

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 22-561, Study of Long-Term Care Facilities and Long-Term Care Services Act of 2018
- D.C. Council enacts Act 23-1, Let Our Vows Endure Emergency Amendment Act of 2019
- D.C. Council schedules a public oversight roundtable on the “Implementation of Law 21-264, The Universal Paid Leave Act”
- D.C. Council schedules a public oversight roundtable on “The District Government’s Strategy and Actions to Combat the Opioid Epidemic”
- Public Service Commission updates the retail quality of service measures for telecommunications service providers
- Department of Behavioral Health announces funding availability for the DC Opioid Response (DCOR) Prevention Grant
- Department of Energy and Environment announces funding availability for the Overnight Meaningful Watershed Educational Experiences for Fifth Grade Students in the District of Columbia Program

DISTRICT OF COLUMBIA REGISTER

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AN ACT

D.C. ACT 22-558

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 15, 2019

To regulate transfers of structured settlement payment rights; and to regulate automatic renewal provisions in consumer contracts for goods and services.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Structured Settlements and Automatic Renewal Protections Act of 2018”.

TITLE I. STRUCTURED SETTLEMENTS PROTECTION

Sec. 101. Short title.

This title may be cited as the “Structured Settlements Protection Act of 2018”.

Sec. 102. Definitions.

For the purposes of this title, the term:

(1) “Annuity issuer” means an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement.

(2) “Assignee” means a party acquiring or proposing to acquire structured settlement payment rights directly or indirectly from a transferee.

(3) “Dependents” means a payee’s spouse and minor children and all other persons for whom the payee is legally obligated to provide support, including alimony.

(4) “Discounted present value” means the present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as published by the United States Internal Revenue Service.

(5) “Gross advance amount” means the sum payable to the payee or for the payee’s account as consideration for a transfer of structured settlement payment rights before any reductions for transfer expenses or other deductions to be made from such consideration.

(6) “Independent professional advice” means the advice of an attorney, certified public accountant, financial planner, actuary, or other appropriately qualified and licensed professional advisor:

(A) Who is engaged by a payee to render advice concerning the implications of a transfer of structured settlement payment rights;

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(B) Who is not in any manner affiliated with or compensated by the transferee; and

(C) Whose compensation for rendering such advice is not affected by whether such a transfer occurs.

(7) “Interested parties” means, with respect to any structured settlement, the payee, any beneficiary irrevocably designated under the annuity contract to receive payments following the payee’s death, the annuity issuer, the structured settlement obligor, a parent or other guardian or authorized legal representative of any interested party who is not legally competent, and any other party that has continuing rights or obligations under such structured settlement.

(8) “Net advance amount” means the gross advance amount less the aggregate amount of the actual and estimated transfer expenses required to be disclosed under section 103(5).

(9) “Payee” means an individual who receives tax-free payments under a structured settlement and proposes to make a transfer of structured settlement payment rights thereunder.

(10) “Periodic payments” means both recurring payments and scheduled future lump-sum payments under a structured settlement.

(11) “Qualified assignment agreement” means an agreement providing for a qualified assignment, as that term is defined in section 130(c) of the Internal Revenue Code of 1954, approved January 14, 1983 (96 Stat. 2605; 26 U.S.C. § 130).

(12) “Structured settlement” means an arrangement for periodic payment of damages for personal injury or sickness established by a settlement or judgment in resolution of a tort claim.

(13) “Structured settlement agreement” means an agreement, judgment, stipulation, or release embodying the terms of a structured settlement.

(14) “Structured settlement obligor” means the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement.

(15) “Structured settlement payment rights” means the rights to receive periodic payments, including lump-sum payments, under a structured settlement, whether from the structured settlement obligor or the annuity issuer, where:

(A) The payee is domiciled in the District; or

(B) The structured settlement agreement was approved by a court in the District.

(16) “Terms of the structured settlement” include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement, and any order or other approval of a court or other government authority that authorized or approved such structured settlement.

(17) “Transfer” means any sale, assignment, pledge, hypothecation, or other alienation or encumbrance of structured settlement payment rights made by a payee for

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consideration; provided, that the term “transfer” shall not include the creation or perfection of a security interest in structured settlement payment rights under a blanket security agreement entered into with an insured depository institution, in the absence of any action to redirect the structured settlement payments to such insured depository institution, or an agent or successor in interest thereof, or otherwise to enforce such blanket security interest against the structured settlement payment rights.

(18) “Transfer agreement” means the agreement providing for the transfer of structured settlement payment rights from a payee to a transferee.

(19) “Transfer expenses” means all expenses of a transfer that are required under the transfer agreement to be paid by the payee or deducted from the gross advance amount, including court filing fees, attorney’s fees, escrow fees, lien recordation fees, judgment and lien search fees, finders’ fees, commissions, and other payments to a broker or other intermediary; provided, that the term “transfer expenses” shall not include preexisting obligations of the payee payable for the payee’s account from the proceeds of a transfer.

(20) “Transferee” means a party acquiring or proposing to acquire structured settlement payment rights through a transfer.

Sec. 103. Required disclosures to payee.

Not fewer than 10 days before the date on which the payee signs a transfer agreement, the transferee shall provide to the payee a separate disclosure statement, in bold type no smaller than 14 points, setting forth:

(1) The amounts and due dates of the structured settlement payments to be transferred;

(2) The aggregate amount of such payments;

(3) The discounted present value of the payments to be transferred, which shall be identified as the “calculation of the current value of the transferred structured settlement payments under federal standards for valuing annuities”, and the amount of the applicable federal rate used in calculating the discounted present value;

(4) The gross advance amount;

(5) An itemized listing of all applicable transfer expenses, other than attorney’s fees and related disbursements payable in connection with the transferee’s application for approval of the transfer, and the transferee’s best estimate of the amount of any such fees and disbursements;

(6) The net advance amount;

(7) The effective annual interest rate, which shall be disclosed in a statement in the following form: “On the basis of the net amount that you will receive from us and the amounts and timing of the structured settlement payments that you are transferring to us, you will, in effect, be paying interest to us at a rate of _____ percent per year”;

(8) The amount of any penalties or liquidated damages payable by the payee in the event of a breach of the transfer agreement by the payee;

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(9) That the payee has the right to cancel the transfer agreement, without penalty or further obligation, at any time before entry of a final court order approving the transfer;

(10) That the purchase price offered by the transferee to the payee in return for the transfer of structured settlement payment rights is negotiable, that the payee may ask the transferee to pay an amount greater than the offered amount, and that the payee may request competing quotes from other potential transferees; and

(11) That the payee has the right to seek and receive independent professional advice regarding the proposed transfer and should consider doing so before agreeing to transfer any structured settlement payment rights.

Sec. 104. Procedure for approval of transfers.

(a) An application for approval of a transfer shall be made by the transferee and shall be brought in the Superior Court of the District of Columbia or in another court that approved the structured settlement agreement.

(b) The court shall hold a timely hearing on an application for approval of a transfer. The payee shall appear in person at the hearing unless the court determines that good cause exists to excuse the payee from appearing in person.

(c)(1) Any interested party is entitled to support, oppose, or otherwise respond to the transferee’s application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing.

(2) The deadline for interested parties to file written comments shall not be fewer than 15 days after service of the transferee’s notice to that interested party.

(d) Not fewer than 20 days before the scheduled hearing on any application for approval of a transfer, the transferee shall file with the court and serve on all interested parties a notice of the proposed transfer, and the application for the transfer’s approval, including:

(1) A copy of the transferee’s application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required by section 103;

(4) The payee’s name, age, place of domicile and the number and ages of the payee’s dependents;

(5) A summary of:

(A) Any prior transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee;

(B) Any proposed transfers by the payee to the transferee or an affiliate, or through the transferee or an affiliate to an assignee, for which the applications for approval were denied; and

(C) To the extent that such transfers or proposed transfers have been disclosed to the transferee by the payee or otherwise are actually known to the transferee:

(i) Any prior transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of the transferee or an affiliate; and

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(ii) Any proposed transfers by the payee to any person or entity other than the transferee or an affiliate or an assignee of a transferee or affiliate, applications for approval of which were denied;

(6) A statement describing what the transferee has done to identify and obtain information, disclosure of which is required by paragraph (5)(C) of this subsection;

(7) Notification that any interested party is entitled to support, oppose, or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the court or by participating in the hearing; and

(8) Notification of the time and place of the hearing and notification of the manner in which and the time by which written comments must be filed.

(e) For the purposes of this section, the term "affiliate" shall have the same meaning as provided in section 101(2) of the Securities Act of 2000, effective October 26, 2000 (D.C. Law 13-203; D.C. Official Code § 31-5601.01(2)).

Sec. 105. Approval of transfers by the court.

(a) No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee or assignee of structured settlement payment rights unless the transferee has provided the payee and other interested parties with the disclosures required by section 103, and the transfer has been approved in advance in a final order of a court of competent jurisdiction based on express findings that:

(1) The transfer is in the best interest of the payee, considering the welfare and support of the payee's dependents;

(2) The transfer does not contravene any applicable statute or the order of any court or other government authority;

(3) The payee has been advised in writing by the transferee to seek independent professional advice regarding the transfer and has either received such advice or knowingly waived in writing the opportunity to seek and receive such advice; and

(4) The transfer satisfies all other requirements of this title.

(b) In determining whether a transfer is in the best interest of the payee, considering the welfare and support of the payee's dependents, the court may consider any relevant information, including:

(1) The age and maturity of the payee;

(2) Whether the payee understands the terms and financial implications of the transfer;

(3) Whether the financial and other terms of the transfer are fair and reasonable;

(4) The payee's stated purposes for the transfer and whether the payee has considered other options for accomplishing those purposes;

(5) Changes in the payee's personal, family, or financial circumstances since the date of the structured settlement agreement;

(6) The summary filed with the court under section 104(d)(5); and

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(7) The remaining payments that the payee will receive under the structured settlement if the court approves the transfer.

Sec. 106. Effects of transfers.

Following a transfer under this title:

(1) The structured settlement obligor and the annuity issuer may rely on the court order approving the transfer in redirecting periodic payments to an assignee or transferee in accordance with the order approving the transfer and shall, as to all parties except the transferee or an assignee designated by the transferee, be discharged and released from any and all liability for the redirected periodic payments, regardless of whether any party to the transfer fails to comply with this title or with the court order approving the transfer;

(2) The transferee shall be liable to the structured settlement obligor and the annuity issuer:

(A) If the transfer contravenes the terms of the structured settlement for any taxes incurred by the structured settlement obligor or annuity issuer as a consequence of the transfer; and

(B) For any other liabilities or costs, including reasonable costs and attorney's fees, arising from compliance by the structured settlement obligor or annuity issuer with the court order approving the transfer or the failure of any party to the transfer to comply with this title;

(3) Neither the annuity issuer nor the structured settlement obligor shall be required to divide any periodic payment between the payee and any transferee or assignee or between 2 or more transferees or assignees; and

(4) Any further transfer by the payee may be made only after compliance with the requirements of this title.

Sec. 107. General provisions; construction.

(a) The provisions of this title may not be waived by a payee; provided, that this subsection shall not be construed to prohibit a payee from waiving the right to seek and receive independent professional advice, consistent with section 105(a)(3) of this title.

(b) Any transfer agreement entered into on or after the effective date of this act by a payee domiciled in the District shall provide that disputes under such transfer agreement, including any claim that the payee has breached the agreement, shall be determined in and under the laws of the District.

(c) No such transfer agreement shall authorize the transferee or any other party to confess judgment, or consent to entry of judgment, against the payee.

(d) No transfer shall extend to any payments that are life-contingent unless, before the date on which the payee signs the transfer agreement, the transferee has established and has agreed to maintain procedures reasonably satisfactory to the annuity issuer and the structured settlement obligor for:

(1) Periodically confirming the payee's survival; and

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(2) Giving the annuity issuer and the structured settlement obligor prompt written notice in the event of the payee's death.

(e) If a payee cancels a transfer agreement, or if the transfer agreement otherwise terminates, after an application for approval of a transfer has been filed and before it has been granted or denied, the transferee shall promptly request dismissal of the application.

(f) No payee who proposes to make a transfer shall incur any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on a failure of the transfer to satisfy the requirements of this title.

(g) Nothing in this title shall be construed to authorize any transfer in contravention of any law.

(h) The provisions of this title shall not be applicable to transfers of workers' compensation claims, awards, benefits, settlements or payments.

(i) Compliance with the requirements set forth in sections 103, 104, and 105 shall be solely the responsibility of the transferee in any transfer, and neither the structured settlement obligor nor the annuity issuer shall bear any responsibility for, or any liability arising from, noncompliance with such requirements.

