit 37.)

OP Report. The Office of Planning submitted a report, dated July 11, 2019, recommending approval of the application. (Exhibit 40.)

DDOT Report. The District Department of Transportation submitted a report, dated July 2, 2019, indicating that it had no objection to the application. (Exhibit 38.)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.7, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing principal dwelling unit in the R-1-B Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 5.**

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, 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:** July 29, 2019

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.

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<sup>1</sup>In granting the certified relief, the Board 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.

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. 20051-A of Kevin and Lauren McDermott**, pursuant to DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 633 7<sup>th</sup> Street, N.E. (Square 891, Lot 79).

**HEARING DATES:** July 3, 2019 and July 10, 2019

**DECISION DATE:** July 10, 2019

**CORRECTED<sup>1</sup> SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C, and ANC 6A.

ANC Report. ANC 6C submitted a report indicating that at a regularly scheduled, properly noticed public meeting on June 12, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 41.) ANC 6A did not submit a written report to the record. Under Subtitle Y § 406.2, the Board must give "great weight" to the issues and concerns raised in the written reports of the affected ANCs. Absent ANC 6A's written report, the Board has no issues or concerns to which it can afford "great weight" for this application.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 45.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 44.)

Persons in Support. The Board received three letters from neighbors in support of the application. (Exhibits 13, 14, and 15.)

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<sup>1</sup> This Corrected Summary Order has been issued to correct an error in the address of the property. No other changes have been made to the Order.

Persons in Opposition. The Board received one letter from a neighbor in opposition to the application. (Exhibit 34.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 633 7<sup>th</sup> Street, N.E. (Square 891, Lot 79).

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>2</sup> AT EXHIBIT 37.**

**VOTE: 5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Robert E. Miller 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:** July 30, 2019

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.

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<sup>2</sup> In granting the self-certified relief, the Board 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.

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. 20063 of Siri Fiske**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a rear addition to an existing, attached principal dwelling unit in the RF-1 Zone at premises 1210 T St N.W. (Square 275, Lot 46).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11 (Updated); Exhibit 3 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 18, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application. (Exhibit 33.) The ANC Report requested that the siding being installed consist of hardy board planking rather than sheets that the Applicant suggested were to be used. The Board noted the ANC's concern, but found that the request did not serve to mitigate a potential impact of the relief requested and thus did not adopt the request as a condition of the Order.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 29.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 28.)

Persons in Support. One letter from an adjacent property owner was submitted in support of the application. (Exhibit 9.)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a rear addition to an existing, attached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 5 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, Lesylleé M. White, 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:** July 29, 2019

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

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<sup>1</sup> In granting the certified relief, the Board 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.

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. 20071 of Charles Weil and Leigh McCue-Weil**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 to construct a side yard addition to an existing, detached principal dwelling unit in the R-1-B Zone at premises 5405 Sherrier Place, N.W. (Square 1443, Lot 43).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 10 (Corrected); Exhibit 3 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 3D.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 12, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 26.)

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the application. (Exhibit 30.) OP's report also raised the issue that relief from the nonconforming structure provisions of Subtitle C § 202.2 may be required; however, at the public hearing, OP clarified that this relief is not needed.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 29.)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 to construct a side yard addition to an existing, detached principal dwelling unit in the R-1-B Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 6.**

**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:** July 26, 2019

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.

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<sup>1</sup> In granting the certified relief, the Board 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.

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. 20073 of Oxbridge Development QOZB at Fourth Street NE LLC**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the inclusionary zoning provisions of Subtitle C § 1001.2(e)(3), and from the lot width requirements of Subtitle E § 201.1, to raze an existing detached principal dwelling unit, and subdivide the lot to construct three new, attached flats in the RF-1 Zone at premises at 2637 4th Street N.E. (Square 3634, Lot 803).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 29 (Final Revised); Exhibit 27 (Revised); Exhibit 5 (Original).)<sup>1</sup>

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 18, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 26.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 32.)

Persons in Opposition. Laura Aldrich of 401 Evarts Street, N.E. testified in opposition to the application.

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<sup>1</sup> This application was amended to withdraw a request for special exception relief from the retaining wall requirements of Subtitle C § 1401.7 and to add special exception relief under the inclusionary zoning provisions of Subtitle C § 1001.2(e).