TITLE II. AUTOMATIC RENEWAL PROTECTIONS

Sec. 201. Short title.

This title may be cited as the "Automatic Renewal Protections Act of 2018".

Sec. 202. Definitions.

For the purposes of this title, the term:

(1) "Clearly and conspicuously" means in larger type than the surrounding text, in contrasting type, font, or color to the surrounding text of the same size, or set off from the surrounding text of the same size by symbols or other marks, in a manner that calls attention to the language and is visually proximate to any request for the consumer's consent.

(2) "Consumer" means any person who seeks or acquires, by purchase or lease, any goods or services.

Sec. 203. Automatic renewal provisions; notice; penalties.

(a) A person who sells a good or service to a consumer pursuant to a contract that will automatically renew at the end of a definite term shall disclose the automatic renewal provision and cancellation procedure clearly and conspicuously in the contract.

(b)(1) A person who sells a good or service to a consumer pursuant to a contract with an initial term of 12 months or more, that will automatically renew for a term of one month or more unless the consumer cancels the contract, shall notify the consumer, in accordance with paragraph (2) of this subsection, of the first automatic renewal and annually thereafter, by:

(A) First-class mail;

(B) Email; or

ENROLLED ORIGINAL

(C) Another easily accessible form of communication, such as text message or a mobile phone application, if the consumer specifically authorizes the person to provide notice in such form.

(2) The notice required by paragraph (1) of this subsection shall:

(A) Be sent to the consumer no fewer than 30 days and no more than 60 days before the cancellation deadline for the first automatic renewal, and no fewer than 30 days and no more than 60 days before each year after the first automatic renewal;

(B) Disclose clearly and conspicuously:

(i) That unless the consumer cancels the contract, it will automatically renew;

(ii) The cost of the goods or services for the term of the renewal;

(iii) The deadline by which the consumer must cancel the contract to prevent automatic renewal; and

(iv) The methods by which the consumer may obtain details of the automatic renewal provision and cancellation procedures, including by contacting the seller at a specified telephone number, e-mail address, or by another easily accessible form of communication, such as within a mobile phone application; and

(C) If the notice is provided by email, include active weblinks to allow the consumer to cancel the automatic renewal.

(c) A person who sells a free trial of a good or service to a consumer with a term of one month or more, where the contract automatically renews at the end of the free trial period, shall:

(1) Notify the consumer of the automatic renewal between one and 7 days before the expiration of the free trial period; and

(2) Notwithstanding the consumer's consent to the free trial, obtain the consumer's affirmative consent to the automatic renewal before charging the consumer for the automatic renewal.

(d) A violation of this title shall render an automatic renewal provision void and terminate the contract at the end of the term in which the violation occurred, and shall also constitute a violation of the District of Columbia Consumer Protection Procedures Act, effective July 22, 1976 (D.C. Law 1-76; D.C. Official Code § 28-3901 *et seq.*), unless the person demonstrates that:

(1) The person has established and implemented written procedures to comply with this title;

(2) Any failure to comply with this title is the result of a good-faith mistake; and

(3) Where a good-faith mistake has caused a failure to comply with this title, the person provides the consumer with a credit for all amounts billed to or a refund for all amounts paid by the consumer due to the mistaken renewal.

Sec. 204. Exemptions.

This title shall not apply to:

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(1) An insurer regulated by the Department of Insurance, Securities, and Banking;

(2) A bank, trust company, savings and loan association, savings bank, or credit union licensed or organized under the laws of the District or any state of the United States, or any foreign bank maintaining a branch or agency licensed or organized under the laws of the District or any state of the United States, or any subsidiary or affiliate thereof;

(3) A person that provides a service regulated by the Public Service Commission, the Federal Communications Commission, or the Federal Energy Regulatory Commission; or

(4) A service contract, as that term is defined in section 2(10) of the Service Contract Regulation Act of 2018, enacted on November 13, 2018 (D.C. Act 22-517; 65 DCR 12963).

TITLE III. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 301. Applicability.

(a)(1) Title I shall not apply to any transfer agreement entered into before the effective date of this act.

(2) Title II shall not apply to a contract entered into or automatically renewed before the effective date of this act, but it shall apply to automatic renewals of such contracts that renew on or after the effective date of this act.

(b)(1) Title II shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

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

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

(B) The date of publication of the notice of the certification shall not affect the applicability of Title II.

Sec. 302. Fiscal impact statement.


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

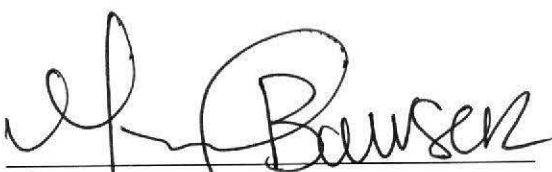
Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

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


Chairman
Council of the District of Columbia


Mayor
District of Columbia
APPROVED
January 15, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-559

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 15, 2019

To amend the Motor Vehicle Safety Responsibility Act of the District of Columbia to repeal provisions providing for the suspension of the license and registration, or, in the case of a nonresident, the operating privilege, of a person who fails to pay a civil judgment arising out of the person's ownership, maintenance, or use of a motor vehicle.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Driver's License Revocation Fairness Amendment Act of 2018".

Sec. 2. The Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.01 *et seq.*), is amended as follows:

- (a) Section 43 (D.C. Official Code § 50-1301.43) is repealed.
- (b) Section 44 (D.C. Official Code § 50-1301.44) is repealed.
- (c) Section 45 (D.C. Official Code § 50-1301.45) is repealed.
- (d) Section 46 (D.C. Official Code § 50-1301.46) is repealed.
- (e) Section 47 (D.C. Official Code § 50-1301.47) is repealed.
- (f) Section 48 (D.C. Official Code § 50-1301.48) is repealed.
- (g) Section 50(b) (D.C. Official Code § 50-1301.50(b)) is repealed.
- (h) Section 51 (D.C. Official Code § 50-1301.51) is repealed.
- (i) Section 67 (D.C. Official Code § 50-1301.67) is amended by striking the phrase "and shall suspend the license and registration pending the filing of such other proof." and inserting a period 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).

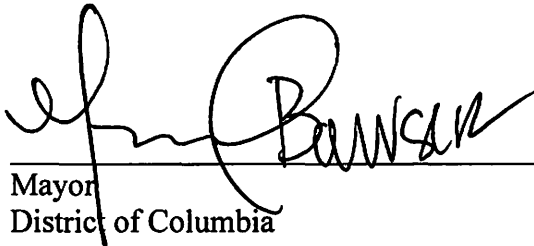
ENROLLED ORIGINAL

Sec. 4. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 15, 2019

ENROLLED ORIGINAL

AN ACT
D.C. ACT 22-560

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 15, 2019

To amend the Child Restraint Act of 1982 to provide that the operator of a motor vehicle may not transport a child under 2 years of age, who weighs less than 40 pounds or who measures less than 40 inches in length, unless the child is properly restrained in a rear-facing child restraint seat.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Rear-Facing Car Seat Safety Amendment Act of 2018”.

Sec. 2. Section 4(a) of the Child Restraint Act of 1982, effective March 10, 1983 (D.C. Law 4-194; D.C. Official Code § 50-1703(a)), is amended by striking the period and inserting the phrase “; provided, that, if the child weighs less than 40 pounds or measures less than 40 inches in length, and is under 2 years of age, the child shall be properly restrained in a rear-facing child restraint seat.” 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.

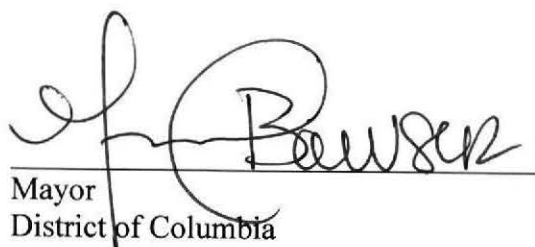
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
January 15, 2019

ENROLLED ORIGINAL

AN ACT
D.C. ACT 22-561

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 15, 2019

To require the Department of Health, in consultation with residents receiving long-term care services, providers of long-term care services, community advocates, and any other appropriate District agencies, to conduct a study to evaluate the availability of affordable long-term care facilities and long-term care services in the District.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Study of Long-Term Care Facilities and Long-Term Care Services Act of 2018”.

Sec. 2. Definitions.

For the purposes of this act, the term:

- (1) “Department” means the Department of Health.
- (2) “Long-term care facility” shall have the same meaning as provided in section 101(7) of the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(7)).
- (3) “Long-term care services” shall have the same meaning as provided in section 101(7A) of the District of Columbia Long-Term Care Ombudsman Program Act of 1988, effective March 16, 1989 (D.C. Law 7-218; D.C. Official Code § 7-701.01(7A)).

Sec. 3. Study of long-term care facilities and long-term care services.

(a) The Department, in consultation with residents receiving long-term care services, providers of long-term care services, community advocates, and any other appropriate District agencies, shall conduct a study using a community-based participatory research framework to evaluate the availability of affordable long-term care facilities and long-term care services in the District. The study shall:

- (1) Review the availability of affordable long-term care facilities;
- (2) Evaluate the number of beds available at long-term care facilities;
- (3) Identify the payment sources accepted by long-term care facilities for the provision of long-term care services;
- (4) Develop an estimate of the number of District residents who receive long-term care services from long-term care facilities located in Virginia and Maryland;

ENROLLED ORIGINAL

(5) Assess the availability of long-term care services provided to residents in the District;

(6) Identify the number of residents receiving long-term care services in the District who transitioned in the preceding year to a long-term care facility either within or outside of the District;

(7) Develop an estimate of the number of District residents who may require long-term care services over the next 10-year period; and

(8) Recommend resources to ensure residents have access to affordable long-term care services in the District.

(b) By February 1, 2019, the Department shall submit the study required pursuant to subsection (a) of this section to the Council.

Sec. 4. Applicability.

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

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

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

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

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

ENROLLED ORIGINAL

provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 15, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 22-562

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 15, 2019

To amend the Compulsory/No Fault Motor Vehicle Insurance Act of 1982 to provide that an Insurance Identification Card includes an electronic image of an Insurance Identification Card that is displayed on a cellular telephone or other portable electronic device; to amend the Vehicle Insurance Enforcement Amendment Act of 2006 to provide that proof of insurance includes an electronic image of proof of insurance that is displayed on a cellular telephone or other portable electronic device; and to amend the District of Columbia Revenue Act of 1937 to provide that a registration certificate includes an electronic image of a registration certificate that is displayed on a cellular telephone or other portable electronic device.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Electronic Proof of Motor Vehicle Insurance and Registration Amendment Act of 2018”.

Sec. 2. The Compulsory/No-Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2401 *et seq.*), is amended as follows:

(a) Section 7(a)(2A) (D.C. Official Code § 31-2406(a)(2A)) is amended by striking the phrase “Card must be carried” and inserting the phrase “Card, or an electronic image of an Insurance Identification Card that can be displayed on a cellular telephone or other portable electronic device, must be carried” in its place.

(b) Section 15 (D.C. Official Code § 31-2413) is amended by adding a new subsection (a-2) to read as follows:

“(a-2)(1) For the purposes of subsection (a)(7) of this section, the term “Insurance Identification Card” includes an electronic image of an Insurance Identification Card that is displayed on a cellular telephone or other portable electronic device.

“(2)(A) The presentation of an electronic image of an Insurance Identification Card on a cellular telephone or other portable electronic device shall not constitute consent for a law enforcement officer to access any other content on the cellular telephone or other portable electronic device.

ENROLLED ORIGINAL

“(B) A law enforcement officer presented with an electronic image of an Insurance Identification Card on a cellular telephone or other portable electronic device shall be immune from liability for damage to or loss of the cellular telephone or other portable electronic device; provided, that no immunity shall extend to recklessness or intentional misconduct.”.

Sec. 3. Section 102 of the Vehicle Insurance Enforcement Amendment Act of 2006, effective June 8, 2006 (D.C. Law 16-117; D.C. Official Code § 5-114.02), is amended by adding a new subsection (b-1) to read as follows:

“(b-1)(1) For the purposes of subsections (a) and (b) of this section, the term “proof of insurance” includes an electronic image of proof of insurance that is displayed on a cellular telephone or other portable electronic device.

“(2)(A) The presentation of an electronic image of proof of insurance on a cellular telephone or other portable electronic device shall not constitute consent for a law enforcement officer to access any other content on the cellular telephone or other portable electronic device.

“(B) A law enforcement officer presented with an electronic image of proof of insurance on a cellular telephone or other portable electronic device shall be immune from liability for damage to or loss of the cellular telephone or other portable electronic device; provided, that no immunity shall extend to recklessness or intentional misconduct.”.

Sec. 4. Section 4 of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 680; D.C. Official Code § 50-1501.04), is amended by adding a new subsection (a-1) to read as follows:

“(a-1)(1) For the purposes of subsection (a)(1)(C) of this section, the term “registration certificate” includes an electronic image of a registration certificate that is displayed on a cellular telephone or other portable electronic device.

“(2)(A) The presentation of an electronic image of a registration certificate on a cellular telephone or other portable electronic device shall not constitute consent for a law enforcement officer to access any other content on the cellular telephone or other portable electronic device.

“(B) A law enforcement officer presented with an electronic image of a registration certificate on a cellular telephone or other portable electronic device shall be immune from liability for damage to or loss of the cellular telephone or other portable electronic device; provided, that no immunity shall extend to recklessness or intentional misconduct.”.

Sec. 5. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 6. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
January 15, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-1

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

JANUARY 11, 2019

To amend, on an emergency basis, An Act To establish a code of law for the District of Columbia to authorize the Mayor to issue marriage licenses and authorize temporary marriage officiants during a period of time when the Clerk of the Superior Court of the District of Columbia is not issuing marriage licenses because of a federal government shutdown.

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

Sec. 2. Chapter Forty-Three of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1391; D.C. Official Code § 46-401 *et seq.*), is amended as follows:

(a) Section 1288(a)(4) (D.C. Official Code § 46-406(a)(4)) is amended by striking the phrase “authorized by the Clerk” and inserting the phrase “authorized by the Mayor or the Clerk” in its place.

(b) Section 1291 (D.C. Official Code § 46-410) is amended as follows:

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

“Sec. 1291. Duty of the Mayor or Clerk.”

(2) The text is amended by striking the phrase “the Clerk” both times it appears and inserting the phrase “the Mayor or the Clerk” in its place.

(c) Section 1292 (D.C. Official Code § 46-411) is amended by striking the word “Clerk” wherever it appears and inserting the phrase “Mayor or Clerk” in its place.

(d) Section 1293 (D.C. Official Code § 46-412) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) The newly designated subsection (a) is amended by striking the phrase “following form:” and inserting the phrase “following form (except when such a license is issued by the Mayor, in which case a form consistent with the provisions of subsection (b) of this section shall be used):” in its place.

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

ENROLLED ORIGINAL

“(b)(1) The Mayor shall create a form for a license to perform a marriage ceremony that is consistent with the form set forth in subsection (a) of this section except that such a form shall be modified by replacing the references to “Clerk’s Office of the Superior Court of the District of Columbia”, “Court”, “Clerk”, “Assistant Clerk”, and “Clerk of the Superior Court of the District of Columbia” with appropriate references to the Mayor or to an office or officer within the executive branch of the government of the District of Columbia; provided, that the form may require that the license be returned to one or either of:

“(A) The Clerk’s Office of the Superior Court of the District of Columbia;

or

“(B) The Mayor or to an office or officer within the executive branch of the government of the District of Columbia.

“(2) The Mayor shall issue the form for a license described in paragraph (1) of this subsection to persons authorized by section 1288 to perform a marriage ceremony when authorized to issue a license pursuant to the Let Our Vows Endure Emergency Amendment Act of 2019, passed on emergency basis on January 8, 2019 (Enrolled version of Bill 23-13).”.

(e) Section 1295 (D.C. Official Code § 46-414) is amended as follows:

(1) The existing text is designated as subsection (a).

(2) New subsections (b) and (c) are added to read as follows:

“(b)(1) The Mayor shall maintain:

“(A) A true and accurate copy of each marriage license issued by the Mayor affixed with a seal;

“(B) Each marriage license certificate returned to the Mayor by a minister, magistrate, or other person authorized by section 1288 to perform or witness a marriage ceremony;

“(C) A record book filled with the names and residences of the parties for whose marriage any license has been issued by the Mayor; and

“(D) A record book filled with the names of each minister, magistrate, or other person authorized by section 1288 to perform or witness a marriage ceremony (“officiant”) who has returned a marriage license certificate to the Mayor and the license number of each marriage license certificate returned by the officiant.

“(2) A copy of each license and marriage license certificate so kept and recorded, certified by the Mayor, shall be competent evidence of the marriage.

“(3) The Mayor shall number each marriage license consecutively, from one upward, and with an alphabetical prefix to such number to distinguish each license issued by the Mayor from licenses issued by the Clerk of the Superior Court of the District of Columbia.

“(c)(1) Within 5 business days after a marriage license is issued by the Mayor or a marriage license certificate is returned to the Mayor by a minister, magistrate, or other person authorized by section 1288 to perform or witness a marriage ceremony, the Mayor shall transmit

ENROLLED ORIGINAL

to the Clerk of the Superior Court of the District of Columbia a true and accurate copy of the marriage license or marriage license certificate.

“(2) A copy of each license and marriage license certificate so transmitted, as maintained and certified by the Clerk, shall be competent evidence of the marriage.”.

(f) A new section 1297a is added to read as follows:

“Sec. 1297a. Applicability of authority of Mayor to issue marriage licenses.

“The authority of the Mayor under this chapter to issue marriage licenses and authorize officiants shall apply only during a period of time when the Clerk of the Superior Court of the District of Columbia is not issuing marriage licenses because of a total or partial federal government shutdown.”.

Sec. 3. Fiscal impact statement.

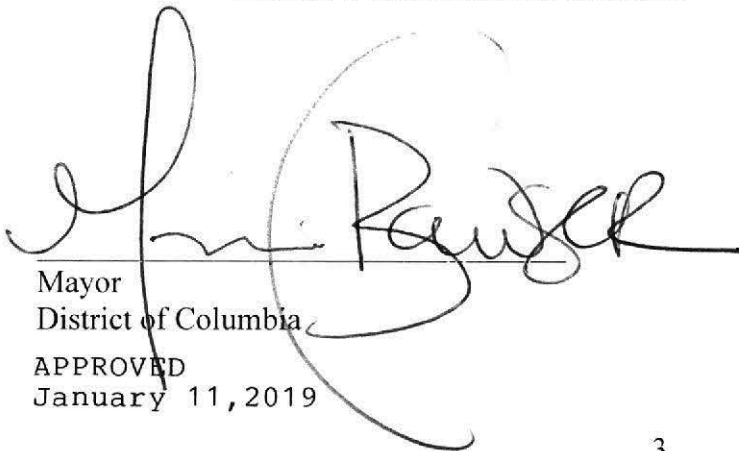
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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 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
January 11, 2019

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-1

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To honor and recognize the DC Central Kitchen on its 30th anniversary and to declare January 20, 2019, as “DC Central Kitchen Day” in the District of Columbia.

WHEREAS, DC Central Kitchen was founded in 1989 by Robert Egger with the belief that food alone would never end hunger, but that food could be a powerful tool for strengthening bodies, empowering minds, and building communities;

WHEREAS, DC Central Kitchen’s Culinary Job Training Program has empowered residents with histories of homelessness, addiction, incarceration, trauma, and chronic unemployment to pursue meaningful careers in our community with an 87% job placement rate;

WHEREAS, 1,800 men and women enrolled in 135 classes have graduated from the Culinary Job Training Program;

WHEREAS, DC Central Kitchen has prevented the waste of 32 million pounds of perfectly safe, nutritious food and creatively transformed it into balanced meals for our community;

WHEREAS, DC Central Kitchen has prepared 36 million nutritious, dignified meals for District of Columbia shelters, front-line nonprofits, and schools;

WHEREAS, DC Central Kitchen has never missed a day of meal service in its 10,957 days of continuous operation;

WHEREAS, DC Central Kitchen has served 6.7 million scratch-cooked, locally sourced meals to District schools since 2008, winning the nationally coveted Golden Carrot Award in 2015;

WHEREAS, DC Central Kitchen’s Healthy Corners program has equipped more than 60 small businesses in neighborhoods without easy access to grocery stores to stock and sell nearly one million units of fresh, nutritious, affordable food to District residents;

ENROLLED ORIGINAL

WHEREAS, DC Central Kitchen models the values of a mission-driven social enterprise by paying all employees a living wage, providing them with comprehensive health, retirement, and paid leave benefits, and sustainably earning more than half its annual budget through food-service contracts;

WHEREAS, DC Central Kitchen's Campus Kitchens Project has helped student leaders replicate our model on 65 college and high school campuses, including 2 in the District of Columbia, prevented the waste of another 8 million pounds of nutritious food, and collectively served 3.3 million meals to food-insecure Americans;

WHEREAS, the success of DC Central Kitchen's model has inspired the launch of more than 80 like-minded culinary training programs and social enterprises across the United States;

WHEREAS, DC Central Kitchen now creates \$67 million of measurable economic and social returns in the District of Columbia each year;

WHEREAS, DC Central Kitchen's successes have been recognized by *The Atlantic*, *The Chronicle of Philanthropy*, *CNN*, *MSNBC*, *National Geographic*, *National Public Radio*, *Newsweek*, *The New York Times*, *PBS NewsHour*, *Nightline*, *No Reservations*, *The Wall Street Journal*, *The Washington Post*, and the documentary *The Liberation*; and

WHEREAS, DC Central Kitchen is celebrating its 30th anniversary in 2019.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "DC Central Kitchen 30th Anniversary Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia recognizes and honors DC Central Kitchen for its 30 years of outstanding service to the District of Columbia and its residents and its efforts to strengthen our economy, broaden prosperity, and defeat hunger and poverty in the metropolitan area, and declares January 20, 2019, as "DC Central Kitchen Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To celebrate the ceremony of the District of Columbia's famous groundhog weatherman, Potomac Phil, as he delivers his unprecedented forecast on February 2, 2019, and to declare February 2, 2019, as "DC Groundhog Day" in the District of Columbia.

WHEREAS, District of Columbia residents and visitors will be enlightened with the knowledge of Potomac Phil's internal power of weather prediction;

WHEREAS, on February 2, 2019, citizens of the District of Columbia will be educated on the American folklore tradition of Groundhog Day by DuPont Festival; and

WHEREAS, hundreds of individuals in and around DuPont Circle during the morning of February 2, 2019, will be elucidated by Potomac Phil.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "D.C. Groundhog Day Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia hereby declares February 2, 2019, as "D.C. Groundhog Day" in the Nation's Capital.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-3

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To recognize the Chinese community in the District of Columbia for its generous and valued contributions to the social, cultural, and political life of the city and to honor the Chinese Consolidated Benevolent Association for its sponsorship of the parade to celebrate the Year of the Pig.

WHEREAS, Chinese people have lived in the District of Columbia as a community since 1884, when nearly 100 immigrants settled near 3rd Street and Pennsylvania Avenue, N.W., and remained until 1935, when the settlement area moved to its current location along H Street, N.W., which is commonly known as “Chinatown”;

WHEREAS, today there are more than 40 Chinese businesses and some 1,000 Chinese residents in Chinatown, which serves as the center of health care, dining, and shopping for the 40,000 Chinese residents in the Washington, D.C. metropolitan area;

WHEREAS, Chinatown is a unique cultural and social center for the District, providing visitors with a taste of Chinese culture;

WHEREAS, the District of Columbia’s commitment to the Chinese community continues as the government strives to improve services for the Chinese community through the establishment of the Office on Asian and Pacific Islander Affairs, the Metropolitan Police Department’s Asian Liaison Unit in Chinatown, and the Chinatown Community Cultural Center, which we salute;

WHEREAS, thousands of District of Columbia residents will gather along H Street and 7th Street, N.W., on Sunday, February 10, 2019, to enjoy the dragon-led parade and celebrate the Chinese Lunar New Year; and

WHEREAS, the annual anniversary celebration and parade for the Chinese Lunar New Year, sponsored by the Chinese Consolidated Benevolent Association, is nationally known as one of the finest celebrations of color, art, and pageantry.

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Chinese Lunar New Year 4717, Year of the Pig Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia salutes the Chinese community of the District of Columbia and the Chinese Consolidated Benevolent Association for its many contributions to the social, economic, cultural, and political life of the city, honors the Chinese Consolidated Benevolent Association and the Parade Committee for sponsoring the parade to celebrate the Chinese New Year, and declares February 10, 2019, as "Chinese Lunar New Year 4717, Year of the Pig Day" in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-4

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To recognize DeMarcco Hellams for his academic success and many athletic accomplishments and honors.