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions from the inclusionary zoning provisions of Subtitle C § 1001.2(e)(3) and the lot width requirements of Subtitle E § 201.1 to raze an existing detached principal dwelling unit, and subdivide the lot to construct three new, attached flats in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 27B.**

**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:** July 31, 2019

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

**BZA APPLICATION NO. 20073**

**PAGE NO. 2**



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. 20074 of Stanton Rd SE LLC**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development requirements of Subtitle U § 421.1, to construct a new, three-story, 22-unit apartment building in the RA-1 Zone at premises 2604-2610 Stanton Road, S.E. (Square 5869, Lot 84).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 34 (Corrected); Exhibit 4 (Original).)<sup>1</sup>

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 8A and ANC 8C.

ANC Report. ANC 8A's report indicated that at a regularly scheduled, properly noticed public meeting on July 2, 2019, at which a quorum was present, the ANC voted unanimously to support the application. (Exhibit 29.) ANC 8C did not submit a written report.

OP Report. The Office of Planning ("OP") submitted a report recommending approval of the special exception under Subtitle U § 421. (Exhibit 31.) OP recommended denial of the relief from the landscaping requirements of Subtitle C § 715, which was subsequently withdrawn by the Applicant.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application, with the condition that the Applicant implement the proposed transportation demand management ("TDM") plan. (Exhibit 32.) The Board adopted the provisions of the TDM plan as conditions of this order.

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<sup>1</sup> At the public hearing, the Applicant verbally withdrew the requested special exception relief from the surface parking lot landscaping requirements of Subtitle C § 715.9.

### Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the new residential development requirements of Subtitle U § 421.1, to construct a new, three-story, 22-unit apartment building in the RA-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>2</sup> AT EXHIBIT 39 WITH THE FOLLOWING CONDITIONS:**

1. The Applicant shall identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall act as points of contact with DDOT, goDCgo, and Zoning Enforcement.
2. The Applicant shall provide the Transportation Coordinator's contact information and report transportation demand management ("TDM") activities to goDCgo once per year.
3. Transportation Coordinators shall receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM plan.
4. The Applicant shall provide welcome packets to all new residents that include, at a minimum, the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, Capital Bikeshare coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing [info@godcgo.com](mailto:info@godcgo.com).

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<sup>2</sup> Self-certification: In granting the certified relief, the Board 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.

5. The Applicant shall provide residents who wish to carpool with detailed carpooling information and shall be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.
6. The Applicant shall provide a free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride.
7. The Applicant shall meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle space shall be provided free of charge to residents.
8. Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kid's bikes.
9. The Applicant shall install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.

**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:** July 30, 2019

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

**BZA APPLICATION NO. 20074**

**PAGE NO. 3**

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20075 of CTF Georgetown Hotel LLC**, 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 renovate an existing hotel in the MU-12 Zone at premises 1050 31st Street N.W. (Square 1189, Lot 90).

**HEARING DATE:** July 24, 2019

**DECISION DATE:** July 24, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 11.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 1, 2019, at which a quorum was present, the ANC voted 6-0-0 to support the application, with three conditions. (Exhibit 43.) The Board did not adopt the requests as conditions of the Order; however, the Applicant indicated that it agrees to the ANC's proposed conditions, provided that the ANC's request that "the area in front of the hotel, including the garage, will be fully accessible to pedestrians at all time" be clarified, so not to seemingly prevent access to the parking area.

OP Report. The Office of Planning submitted a report recommending approval of the application, with two conditions. (Exhibit 41.) The Board adopted both conditions.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application, on the condition that that the Applicant implement the proposed transportation demand management ("TDM") plan in Exhibit 23. (Exhibit 40.) The Board adopted conditions implementing the TDM plan.

### Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to renovate an existing hotel in the MU-12 Zone

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 13 AND WITH THE FOLLOWING CONDITIONS:**

1. No vehicles shall enter or exit the building except through a head-in / head out movement.
2. The Applicant shall provide 20 parking spaces within 600 feet of the building for the life of the hotel use.
3. The Applicant shall implement the transportation demand management (“TDM”) plan as follows:
  - a. The Applicant shall continue to offer a SmartBenefits plan for employees. Pre-tax funds may be deducted to pay for transit, including services from WMATA, VRE, MARC, and vanpool operators.
  - b. The Applicant shall continue to offer the use of five on-site bicycles for hotel guests during their stay.
  - c. The Applicant shall identify a Transportation Coordinator (for planning, construction, and operations). The Transportation Coordinator shall work with employees to

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<sup>1</sup> Self-certification: In granting the self-certified relief, the Board 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.

distribute and market various transportation alternatives and options to employees and guests.

- d. The building management shall provide updated contact information for the Transportation Coordinator to goDCgo, conduct an annual commuter survey of employees, and report TDM efforts and amenities to goDCgo staff once per year.
- e. The Transportation Coordinator shall receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
- f. Front office and customer-facing staff shall be provided training by goDCgo (either in-person or webinar) to learn of the non-automotive options for traveling to the hotel.
- g. The Applicant shall provide guests with goDCgo's Get around Guide by making it available on the property website and in printed format for front office or customer-facing staff.
- h. The Transportation Coordinator shall subscribe to goDCgo's hospitality newsletter.
- i. The Applicant shall post "getting here" information in a visible and prominent location on the website with a focus on non-automotive travel modes. Also, links shall be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area.
- j. The Applicant shall provide comprehensive transportation information and directions on hotel website, including promoting the use of non-automotive modes of transportation and links to website for goDCgo, Capital Bikeshare, DC Circulator, and WMATA.
- k. The Applicant shall provide brochures with information on non-automotive options for traveling to the property available at all times in a visible location in the lobby.
- l. The Applicant shall supply bicycle parking to meet the practical needs of guests, visitors, and employees, including a minimum of seven combined long-term and short-term bicycle parking spaces within the secure garage. The long-term spaces shall be provided to employees free of charge and guests/visitors shall be able to park their bikes in the garage using a valet system.
- m. The Applicant shall provide a minimum of three lockers within the Hotel for employee use.



- n. The Applicant shall provide employees who wish to carpool with detailed carpooling information and shall be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.

**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:** August 1, 2019

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

**BZA APPLICATION NO. 20075**

**PAGE NO. 4**

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. 20076 of Athos Pashiardis**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition in the RF-1 Zone at premises 122 V Street, N.W. (Square 3116, Lot 30).

**HEARING DATE:** Applicant waived the right to a public hearing

**DECISION DATE:** July 31, 2019 (Expedited Review Calendar)

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 15 (Revised); Exhibit 8 (Original).)

Expedited Review. Pursuant to 11 DCMR Subtitle Y § 401, this application was tentatively placed on the Board of Zoning Adjustment (the "Board" or "BZA") expedited review calendar for decision as a result of the applicant's waiver of its right to a hearing. No objections to expedited review consideration were made by any person or entity entitled to do under Subtitle Y §§ 401.7 and 401.8.

Notice of the Application and Public Meeting. The Board referred the application to the appropriate agencies and provided proper and timely notice of the public meeting in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on June 18, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 32.)

OP Report. The Office of Planning submitted a report, dated July 16, 2019, recommending approval of the application. (Exhibit 36.)

DDOT Report. The District Department of Transportation submitted a report, dated July 12, 2019, indicating that it had no objection to the application. (Exhibit 38.)

Persons in Support. The Board received one letter from a neighbor in support of the application. (Exhibit 18.)

Persons in Opposition. The Board received one letter from a neighbor in opposition that requested the application be removed from the Expedited Review calendar. (Exhibit 37.) The neighbor submitted a second letter withdrawing the request for removal of the application from Expedited Review. (Exhibit 40.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 4, 10A1 AND 10A2.**

**VOTE: 5-0-0** (Frederick L. Hill, Lesylleé M. White, Lorna L. John, Carlton E. Hart, and Peter G. May 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:** August 1, 2019

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<sup>1</sup>In granting the certified relief, the Board 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.

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. 20080 of Anna-Louisa Yon and Edwin Darilek**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing, attached principal dwelling unit in the RF-3 Zone at premises at 323 5th Street S.E. (Square 820, Lot 30)

**HEARING DATE:** July 31, 2019

**DECISION DATE:** July 31, 2019

**SUMMARY ORDER**

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 9, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 32.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 34.)