WHEREAS, DeMarcco Hellams is a native Washingtonian and Ward 7 resident who attended District of Columbia public and public charter schools and is currently a senior honor roll student at DeMatha Catholic High School, where he has gained a keen interest in British Literature and Latin;

WHEREAS, DeMarcco Hellams learned the fundamentals of football at 5 years of age from his father DeLante Hellams, Sr. and his uncle Eric Hellams, and began his football journey with Watkins Hornets Youth Football and the Pop Warner Organization;

WHEREAS, DeMarcco Hellams is a member and 2018 season captain of the nationally ranked Washington Catholic Athletic Conference (“WCAC”) DeMatha Stags varsity football program, for which he played as a freshman wide receiver and received 2 championship rings, in both the 2016 and 2017 seasons;

WHEREAS, DeMarcco Hellams has prodigious talent playing both offensive and defensive positions that has earned him awards such as being named to the first class of the 2018 Pro Football Hall of Fame Academy for High School, participant in the 2019 Polynesian All-American Bowl in Hawaii, 2018 Nike Opening Finalist, 1st Team WCAC 2018 Defense, 1st Team MaxPreps All American 2018 Defense, 1st Team All-USA Football Defense 2018, 2017 WCAC All Conference 1st Team (Offense-Wide Receiver) and 2016 WCAC All Conference 2nd Team (Defense-Defensive Back), and Washington Post Player of the Year 2018 (Offense);

WHEREAS, DeMarcco Hellams received over 20 offers from National Collegiate Athletic Association Division I schools and has committed to continue his educational and athletic career at The University of Alabama;

WHEREAS, DeMarcco Hellams enjoys spending his time with family and friends and visiting and encouraging sick children at hospitals locally and nationally, and plans to continue this tradition for years to come;

ENROLLED ORIGINAL

WHEREAS, DeMarcco Hellams exerts a positive influence on younger student athletes, sharing with them the hard work, consistency, and perseverance that are the keys to his success and encouraging them to stay patient and keep the faith; and

WHEREAS, DeMarcco Hellams hopes to channel his football passion into a successful professional career in the National Football League.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “DeMarcco Hellams Recognition Resolution of 2019”.

Sec. 2. The Council of the District of Columbia recognizes and congratulates DeMarcco Hellams for his exceptional achievements as a student, athlete, and citizen.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-5

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To recognize Principal Maisha Riddlesprigger for her contributions and services to the District of Columbia Public Schools and Ward 8 community and to commemorate her selection as District of Columbia Public Schools Principal of the Year.

WHEREAS, Maisha Riddlesprigger has been an extraordinary leader and administrator in the District of Columbia Public Schools for 9 years;

WHEREAS, Principal Riddlesprigger has worked with staff, parents, community members, and city leaders to make vast improvements at Ketcham Elementary School (“Ketcham”);

WHEREAS, Principal Riddlesprigger immediately created an entry plan and interviewed staff, parents, community members, and students to determine the best strategy to improve Ketcham;

WHEREAS, Principal Riddlesprigger worked with her staff to develop a clear mission statement and action plan and toured the community to introduce herself to parents and engage the community;

WHEREAS, Principal Riddlesprigger has consistently poured love and dedication into our schools and our community;

WHEREAS, during Principal Riddlesprigger’s time at Ketcham, her team has made significant progress with students who are considered the furthest from opportunity;

WHEREAS, since 2015, the number of Ketcham students who are proficient in math has nearly tripled and the number of students who are proficient in English language arts has doubled on the Partnership for Assessment of Readiness for College and Careers (“PARCC”);

WHEREAS, over the past 5 years, the number of students scoring a one or 2 (out of a possible 5) on PARCC decreased by 40% in math and 17% in reading;

ENROLLED ORIGINAL

WHEREAS, math proficiency rates at Ketcham are now similar to more affluent schools located in Northwest;

WHEREAS, student satisfaction rates increased from 73% to 96%;

WHEREAS, Ketcham was recognized by EmpowerK12 as a Bold Performance and Improvement School for exceeding annual growth and performance expectations;

WHEREAS, Principal Riddlesprigger has worked tirelessly to ensure that all of her students have the option to choose the life or academic path they choose in life;

WHEREAS, for her efforts, Principal Riddlesprigger was named the 2019 Principal of the Year by the District of Columbia Public Schools;

WHEREAS, Principal Riddlesprigger continues to serve as an example and as an inspiration to the next generation of District of Columbia Public Schools leaders; and

WHEREAS, Principal Riddlesprigger exemplifies excellence in educational and community leadership and has a proven track record of success in improving District of Columbia schools.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Principal Maisha Riddlesprigger Recognition Resolution of 2019”.

Sec. 2. The Council of the District of Columbia recognizes and celebrates the accomplishments of Maisha Riddlesprigger.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-6

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 8, 2019

To recognize Religious Freedom Day, and to declare January 16, 2019, as “Religious Freedom Day” in the District of Columbia.

WHEREAS, the Virginia Statute for Religious Freedom (the “Statute”), which was written by Thomas Jefferson and championed by James Madison and served as the forerunner to the approach to religion and government taken by the Framers of the Constitution in 1787, was enacted on January 16, 1786;

WHEREAS, religious freedom is a fundamental American and human right and a cornerstone of democracy, a right for all rather than a privilege for the few, and this fundamental right applies to people of all and of no religious affiliations or beliefs;

WHEREAS, the Statute insists on equality as a guiding and governing principle, specifying that one’s religious identity should be neither an advantage nor a disadvantage under the law;

WHEREAS, the Statute declared that all people “...shall be free to profess, and by argument to maintain, their opinions in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities,” and that Thomas Jefferson later said that religious freedom encompasses “the Jew and the Gentile, the Christian and the [Muslim], the [Hindu], and infidel of every denomination;”

WHEREAS, these principles are not only foundational, but remain essential to the health and future of our democracy, and the government may not favor one religion over another, or over nonreligion, without fatally undermining religious freedom;

WHEREAS, these principles should guide and inform judicial decisions, legislation, and public policy-making at all levels of government;

ENROLLED ORIGINAL

WHEREAS, in 1992, Congress designated January 16th as Religious Freedom Day — to celebrate the enactment of the Statute, stipulating only that it be commemorated by a presidential proclamation; and

WHEREAS, the Statute was central in shaping one of the highest aspirations of the American experiment: religious freedom.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Religious Freedom Day Recognition Resolution of 2019”.

Sec. 2. The Council of the District of Columbia recognizes the religious freedom of all residents of the District of Columbia, commemorates the enactment of the Virginia Statute for Religious Freedom on January 16, 1786, and declares January 16, 2019, as “Religious Freedom Day” in the District of Columbia.

Sec. 3. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.

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

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

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

COUNCIL OF THE DISTRICT OF COLUMBIA

PROPOSED LEGISLATION

BILLS

- | | |
|--------|--|
| B23-26 | Bike Valet Grant Program Act of 2019

Intro. 1-8-19 by Councilmembers Evans and Allen and referred to the Committee on Government Operations with comments from the Committee on Transportation and the Environment |
| <hr/> | |
| B23-27 | Theaters Summer Garden and Sidewalk Café Amendment Act of 2019

Intro. 1-8-19 by Councilmembers Evans, Grosso, Bonds, Cheh, Allen, and Chairman Mendelson and referred to the Committee on Business and Economic Development |
| <hr/> | |
| B23-28 | The Foreign Mission Trash Collection Amendment Act of 2019

Intro. 1-8-19 by Councilmembers Evans, R. White, Todd, Bonds, Cheh, and Grosso and referred to the Committee on Transportation and the Environment |
| <hr/> | |
| B23-29 | Residential Real Property Tax Relief Act of 2019

Intro. 1-8-19 by Councilmembers Evans, R. White, Todd, Bonds, Cheh, and Grosso and referred to the Committee on Finance and Revenue |
| <hr/> | |

- B23-30 Amplified Noise Amendment Act of 2019
Intro. 1-8-19 by Councilmembers Evans, Cheh, and Bonds and referred to the Committee of the Whole
-
- B23-31 Paid Leave to Vote Amendment Act of 2019
Intro. 1-8-19 by Councilmembers Cheh, Allen, Nadeau, Gray, Grosso, Silverman, Todd, Bonds, T. White, R. White, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety
-
- B23-32 Delegate Voting Rights Amendment Act of 2019
Intro. 1-8-19 by Councilmembers Cheh, Todd, Bonds, Grosso, Allen, Nadeau, T. White, and Gray and referred to the Committee of the Whole
-
- B23-33 Temporary Protection Order Firearm Relinquishment Amendment Act of 2019
Intro. 1-8-19 by Councilmembers Cheh, Bonds, Silverman, and Nadeau and referred to the Committee on Judiciary and Public Safety
-
- B23-34 Elephant Ivory and Rhinoceros Horn Trafficking Prohibition Act of 2019
Intro. 1-8-19 by Councilmembers Cheh, Bonds, Silverman, and Nadeau and referred to the Committee on Judiciary and Public Safety
-
- B23-35 False Claims Amendment Act of 2019
Intro. 1-8-19 by Councilmember Cheh and referred to the Committee of the Whole
-
- B23-36 Pre-exposure Prophylaxis Insurance Discrimination Amendment Act of 2019
Intro. 1-8-19 by Councilmembers Cheh, Gray, Bonds, R. White, Nadeau, Allen, and Chairman Mendelson and referred to the Committee on Business and Economic Development
-

- B23-37 Care for LGBTQ Seniors and Seniors with HIV Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Cheh, Bonds, Nadeau, Gray, T. White, Allen, McDuffie, Todd, Silverman, and R. White and referred to the Committee on Government Operations with comments from the Committee on Housing and Neighborhood Revitalization
-
- B23-38 Racial Equity Achieves Results Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers McDuffie, Nadeau, Bonds, T. White, Gray, Evans, Grosso, Allen, R. White, Todd, Silverman, and Chairman Mendelson and referred sequentially to the Committee on Government Operations and the Committee of the Whole
-
- B23-39 Special Education Rights for Youth Defendants Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Grosso, Bonds, Cheh, Gray, Nadeau, Allen, Evans, McDuffie, and R. White and referred to the Committee on Judiciary and Public Safety
-
- B23-40 Record Sealing Modernization Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Grosso, McDuffie, T. White, Allen, Bonds, and R. White and referred to the Committee on Judiciary and Public Safety
-
- B23-41 Taxpayer Advocate Act of 2019
- Intro. 1-8-19 by Councilmembers Silverman, Todd, R. White, Bonds, Grosso, Nadeau, Allen, and Cheh and referred to the Committee on Finance and Revenue
-
- B23-42 Substandard Construction Relief Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Silverman, Bonds, Evans, Cheh, T. White, Todd, Nadeau, R. White, McDuffie, Gray, Allen, and Chairman Mendelson and referred to the Committee of the Whole
-

B23-43	<p>Rainy Day Refund Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Nadeau, Silverman, Evans, and Grosso and referred to the Committee on Finance and Revenue</p> <hr/>
B23-44	<p>Alimony Justice for Injured Spouses Amendment Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Nadeau, Grosso, Bonds, Cheh, Gray, Evans, and R. White and referred to the Committee on Judiciary and Public Safety</p> <hr/>
B23-45	<p>Bedbug Control Act of 2019</p> <p>Intro. 1-8-19 by Councilmember Nadeau and referred sequentially to the Committee on Health and the Committee of the Whole</p> <hr/>
B23-46	<p>At-Risk School Funding Transparency Amendment Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Allen, R. White, Cheh, Nadeau, T. White, and Bonds and referred sequentially to the Committee on Education and the Committee of the Whole</p> <hr/>
B23-47	<p>Sexual Misconduct Sunshine Amendment Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Allen, Bonds, Evans, Grosso, Nadeau, R. White, Silverman, Cheh, Gray, McDuffie, Todd, T. White, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety</p> <hr/>
B23-48	<p>Housing Conversion and Eviction Clarification Amendment Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Allen, T. White, Bonds, Cheh, and Chairman Mendelson and referred to the Committee on Housing and Neighborhood Revitalization</p> <hr/>
B23-49	<p>Classroom Innovation Grant Program Act of 2019</p> <p>Intro. 1-8-19 by Councilmembers Todd, Cheh, and R. White and referred sequentially to the Committee on Education and the Committee of the Whole</p> <hr/>

- B23-50 District Promise Scholarship Program Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Todd, Nadeau, R. White, T. White, Bonds, McDuffie, and Grosso and referred to the Committee of the Whole
-
- B23-51 Dual Language Immersion Accelerator Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Todd, McDuffie, R. White, Bonds, Cheh, Nadeau, Allen, and Grosso and referred sequentially to the Committee on Education and the Committee of the Whole
-
- B23-52 Micro-Business Startup Fee Relief Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers R. White, Bonds, Silverman, Allen, Gray, McDuffie, Grosso, Nadeau, Todd, and T. White and referred to the Committee of the Whole
-
- B23-53 Babies Safe at Home Act of 2019
- Intro. 1-8-19 by Councilmembers R. White, McDuffie, Grosso, Nadeau, T. White, Evans, Bonds, Silverman, and Allen and referred to the Committee on Housing and Neighborhood Revitalization with comments from the Committee on Human Services
-
- B23-54 Opioid Overdose Prevention Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, Allen, Cheh, Bonds, T. White, Grosso, R. White, Evans, Nadeau, Silverman, and Chairman Mendelson and referred to the Committee on Judiciary and Public Safety with comments from the Committee on Health
-
- B23-55 Tax on Wellness Repeal Act of 2019
- Intro. 1-8-19 by Councilmembers Gray and Evans and referred to the Committee on Finance and Revenue
-

- B23-56 Senior Citizen Real Property Tax Relief Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, Cheh, T. White, Bonds, Grosso, Evans, McDuffie, R. White, Todd, Nadeau, and Allen and referred to the Committee on Finance and Revenue
-
- B23-57 D.C. Statehood Federal District Electoral College Clarification Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, Bonds, Cheh, and Evans and referred to the Committee of the Whole
-
- B23-58 Police Officer Family College Tuition Voucher Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, Cheh, R. White, and Nadeau and referred to the Committee of the Whole
-
- B23-59 First Responder Income Tax Exclusion Amendment Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, Bonds, R. White, McDuffie, Evans, and Todd and referred to the Committee on Finance and Revenue with comments from the Committee on Judiciary and Public Safety
-
- B23-60 Pension Exclusion Restoration and Expansion Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, T. White, R. White, Cheh, Evans, Bonds, Todd, and Nadeau and referred to the Committee on Finance and Revenue
-
- B23-61 Senior Citizen Tax Cap Transfer Act of 2019
- Intro. 1-8-19 by Councilmembers Gray, T. White, R. White, Todd, Cheh, Evans, McDuffie, Bonds, and Nadeau and referred to the Committee on Finance and Revenue
-
- B23-62 Executive Branch Budget Implementation Flexibility Amendment Act of 2019
- Intro. 1-8-19 by Councilmember Gray and referred to the Committee of the Whole
-

- B23-63 Joy Evans Therapeutic Recreation Center Designation Act of 2019
Intro. 1-8-19 by Councilmembers Gray, Bonds, Grosso, R. White, Allen, Nadeau, Silverman, and McDuffie and referred to the Committee of the Whole
-
- B23-64 Commission on Literacy Act of 2019
Intro. 1-8-19 by Councilmembers T. White, Nadeau, McDuffie, Gray, R. White, Grosso, Todd, Bonds, Cheh, Allen, and Chairman Mendelson and referred sequentially to the Committee on Education and the Committee of the Whole
-
- B23-65 Youth Mentoring Initiative Establishment Act of 2019
Intro. 1-8-19 by Councilmembers T. White, Bonds, Cheh, Gray, Evans, Silverman, R. White, McDuffie, and Allen and referred sequentially to the Committee on Education and the Committee of the Whole
-
- B23-66 Nonprofit Incubator Program Establishment Act of 2019
Intro. 1-8-19 by Councilmembers T. White, Silverman, R. White, Gray, Nadeau, Evans, Cheh, Bonds, and Allen and referred to the Committee on Business and Economic Development
-
- B23-67 Sexual Assault Victims' Rights Amendment Act of 2019
Intro. 1-8-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety
-
- B23-68 Bishop Sherman S. Howard Way Designation Act of 2019
Intro. 1-8-19 by Councilmember Todd and referred to the Committee of the Whole
-
- B23-69 D.C. Official Code Title 49 Enactment Act of 2019
Intro. 1-9-19 by Chairman Mendelson and referred to the Committee of the Whole
-

B23-70 Special Event Safety Certification Amendment Act of 2019
Intro. 1-9-19 by Chairman Mendelson and Councilmembers Bonds, Grosso,
and Silverman and referred to the Committee of the Whole

B23-71 Uniform Power of Attorney Amendment Act of 2019
Intro. 1-10-19 by Chairman Mendelson and Councilmembers McDuffie and
Allen and referred to the Committee on Judiciary and Public Safety

PROPOSED RESOLUTIONS

PR23-72 Sense of the Council in Opposition to the Federal Government Shutdown
Resolution of 2019
Intro. 1-8-19 by Councilmembers McDuffie, Grosso, Cheh, Todd, Evans, R.
White, T. White, Nadeau, Allen, Silverman, Bonds, Gray, and Chairman
Mendelson and Retained by the Council

PR23-73 District of Columbia Retirement Board Michael J. Warren Reappointment
Resolution of 2019
Intro. 1-7-19 by Chairman Mendelson and referred to the Committee of the
Whole

PR23-74 Commission on the Arts and Humanities Derek Younger Confirmation
Resolution of 2019
Intro. 1-11-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Finance and Revenue

PR23-75 Interagency Council on Homelessness Sue Ann Marshall Confirmation
Resolution of 2019
Intro. 1-11-19 by Chairman Mendelson at the request of the Mayor and referred
to the Committee on Human Services

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

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

**ANNOUNCES A PUBLIC OVERSIGHT ROUNDTABLE ON
Implementation of Law 21-264, The Universal Paid Leave Act**

**Tuesday, January 29, 2019, 1:30 pm
Hearing Room 500 John A. Wilson Building
1350 Pennsylvania Avenue, NW
Washington, DC 20004**

Councilmember Elissa Silverman, Chairperson of the Committee on Labor and Workforce Development, announces a public oversight roundtable before the Committee on implementation of the Universal Paid Leave Amendment Act of 2016 (L21-264). The law establishes a paid leave system to provide partial wage replacement for District residents in need of leave from work due to serious family illness, personal medical needs, or to care for a new child. Previous oversight roundtables were held on November 20, 2017; January 31, 2018; July 11, 2018; during the Department of Employment Services (DOES) FY19 budget oversight hearing on April 20, 2018, and most recently on October 9, 2018.

At this roundtable, the committee will review the quarterly report submitted by DOES for FY2019 Quarter 1, available [here](#), in addition to the status of other elements of implementation. D.C. Official Code §32–541.04(h) requires quarterly a “project plan that explains in detail the timeline, including specific dates by which milestones of the project will be accomplished, for the development of all software necessary to administer the paid-leave system.” D.C. Official Code §32–541.04(i) requires quarterly “a requirements document that explains in detail the requirements needed in order to develop all software necessary to administer the paid-leave system established pursuant to this act.” The roundtable will be held at 1:30 p.m. on Tuesday, January 29, 2019, in Room 500 of the John A. Wilson Building.

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at labor@dccouncil.us or (202) 724-7772 by 5p.m. on Friday, January 25, 2019, to provide their name, address, telephone number, organizational affiliation and title (if any), as well as the language of oral interpretation, if any, they require. Those wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. Those representing organizations will have five minutes to present their testimony, and other individuals will have three minutes to present their testimony; less time will be allowed if there are a large number of witnesses.

If you are unable to testify at the roundtable, written statements will be made a part of the official record. Written statements should be submitted by email to Ms. Royster at labor@dccouncil.us or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, February 12, 2019.

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

**COUNCILMEMBER VINCENT C. GRAY, CHAIRPERSON
COMMITTEE ON HEALTH**

AND

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

ANNOUNCE A JOINT PUBLIC OVERSIGHT ROUNDTABLE ON

**THE DISTRICT GOVERNMENT’S STRATEGY AND ACTIONS TO COMBAT THE
OPIOID EPIDEMIC**

**Monday, January 28, 2019, 10:00 a.m.
Room 500, John A. Wilson Building
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004**

On Monday, January 28, 2019, Councilmember Vincent C. Gray, Chairperson of the Committee on Health, and Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a joint public oversight roundtable on the District Government’s strategy and actions to combat the opioid epidemic. The roundtable will take place in Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 10:00 a.m.

The District and states across the country are experiencing an opioid epidemic. In the District, opioid-related deaths have increased substantially in recent years, from 83 opioid-related deaths in 2014, to 114 deaths in 2015, to 231 deaths in 2016, and to 279 deaths in 2017. The opioid supply is also increasingly laced with fentanyl, with 71% of cases involving the presence of fentanyl or fentanyl analogs in 2017. The profile of overdoses in the District is markedly different than in the rest of the country, with 80% of all overdoses due to opioid use occurring among adults between the ages of 40 to 69, and 81% of all deaths among African-Americans. Strikingly, of the District’s opioid users, 22% have been using heroin for more than 40 years, 59% for more than 25 years, and 88% for more than 10 years. These District-specific statistics require a District-specific response.

Following the publication of a series of articles in the *Washington Post* in mid-December 2018 on the District’s opioid crisis, Mayor Bowser released “LIVE. LONG. DC.”, her administration’s strategic plan to reduce opioid use and misuse and to reduce opioid-related deaths by 50 percent by 2020. The purpose of this roundtable is to examine the opioid epidemic as it presents in the District, as well as to discuss, with specificity, the proposed strategic plan, related federal grant funding, and public health-based collaborations between the District’s health and public safety agencies. In addition, the Committees will engage government witnesses in planning for the implementation of recently-passed Council legislation, the “Opioid Overdose Treatment and Prevention Omnibus Act of 2018” (available at <http://ims.dccouncil.us/Download/38775/B22-0459-Enrollment.pdf>). The Committees will also discuss the subject matter of B23-0054, the “Opioid Overdose Prevention Act of 2019”. The stated purpose of B23-0054 is to require the Metropolitan Police Department (“MPD”) to provide opioid antagonist rescue kits for sworn personnel in order to prevent potential overdose deaths; to require MPD to provide training for all sworn personnel; and to allow for the voluntary surrender of opiates and drug paraphernalia at MPD stations.

Anyone wishing to testify at the roundtable should contact the Committee on the Judiciary and Public Safety via email at judiciary@dccouncil.us or (202) 724-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Thursday, January 24**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses should bring **twenty double-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to judiciary@dccouncil.us. **Note that government witnesses will testify at the beginning of the roundtable.**

For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on the Judiciary and Public Safety at judiciary@dccouncil.us. **The record will close at the end of the business day on February 11, 2019.**

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

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

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

ANNOUNCES A PUBLIC ROUNDTABLE ON:

PR23-56, the “Commission on the Arts and Humanities Kymber Menkiti Confirmation Resolution of 2019”

PR23-57, the “Commission on the Arts and Humanities Kay Kendall Confirmation Resolution of 2019”

PR23-58, the “Commission on the Arts and Humanities Gretchen Wharton Confirmation Resolution of 2019”

Wednesday, January 23, 2019

11:30 a.m.

Room 120 - John A. Wilson Building

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

Councilmember Jack Evans, Chairman of the Committee on Finance and Revenue, announces a public roundtable to be held on Wednesday, January 23, 2019 at 11:30 a.m. in Room 120, of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

PR 23-56, the “Commission on the Arts and Humanities Kymber Menkiti Confirmation Resolution of 2019” would confirm the appointment of Kymber Menkiti as a member of the Commission on the Arts and Humanities, replacing Darren Glymph, to serve a term ending June 30, 2021.

PR 23-57, the “Commission on the Arts and Humanities Kay Kendall Confirmation Resolution of 2019” would confirm the reappointment of Kay Kendall as a member of the Commission on the Arts and Humanities, to serve a term ending June 30, 2021.

PR 23-58, the “Commission on the Arts and Humanities Gretchen Wharton Confirmation Resolution of 2019” would confirm the reappointment of Gretchen Wharton as a member of the Commission on the Arts and Humanities, to serve a term ending June 30, 2021.

The Committee invites the public to testify at the roundtable. Those who wish to testify should contact Sarina Loy, Committee Assistant at (202) 724-8058 or sloy@dccouncil.us, and provide your name, organizational affiliation (if any), and title with the organization by 11:00 a.m. on Tuesday, January 22, 2019. Witnesses should bring 15 copies of their written testimony to the roundtable. The Committee allows individuals 3 minutes to provide oral testimony in order to permit each witness an opportunity to be heard. Additional written statements are encouraged and will be made part of the official record. Written statements may be submitted by e-mail to sloy@dccouncil.us or mailed to: Council of the District of Columbia, 1350 Pennsylvania Ave., N.W., Suite 114, Washington D.C. 20004.

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

**CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
&
COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION**

ANNOUNCE A JOINT PUBLIC ROUNDTABLE

on the

PR23-0067, the “Chancellor of the District of Columbia Public Schools Dr. Lewis D. Ferebee Confirmation Resolution of 2019”

on

**Wednesday, January 30, 2019
6:00 p.m., Ron Brown Boys College Preparatory High School
Monarch Hall
4800 Meade St. NE
Washington, DC 20019**

Chairman Phil Mendelson and Councilmember David Grosso announce the scheduling of a public roundtable of the Committee of the Whole and the Committee on Education on the nomination of Dr. Lewis D. Ferebee as Chancellor of the D.C. Public Schools. The roundtable will be held at 6:00 p.m. on Wednesday, January 30, 2019 at Ron Brown College Preparatory High School, 4800 Meade St. NE, Washington, D.C., 20019.