Persons in Support. The adjacent neighbors signed a letter in support (Exhibit 28)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle E §§ 205.5 and 5201 from the rear yard requirements of Subtitle E § 205.4, to construct a two-story rear addition to an existing, attached principal dwelling unit in the RF-3 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the

burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 29.**

**VOTE: 5-0-0** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Lesylleé M. White, and Peter G. May 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:** August 1, 2019

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

BZA APPLICATION NO. 20080

PAGE NO. 2

APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****NOTICE OF FILING****Z.C. Case No. 01-17E****(GWU – Modification of Significance to PUD****@ Square 122, Lot 29 – 1959 E Street, N.W.)****July 29, 2019****THIS CASE IS OF INTEREST TO ANC 2A**

On July 23, 2019, the Office of Zoning received an application from the George Washington University (the “Applicant”) for approval of a modification of significance to a previously approved planned unit development (“PUD”).

The property that is the subject of this application consists of Lot 29 in Square 122 in northwest Washington, D.C. (Ward 2), on property located at 1959 E Street, N.W. (the residential portion of what was previously known at 1957 E Street, N.W.) The property is currently zoned C-3-C through a previously approved PUD-related map amendment. The underlying zone is MU-2.

The Applicant are requesting temporary relief from Condition 8 of Z.C. Order No. 746-C to allow second-year students to live at the subject property during the two-year renovation period for Thurston Hall.

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA****NOTICE OF FILING****Z.C. Case No. 06-12Q****(George Washington University – Modification of Significance to First-Stage PUD related to the renovation of Thurston Hall, 1900 F St., N.W. (Squares 39-43, 54-58, 75, 77, 79-81, 101-103, 121 & 122))****July 24, 2019****THIS CASE IS OF INTEREST TO ANC 2A**

On July 16, 2019, the Office of Zoning received an application from George Washington University (the “Applicant” or “University”) for approval of a modification of significance to a previously approved first-stage planned unit development (“PUD”) for the above-referenced property.

The property that is the subject of this application consists of various squares in northwest Washington, D.C. (Ward 2) that comprise the George Washington University Foggy Bottom Campus.

The Applicant proposes to renovate Thurston Hall, pursuant to a companion case for a modification to and further processing of a campus plan (Case No. 06-11Q). Consequently, the Applicant is requesting a modification of two conditions from the previously approved PUD case (06-12) in order to accommodate the Temporary Housing plan needed during the renovation period. Those conditions proposed to be modified are: 1) Condition P-8(b), which prohibits housing undergraduates in The Aston at 1129 New Hampshire Avenue, N.W.; and 2) Condition C-7, which requires that on-campus beds be available to 70% of the full-time Foggy Bottom undergraduate students up to an 8,000 enrollment (plus one bed per full-time Foggy Bottom undergraduate student over an 8,000 enrollment). The proposed temporary conditions would 1) allow third- and fourth-year undergraduates to live in the The Aston, and 2) allow the University to include The Aston and One Washington Circle in addition to its on-campus housing inventory to satisfy its requirement for housing undergraduate students.

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.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
NOTICE OF CLOSED MEETING**

**TIME AND PLACE:**                      **Monday, September 9, 2019, @ 6:00 p.m.**  
   **Monday, September 23, 2019, @ 6:00 p.m.**  
   **Jerrily R. Kress Memorial Hearing Room**  
   **441 4<sup>th</sup> Street, N.W., Suite 220**  
   **Washington, D.C. 20001**

**FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:**

On Mondays, September 9 and 23, 2019, the Zoning Commission, in accordance with § 406 of the District of Columbia Administrative Procedure Act (“Act”)(D.C. Official Code § 2-576), hereby provides notice it will hold a closed meetings at the times and place noted above, regarding cases noted on the agendas for the meetings to be held on those evenings in order to receive legal advice from its counsel, per § 405(b)(4), and to deliberate, but not voting, on the contested cases, per § 405(b)(13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)).

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

**District of Columbia REGISTER – August 9, 2019 – Vol. 66 - No. 33 010176 – 010499**