The stated purpose of PR23-0067 is to confirm the appointment of Lewis D. Ferebee as Chancellor of the District of Columbia Public Schools in accordance with section 104 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-174), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm on Monday, January 28, 2019. Persons wishing to testify are encouraged, but not required, to submit 10-15 copies of written testimony. Witnesses should limit their testimony to three minutes.

If you are unable to testify at this public roundtable, there will be two additional public roundtables. Also, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, Committee Assistant, at astrange@dccouncil.us, or by mail to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday February 26, 2019.

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

CHAIRMAN PHIL MENDELSON
COMMITTEE OF THE WHOLE
&
COUNCILMEMBER DAVID GROSSO
COMMITTEE ON EDUCATION

ANNOUNCE A JOINT PUBLIC ROUNDTABLE
on the

PR23-0067, the “Chancellor of the District of Columbia Public Schools Dr. Lewis D. Ferebee Confirmation Resolution of 2019”

on

Wednesday, February 6, 2019
6:00 p.m., Francis L. Cardozo Education Campus
Cafeteria
1200 Clifton St. NW
Washington, DC 20009

Chairman Phil Mendelson and Councilmember David Grosso announce the scheduling of a public roundtable of the Committee of the Whole and the Committee on Education on the nomination of Dr. Lewis D. Ferebee as Chancellor of the D.C. Public Schools. The public roundtable will be held at 6:00 p.m. on Wednesday, February 6, 2019 at Francis L. Cardozo Education Campus, Cafeteria, 1200 Clifton St. NW, Washington, D.C., 20009.

The stated purpose of PR23-0067 is to confirm the appointment of Lewis D. Ferebee as Chancellor of the District of Columbia Public Schools in accordance with section 104 of the District of Columbia Public Schools Agency Establishment Act of 2007, effective June 12, 2007 (D.C. Law 17-9; D.C. Official Code § 38-174), and in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01).

Those who wish to testify may sign-up online at <http://bit.do/educationhearings> or call the Committee on Education at (202) 724-8061 by 5:00pm on Monday, February 4, 2019. Persons wishing to testify are encouraged, but not required, to submit 10-15 copies of written testimony. Witnesses should limit their testimony to three minutes.

If you are unable to testify at this public roundtable, there will be an additional public roundtable. Also, written statements are encouraged and will be made a part of the official record. Written statements should be submitted by email to Ashley Strange, Committee Assistant, at astrange@dccouncil.us, or by mail to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350 Pennsylvania Avenue, NW, Washington, D.C. 20004. The record will close at 5:00 p.m. on Tuesday, February 26, 2019.

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

Pursuant to the Consolidated Appropriations Act of 2017, approved May 5, 2017 (P.L. 115-31), the Council of the District of Columbia gives notice that the Mayor has transmitted the following Grant Budget Modification (GBM).

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

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

GBM 23-1: FY 2019 Grant Budget Modifications of November 26, 2018

RECEIVED: 14-day review begins January 16, 2019

GBM 23-2: FY 2019 Grant Budget Modifications of November 28, 2018

RECEIVED: 14-day review begins January 16, 2019

GBM 23-3: FY 2019 Grant Budget Modifications of November 29, 2018

RECEIVED: 14-day review begins January 16, 2019

GBM 23-4: FY 2019 Grant Budget Modifications of December 3, 2018

RECEIVED: 14-day review begins January 16, 2019

GBM 23-5: FY 2018 Grant Budget Modifications of December 6, 2018

RECEIVED: 14-day review begins January 16, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 18, 2019
Protest Petition Deadline: March 4, 2019
Roll Call Hearing Date: March 18, 2019

License No.: ABRA-099065
Licensee: El Sol, LLC
Trade Name: El Sol Restaurant & Tequileria
License Class: Retailer’s Class “C” Restaurant
Address: 1227 11th Street, N.W.
Contact: Jeff Jackson, Agent: (202) 251-1566

WARD 2 ANC 2F SMD 2F07

Notice is hereby given that this licensee has requested Substantial Changes to their license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on March 18, 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 SUBSTANTIAL CHANGES

Request to add a Summer Garden with 30 seats and a Sidewalk Café with 12 seats. Total Occupancy Load of 61.

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

Sunday – Thursday 8am – 1am
Friday and Saturday 8am – 2am

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 18, 2019
Protest Petition Deadline: March 4, 2019
Roll Call Hearing Date: March 18, 2019
Protest Hearing Date: May 15, 2019

License No.: ABRA-112439
Licensee: Philotimo Hospitality LLC
Trade Name: Philotimo
License Class: Retailer’s Class “C” Restaurant
Address: 1100 15 Street, N.W.
Contact: Sidon Yohannes: (202) 686-7600

WARD 2

ANC 2B

SMD 2B05

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 March 18, 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. The Protest Hearing date is scheduled on May 15, 2019 at 1:30 p.m.

NATURE OF OPERATION

A new Retailer’s Class C Restaurant with a seating capacity of 300 and Total Occupancy Load of 409. Summer Garden with 50 seats and Sidewalk Café with 75 seats. Licensee is requesting an Entertainment Endorsement to include Dancing.

HOURS OF OPERATION FOR INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN & SIDEWALK CAFÉ

Sunday through Thursday 7am – 2am, Friday and Saturday 7am – 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN & SIDEWALK CAFÉ

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

HOURS OF LIVE ENTERTAINMENT

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 18, 2019
 Protest Petition Deadline: March 4, 2019
 Roll Call Hearing Date: March 18, 2019
 Protest Hearing Date: May 15, 2019

License No.: ABRA-112211
 Licensee: Midtown Center Restaurant, LLC
 Trade Name: TBD
 License Class: Retailer's Class "C" Restaurant
 Address: 1100 15th Street, N.W.
 Contact: Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 2

ANC 2B

SMD 2B05

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 March 18, 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. The **Protest Hearing date** is scheduled on **May 15, 2019 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" New Orleans-themed Restaurant providing an elegant and relaxed dining atmosphere. Two Summer Gardens with a Total Occupancy Load of 171, with 97 seats on the north side and 74 seats on the south side. Total Occupancy Load of 362 with seating for 159 patrons inside premises. Entertainment Endorsement requested to provide live entertainment indoors and outdoors.

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

Sunday through Thursday 8am – 2am

Friday and Saturday 8am – 3am

HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)

Sunday through Thursday 8am – 2am

Friday and Saturday 8am – 3am

HOURS OF LIVE ENTERTAINMENT (SUMMER GARDENS)

Sunday through Saturday 8am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 18, 2019
Protest Petition Deadline: March 4, 2019
Roll Call Hearing Date: March 18, 2019

License No.: ABRA-106670
Licensee: Zenebech Restaurant, LLC
Trade Name: Zenebech Restaurant
License Class: Retailer’s Class “C” Restaurant
Address: 2420-2422 18th Street, N.W.
Contact: Surafal Demissie: (202) 667-4700

WARD 1

ANC 1C

SMD 1C03

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 March 18, 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 SUBSTANTIAL CHANGE

Applicant requests an Entertainment Endorsement with a Dance Floor to provide live entertainment inside only.

CURRENT HOURS OF OPERATION / ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE PREMISES

Sunday through Thursday 9am – 1am, Friday and Saturday 9am – 2am

PROPOSED HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

Sunday through Saturday 9pm – 1am

HISTORIC PRESERVATION REVIEW BOARD**NOTICE OF PUBLIC HEARING**

The D.C. Historic Preservation Review Board will hold a public hearing to consider an application to designate the following property a historic landmark in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the property to the National Register of Historic Places:

Case No. 19-02: Safeway Grocery Store
4865 MacArthur Boulevard NW
Square 1389, Lot 25
Affected Advisory Neighborhood Commission: 3D
Applicant: NAI Saturn Eastern LLC (property owner)

The hearing will take place at **9:00 a.m. on Thursday, February 28, 2019**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

For each property, a copy of the historic designation application is currently on file and available for inspection by the public at the Historic Preservation Office. A copy of the staff report and recommendation will be available at the office five days prior to the hearing. The office also provides information on the D.C. Inventory of Historic Sites, the National Register of Historic Places, and Federal tax provisions affecting historic property.

If the Historic Preservation Review Board designates a property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects:
Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies

allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, MARCH 13, 2019
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD TWO

19936 **Application of Matthew and Alicia Amling**, pursuant to 11 DCMR
ANC 2E Subtitle X, Chapter 9, for a special exception under Subtitle D §§ 1206.4
and 5201 from the rear addition requirements of Subtitle D § 1206.3, to
construct a third story and a rear addition to an existing, attached principal
dwelling unit in the R-20 Zone at premises 3617 T Street N.W. (Square
1296, Lot 338).

WARD ONE

19939 **Application of Robert L. Strayer II**, pursuant to 11 DCMR Subtitle X,
ANC 1B Chapter 9, for a special exception under Subtitle F § 5201 from the lot
occupancy requirements of Subtitle F § 304.1, to construct a two-story rear
and side addition to an existing, attached principal dwelling unit in the RA-
2 Zone at premises 1229 W Street N.W. (Square 271, Lot 76).

WARD TWO

19943 **Application of The Mills Building Associates, LLC**, pursuant to 11
ANC 2A DCMR Subtitle X, Chapter 10, for area variances from the loading
requirements of Subtitle C § 901.1, and from the habitable penthouse
regulations of Subtitle C § 1500.3(d), to renovate and construct additions
to an existing office building in the D-5/D-6 Zones at premises 1700
Pennsylvania Avenue N.W. (Square 168, Lot 50).

WARD ONE

19944 **Application of 3554 10th Street LLC**, pursuant to 11 DCMR Subtitle X,
ANC 1A Chapter 9, for a special exception under the residential conversion
requirements of Subtitle U § 320.2, to construct a three-story rear addition
to an existing semi-detached principal dwelling unit and convert it to a
three-unit apartment house in the RF-1 Zone at premises 3554 10th Street
N.W. (Square 2832, Lot 52).

BZA PUBLIC HEARING NOTICE

MARCH 13, 2019

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WARD FIVE

19947 **Application of Dilan Investment, LLC**, pursuant to 11 DCMR Subtitle
ANC 5B X, Chapter 9, for a special exception under Subtitle C § 703.2 from the
 minimum parking requirements of Subtitle C § 701.5, to construct a partial
 second story addition to an existing commercial building in the MU-4
 Zone at premises 1600 Rhode Island Avenue N.E. (Square 4132, Lot 4).

WARD THREE

19935 **Appeal of Cyrus Frelinghuysen, et al.**, pursuant to 11 DCMR Subtitle Y
ANC 3F § 302, from the decision made on June 5, 2018 by the Zoning
 Administrator, Department of Consumer and Regulatory Affairs, to issue
 building permits B1808453, B1812270, B1812271 and excavation permits
 EX1900001, and EX1900002, to construct three new detached principal
 dwelling units in the R-8 Zone at premises 3113 Albemarle Street N.W.
 (Square 2041, Lots 24, 25, and 26).

PLEASE NOTE:

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

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: www.dcoz.dc.gov. All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4th Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

BZA PUBLIC HEARING NOTICE
MARCH 13, 2019
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Do you need assistance to participate?

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

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

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

如果您需要特殊便利设施或语言协助服务（翻译或口译），请在见面之前提前五天与 Zee Hill 联系，电话号码 (202) 727-0312，电子邮件

Zelalem.Hill@dc.gov。这些是免费提供的服务。

French

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

Korean

참여하시는데 도움이 필요하세요?

특별한 편의를 제공해 드려야 하거나, 언어 지원 서비스(번역 또는 통역)가 필요하시면,

회의 5일 전에 Zee Hill 씨께 (202) 727-0312로 전화 하시거나 Zelalem.Hill@dc.gov 로

이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

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

**FREDERICK L. HILL, CHAIRPERSON
LESYLLEÉ M. WHITE, MEMBER**

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**LORNA L. JOHN, MEMBER
CARLTON HART, VICE-CHAIRPERSON,
NATIONAL CAPITAL PLANNING COMMISSION
A PARTICIPATING MEMBER OF THE ZONING COMMISSION
CLIFFORD W. MOY, SECRETARY TO THE BZA
SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF PUBLIC HEARING

TIME AND PLACE: Thursday, March 14, 2019, @ 6:30 p.m. – 1st Case
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-18 (Office of Planning – Text Amendment to Subtitle K to Add a New Chapter 10 to Create the Northern Howard Road [NHR] Zone)

THIS CASE IS OF INTEREST TO ALL ANCs

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 of Title 11 DCMR (Zoning Regulations of 2016). The text amendments would create a new Special Purpose Zone (Subtitle K), known as the Northern Howard Road (NHR) zone. The NHR zone would be available to property owners for zoning map amendments along the northernmost stretch of Howard Road, S.E., within the area adjacent to Poplar Point and between Suitland Parkway and the Anacostia Freeway/I-295. The purpose of the zone would be to allow high density development in the subject location, in conformance with the Comprehensive Plan, and to ensure a mix of uses with a substantial affordable housing component and a high degree of sustainability and pedestrian and bicycle mobility.

On October 22, 2018, the Commission voted to set down the petition for a public hearing. The OP Setdown Report served as the pre-hearing filing required by Subtitle Z § 400.6.

PROPOSED TEXT AMENDMENT

Title 11 DCMR, Subtitle K is proposed to be amended as follows:

Add a new Chapter 10, “Northern Howard Road Zone”

CHAPTER 10 – NORTHERN HOWARD ROAD 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 found at Subtitle K §§ 1001 through 1010.

1000.5 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15 and the height and story limitations specified in this chapter.

1000.6 All requests to change the zone designation of a property to the NHR zone shall be heard as a rulemaking.

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 development standards in Subtitle K §§ 1001.3 through 1001.19 shall control the bulk of buildings in the NHR zone.

- 1001.3 The maximum permitted density in the NHR zone is 9.0 FAR, except as provided in Subtitle K § 1001.5.
- 1001.4 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 § 1001.5 below. Residential FAR consists exclusively of uses that fall within the “Residential” use category described in Subtitle B § 200.2.
- 1001.5 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.
- 1001.6 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.
- 1001.7 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.
- 1001.8 The declaration of covenants shall expressly state that it may be substantively amended or terminated only with the approval of the Zoning Administrator.
- 1001.9 The declaration of covenants shall be approved in content by the Zoning Administrator, who may, in his or her discretion, request their General Counsel or the Office of the Attorney General to undertake a legal sufficiency review.
- 1001.10 The declaration 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.

1001.11 The maximum permitted building height, not including the penthouse, in the NHR zone shall be:

TABLE K § 1001.11: NHR MAXIMUM PERMITTED BUILDING HEIGHT

Street Right of Way Width	Maximum Permitted Building Height, Not Including Penthouse
Greater than or equal to 110 ft.	130 ft.
Less than 110 ft. but greater than or equal to 100 ft.	120 ft.
Less than 100 ft. but greater than or equal to 90 ft.	110 ft.
Less than 90 ft.	No taller than the width of the street right of way, plus 20 ft.

1001.12 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.

1001.13 The height and density limits of Subtitle K § 1001 shall serve as the maximum permitted under a planned unit development.

1001.14 The maximum permitted lot occupancy in the NHR zone shall be one hundred percent (100%).

1001.15 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, but not less than five feet (5 ft.).

1001.16 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 § 1001.16(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.

1001.17 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.

1001.18 A court is not required in the NHR zone, but where it is provided, it shall have the following minimum dimensions:

TABLE K § 1001.18: NHR COURT DIMENSIONS

Type of Structure	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
Residential, more than 3 units	4 in./ft. of height of court; 10 ft. minimum	4 in./ft. of height of court; 15 ft. minimum	Twice the square of the required width of court dimension; 350 sq. ft. minimum
Non-Residential and Lodging	2.5 in./ft. of height of court; 6 ft. minimum	2.5 in./ft. of height of court; 12 ft. minimum	Twice the square of the required width of court dimension; 250 sq. ft. minimum

1001.19 The minimum required Green Area Ratio (GAR) for the NHR zone shall be 0.2.

1002 INCLUSIONARY ZONING (NHR)

1002.1 The NHR zone shall be subject to the inclusionary zoning requirements of Subtitle C, Chapter 10, as modified by this chapter. Inclusionary zoning is indicated by the abbreviation “IZ”.

1002.2 No bonus density, as authorized by 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) Ten percent (10%) of the total gross floor area dedicated to residential use, excluding penthouse habitable space; and
- (b) The equivalent of eight percent (8%) of the total gross floor area of penthouse habitable space not devoted exclusively to communal rooftop

recreation or amenity space for the primary use of residents of the residential building.

1002.4 Notwithstanding Subtitle C § 1003.3 or type of tenancy, the 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 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 K § 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.

1003 USE PERMISSIONS (NHR)

1003.1 The use permissions in this section include uses permitted as a matter of right, as a special exception, and uses not permitted.

1003.2 Use permissions for the NHR zone are as specified in the following table:

TABLE K § 1003.2: NHR USE PERMISSIONS

Zone	Subtitle/Chapter	Use Group
NHR	Subtitle U, Chapter 5	MU-Use Group F

1003.3 Buildings, structures, and uses with frontage on a Designated Street, as defined by Subtitle K § 1004, shall provide specified ground floor uses in accordance with the requirements and provisions of Subtitle K § 1005.

1004 DESIGNATED STREETS (NHR)

1004.1 Designated Streets for the purposes of this chapter are those streets where a building with frontage on that street must comply with use and/or design regulations that may differ from the requirements of the zone through which the street passes.

1004.2 Refer to Subtitle K § 1005 for preferred use requirements that apply to a specified Designated Street.

1004.3 Refer to Subtitle K § 1006 for design related requirements that apply to a specified Designated Street.

1004.4 Any portion of Howard Road, S.E. (both sides of the street) in the NHR zone shall be a Designated Street.

1005 USE REQUIREMENTS FOR DESIGNATED STREETS (NHR)

1005.1 Preferred use requirements shall apply only to a Designated Street identified in Subtitle K § 1004.4.

1005.2 Preferred uses of this section shall include uses within the following 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.

1005.3 Any new building or structure with frontage on a Designated Street identified in Subtitle K § 1004.4 shall devote one hundred percent (100%) of the building's street frontage along a Designated Street to the preferred uses specified in this section, except for space devoted to building entrances or required for fire control.

1006 DESIGN REQUIREMENTS FOR DESIGNATED STREETS (NHR)

1006.1 The following design requirements shall apply to a Designated Street identified in Subtitle K § 1004:

- (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 a 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 façade facing the Designated Street; and
- (d) No direct vehicular garage or loading entrance or exit shall be permitted on a Designated Street to a new building or structure.

1007 ZONING COMMISSION REVIEW OF BUILDINGS, STRUCTURES, AND USES (NHR)

1007.1 The provisions of this section apply to properties within the NHR zone.

1007.2 With respect to those properties described in Subtitle K § 1007.1, 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 provisions of this § 1007.

1007.3 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 purposes of the NHR zone defined in Subtitle K § 1000.2;
- (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.

1008 RELIEF FROM DEVELOPMENT STANDARDS AND USE AND DESIGN REQUIREMENTS (NHR)

1008.1 The Zoning Commission may grant special exception relief to the development standards of this chapter and the Designated Street use and design standards of this Chapter, subject to any applicable conditions of this Chapter.

1008.2 As set forth in this chapter, specific conditions or criteria may be applicable in the consideration of relief and shall be considered in combination with the conditions of Subtitle X, Chapter 9.

1008.3 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.

1008.4 Relief may be granted as a special exception by the Zoning Commission to the development standards and regulations of this chapter where, in the judgment of the Commission, the special exception:

- (a) Will be in harmony with the general purpose and intent of the NHR 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; and
- (c) Will be subject in each case to any applicable conditions specified in this chapter.

1008.5 The Zoning Commission may grant, pursuant to Subtitle X, Chapter 9, special exception relief to 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;
- (d) Provision shall be included for service functions, including parking and loading access and adequate loading areas; and
- (e) Upon receiving an application to waive rear yard requirements in the NHR zone, the Office of Zoning shall refer the application to the Office of Planning, the Office of Planning’s Historic Preservation Office if a historic district or historic landmark is involved, the Department of Transportation, the District of Columbia Housing Authority, and any other relevant District agencies for review, report, and impact assessment.

1008.6 The Zoning Commission may grant, pursuant to Subtitle X, Chapter 9, special exception relief to 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 the Designated 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.

1008.7 PARKING AND LOADING REGULATIONS (NHR)

1008.8 This chapter provides conditions and requirements related to parking spaces and loading, including location and access.

1008.9 Vehicle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 7.

1008.10 Bicycle parking shall be provided in accordance with the requirements of Subtitle C, Chapter 8.

1008.11 Loading shall be provided in accordance with the requirements of Subtitle C, Chapter 9.

1009 SUSTAINABILITY (NHR)

1009.1 Each building constructed or substantially modified shall earn a LEED v4 Gold rating, with an executed financial security compliant with the provisions of Section 6 of the Green Building Act of 2006, as amended (D.C. Official Code § 6-1451.05) provided to the Department of Consumer & Regulatory Affairs prior to receipt of the first certificate of occupancy.

1009.2 Each building constructed or substantially modified shall have an on-site renewable energy system installed and operating prior to receipt of the first certificate of occupancy, 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 & Regulatory Affairs.

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

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

How to participate as a witness.

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

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

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

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

The Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

ANTHONY J. HOOD, ROBERT E. MILLER, PETER A. SHAPIRO, PETER G. MAY, AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION

Do you need assistance to participate? If you need special accommodations or need language assistance services (translation or interpretation), please contact Zee Hill at (202) 727-0312 or Zelalem.Hill@dc.gov five days in advance of the meeting. These services will be provided free of charge.

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

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

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

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

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

ለሚተኛ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጓሚ) ካስፈለገዎት እባክዎን ከስብሰባው አጭነት ቀናት በፊት ዜ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

TIME AND PLACE: Thursday, March 14, 2019, @ 6:30 p.m. – 2nd Case
Jerrily R. Kress Memorial Hearing Room
441 4th Street, N.W., Suite 220-South
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-19 (Poplar Point RBBR, LLC d/b/a/ Columbian Quarter Holdings – Zoning Map Amendment @ Squares 5860 & 5861 [Howard Road, S.E.]

THIS CASE IS OF INTEREST TO ANC 8A AND ANC 8C

On October 10, 2018, the Office of Zoning received a petition from Poplar Point RBBR, LLC d/b/a/ Columbian Quarter Holdings (“Petitioner”) requesting approval of a Zoning Map amendment for property along Howard Road, S.E. (Lots 97, 1025-1031, 1036, and 1037 in Square 5860, and Lots 91 and 89 in Square 5861) (“Property”) from the MU-14 zone to the NHR zone.

On this same evening, prior to this case being heard, the Zoning Commission will hold a hearing on ZC Case No. 18-18, to consider text amendments proposed by the Office of Planning (“OP”) to create the Northern Howard Road (“NHR”) Zone, within which the Property is proposed to be mapped. A notice of public hearing advertising that hearing is also being published separately in this edition of the *D.C. Register*.

The Property consists of approximately 348,737 square feet of land area. The Property is located on both sides of Howard Road, S.E. in between Interstate 295 and South Capitol Street, S.E. The Future Land Use Map of the District of Columbia Comprehensive Plan designates the Property in a mixed land use category composed of High Density Residential, Institutional, and High Density Commercial land use categories.

The Petitioner is petitioning to rezone the Property to the NHR zone to make it consistent with the Comprehensive Plan’s designation. Under the requested rezoning to the NHR zone, a project on the Property would be permitted a maximum height of 130 feet, a FAR of 9.0, and 100% lot occupancy, instead of the maximum height of 90 feet, 6.0 FAR, and 75% lot occupancy permitted for the Property under the current MU-14 zoning (projects under the Inclusionary Zoning (“IZ”) program are eligible for a maximum height of 100 feet, 7.2 FAR and 80% lot occupancy). Under the requested NHR rezoning, a project on the Property would also have to comply with an enhanced IZ requirement over MU-14, including 10% of any residential development be devoted to IZ units.

In its October 15, 2018 Setdown Report, OP recommended that the Commission set the petition down for a public hearing and that the Commission consider an additional text amendment to the NHR zone to impose additional requirements on most of the Property to reflect some of the public benefits of a planned unit development approved for most of the Property. On November 19, 2018, the Commission voted to set down the map amendment petition and the additional text proposed by OP for a public hearing.

PROPOSED TEXT AMENDMENT

Title 11 DCMR, Subtitle K is proposed to be amended as follows:

Add a new § 1011, “Development of Lots 97, 1025-1031, 1036, and 1037 in Square 5860 and on Lot 91 in Square 5861,” to Chapter 10, “Northern Howard Road Zone,” as proposed in Z.C. Case No. 18-18, to read as follows:

1011 DEVELOPMENT ON LOTS 97, 1025-1031, 1036, AND 1037 IN SQUARE 5860 AND ON LOT 91 IN SQUARE 5861

1011.1 Any new building constructed on Lots 97, 1025-1031, 1036, and 1037 in Square 5860 and on Lot 91 in Square 5861 shall comply with the following provisions:

- (a) Rooftop solar panels shall be constructed on each building to generate one hundred and seventy-eight kilowatt hours (178 kWh) per one thousand (1,000) gross square feet of building area;
- (b) All inclusionary units required to be set aside for households earning equal to or less than fifty percent (50%) of the MFI by Subtitle K § 1002 shall be three-bedroom units;
- (c) One-third (1/3) of all inclusionary units set aside for households earning equal to or less than sixty percent (60%) of the MFI by Subtitle K § 1002 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.

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

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

How to participate as a witness.

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

Time limits.

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

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| 2. | Individuals | 3 minutes each |

The Commission may increase or decrease the time allowed above, in which case, the presiding officer shall ensure reasonable balance in the allocation of time between proponents and opponents.

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Please include the case number on your submission. **FOR FURTHER INFORMATION, YOU MAY CONTACT THE OFFICE OF ZONING AT (202) 727-6311.**

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

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

TIME AND PLACE: **Thursday, April 11, 2019, @ 6:30 p.m.**
Office of Zoning Hearing Room
441 4th Street, N.W., Suite 220
Washington, D.C. 20001

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 18-22 (Forest City SEFC, LLC – Design Review of “Parcel G” in the Southeast Federal Center (Square 743, Lot 94))

THIS CASE IS OF INTEREST TO ANC 6D

On December 12, 2018, the Office of Zoning received an application from Forest City SEFC, LLC (“Applicant”). The Applicant is requesting design review and related zoning relief of a proposed development on the property commonly known as “Parcel G” of the Yards (Lot 94 in Square 743, the “Property”). The Property is located in the SEFC-1A zone.

The Property consists of a lot in the 42-acre site formerly known as the Southeast Federal Center and now known as The Yards. Parcel G is **bounded by N Street, S.E. to the south, New Jersey Avenue, S.E. to the east, the future Quander Street to the north, and the future 1½ Street to the West.** Parcel G consists of approximately 39,029 square feet of land area and will be located on a single record lot with Parcels A and F and portions of the private street network.

Parcel G is currently improved with a temporary trapeze school building. The Applicant proposes to construct an 11-story mixed-use building containing approximately 284,844 square feet of office use on floors 1 through 11 plus a habitable penthouse with an additional 5,578 square feet of office space, approximately 14,140 square feet of retail, eating/drinking establishment, service and/or retail/office flex uses on the ground floor, and approximately 167 vehicle parking spaces in a below-grade garage. The primary use is anticipated to be a new office headquarters for a single office tenant.

This public hearing will be conducted in accordance with the contested case provisions of the Zoning Regulations, Subtitle Z, Chapter 4.

How to participate as a witness.

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1.

A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Zoning Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact the Office of Zoning at dcoz@dc.gov or at (202) 727-6311.

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

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

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

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

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

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

Written statements, in lieu of oral testimony, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <http://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, DC 20001; by e-mail to

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PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGRM1-2018-01, IN THE MATTER OF THE COMMISSION'S INVESTIGATION INTO THE PUBLIC SERVICE COMMISSION'S RULES OF PRACTICE AND PROCEDURE

1. The Public Service Commission of the District of Columbia (Commission), pursuant to D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.), hereby gives notice of its final rulemaking action amending Chapter 1 (Public Service Commission Rules of Practice and Procedure) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), effective upon publication of this Notice of Final Rulemaking (NOFR) in the *D.C. Register*.

2. The purpose of amending Chapter 1 is to reflect new features in the Commission's electronic filing system (eDocket System), to eliminate outdated requirements, and to improve clarity. In addition, the Commission revised the rules to include proposed amendments to Section 100, Dockets and Filings, requiring electronic filing of all documents, including documents containing confidential or proprietary information, subject to certain exceptions. The Commission also deleted Section 118, Electronic Filing Procedures, in its entirety and those provisions were incorporated into Section 100.

3. On October 19, 2018, the Commission published a First Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* (65 DCR 11730-11733) amending Chapter 1. A Second NOPR superseding the First NOPR was published in the *D.C. Register* (65 DCR 13381-13385) on December 7, 2018. In the Second NOPR, Subsection 100.5 has been revised in response to comments filed by the Potomac Electric Power Company seeking clarification as to whether Subsection 100.5, requiring all documents to be filed electronically, is applicable to Critical Infrastructure Information (CII).¹ The Second NOPR makes clear that documents containing CII shall be filed in the form of one hard copy with the Commission. No comments were filed in response to the Second NOPR.

4. By Order No. 19792, the Commission adopted the revised rules as final on January 9, 2019, with the rules becoming effective upon publication in the *D.C. Register*.

¹ *RM1-2018-01, In the Matter of the Commission's Investigation Into the Public Service Commission's Rules of Practice and Procedure*, Comments of the Potomac Electric Power Company Regarding Notice of Proposed Rulemaking at 2, filed November 19, 2018.

Chapter 1, PUBLIC SERVICE COMMISSION RULES OF PRACTICE AND PROCEDURE, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

Section 100, DOCKETS AND FILINGS, is amended in its entirety to read as follows:

- 100.1 The Office of the Commission Secretary shall maintain the official docketing system for the Commission.
- 100.2 The docketing system shall contain records and documents available for public inspection. Public inspection may be either on the Commission’s website or in person at the Office of the Commission Secretary during normal office hours. Confidential or proprietary records and documents are not available for public inspection. The rules governing confidential or proprietary records and documents are contained in Section 150. Access to all filings in the Office of the Commission Secretary is subject to reasonable limitations, including extraordinary circumstances, or when inspection would interfere with the normal operation of the Office of the Commission Secretary. Persons requesting copies of any filing or other written matter within the possession and/or custody of the Commission from the Office of the Commission Secretary may be subject to a per page copying fee.
- 100.3 All documents filed with the Commission shall be addressed to the Commission Secretary and filed with the Office of the Commission Secretary.
- 100.4 The Commission shall be open each business day except Saturdays, Sundays, and legal holidays, from 9:00 a.m. to 5:30 p.m.
- 100.5 All documents shall be filed electronically, including documents containing confidential or proprietary information, with the exception of documents containing “critical infrastructure information” (CII) and documents filed on electronic storage devices such as flash drives or compact disks (CDs). Documents containing CII must be filed with the Commission as one hard copy and shall clearly state in bold, capitalized letters that the filing contains CII. Documents filed on electronic storage devices shall include a table of contents, list of the data, or other description of the data stored on the device. To file documents electronically with the Commission, filers must first complete an online registration form on the eDocket System.
- 100.6 All filings shall comply with the requirements set forth in the Commission’s rules and shall be accompanied by a cover letter indicating the title of the document or type of filing; the case or docket number and caption, if already assigned; and the name, street address, e-mail address, and telephone number of the person making the filing.

- 100.7 The Commission may, at any time, reject all or any part of a filing that does not conform with the requirements of the Commission’s rules under this chapter. If any filing, or part thereof, is rejected, the document or the part thereof will be deemed not to have been accepted for filing with the Commission.
- 100.8 When a confidential or proprietary document is filed, the corresponding public version shall be filed concurrently.
- 100.9 All documents filed electronically shall be considered filed when the Commission has received the electronic filing, consistent with Subsection 100.10, unless the electronic filing has been rejected under Subsection 100.12.
- 100.10 Documents may be filed electronically twenty-four (24) hours a day, seven (7) days a week. All documents filed electronically shall be considered as timely filed and will be docketed, consistent with Subsection 100.9, if filed by 5:30 p.m. If a filing is received after 5:30 p.m. on a business day or at any time on a non-business day, it shall be docketed on the next business day.
- 100.11 Persons that file documents electronically shall receive an electronic acknowledgment of their filing from the Office of the Commission Secretary once file transmission is complete.
- 100.12 After reviewing an electronic filing to ensure that it meets the Commission’s electronic filing requirements, the Office of the Commission Secretary shall send a notice of acceptance or a notice of rejection. If the filing does not meet the Commission’s requirements, then the Office of the Commission Secretary shall send a notice of rejection explaining the reason(s) for rejection.

Section 113, FORM OF FORMAL PLEADINGS, is amended in its entirety to read as follows:

113 FORM OF FILINGS

- 113.1 All electronic filings shall be word-processed or otherwise electronically entered on a page sized 8 ½ inches wide and 11 inches long in font size of not less than 11 points, unless a larger size page format is required.
- 113.2 The cover page of each confidential or proprietary document shall indicate that the filing contains confidential or proprietary information. Each confidential or proprietary document filed shall have clearly marked “[**BEGIN CONFIDENTIAL**]” in bold capital letters at the beginning of each portion or section of the document containing such confidential or proprietary information and “[**END CONFIDENTIAL**]” in bold capital letters at the end of each portion or section of the document containing such confidential or proprietary information. All other material in each and every portion or section of such document shall be treated as non-confidential and non-proprietary and available

for public use and review. Redacted public versions of confidential or proprietary filings shall also be filed consistent with Subsections 100.6 and 100.8. The pagination, numbering and other formatting features of the redacted filings shall be identical to those features in the confidential or proprietary filings. The beginning and the ending of all confidential or proprietary matters redacted from the public versions shall be clearly identified on each and every page of that public version as set forth in this subsection.

113.3 Consistent with Subsection 100.7, the Commission may reject any filings that do not conform to the requirements of this section.

Section 118, ELECTRONIC FILING PROCEDURES, is deleted in its entirety.

Section 150, CONFIDENTIAL AND PROPRIETARY INFORMATION, is amended as follows:

Subsection 150.5 is amended to read as follows:

- 150.5 If any party uses confidential or proprietary information in filings, such as briefs, comments, testimony, exhibits, data responses, cross-examination or other documents, to be filed in a proceeding in which the information is obtained pursuant to a confidentiality or proprietary agreement, the following shall apply:
- (a) A confidential version of the filings containing the alleged confidential or proprietary information shall be filed, consistent with Sections 100 and 113 of these rules, with the Office of the Commission Secretary;
 - (b) Direct or cross-examination by any party involving information which another party alleges to be confidential or proprietary shall be conducted during proceedings which shall be closed to all those who have not signed an appropriate proprietary or confidentiality agreement; provided, that there has been no prior Commission determination that such information is not confidential or proprietary. Two transcripts of the proceeding shall be prepared and filed with the Commission Secretary; one that shall include the confidential or proprietary information and one that shall exclude the confidential or proprietary information. The Office of the Commission Secretary shall maintain the transcript of the proceeding containing the confidential or proprietary information as confidential; and
 - (c) If any party challenges the appropriateness of a claim that information is confidential or proprietary, the procedures set forth under Subsection 150.7 of this chapter shall apply.

Section 199, DEFINITIONS, is amended as follows:

The following definitions in Subsection 199.1 are added to read as follows:

Docket – the Commission’s formal record of a proceeding, including the filings.

File – to submit a filing to the Office of the Commission Secretary, utilizing the “eDocket” system available through the Commission website at www.dcpsc.org, for the purpose of having that filing entered upon the docket of a proceeding.

Party – a person who appears in and has a direct interest in a proceeding before the Commission. Persons may become parties to proceedings by virtue of filing an application, complaint, or petition initiating the proceeding; by filing a response to an application, complaint, or petition; by statutory right; or by Commission authorization, such as the granting of a petition for intervention.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

RM6-2018-01, IN THE MATTER OF THE COMMISSION’S INVESTIGATION INTO THE RULES REGARDING PAY TELEPHONES

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 34-802, 2-505, and 34-1831 of the District of Columbia Code,¹ of approval of amendments to Chapter 6 (Pay Telephones) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR).

2. The amendments consolidate sections regarding the cancellation of a certification to provide pay telephone service, ensure that the complaint procedures are consistent with those in 15 DCMR Chapter 3, revise penalty provisions, and provide for recovery of pay telephone removal expenses. The proposed amendments also update D.C. Official Code citations and make other technical changes.

3. The Notice of Proposed Rulemaking was published on November 9, 2018.² No comments were filed. The Commission approved the amendments as proposed in a vote at the January 9, 2019 open meeting, with the rule becoming effective upon publication in the *D.C. Register*.

Chapter 6, PAY TELEPHONES, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:

601 PAY TELEPHONE PROVIDER CERTIFICATION

...

601.6 All filings to the Commission concerning pay telephones shall filed with the Commission Secretary.

...

602 CANCELLATION OF CERTIFICATE

...

602.6 A PSP may request that its certificate be canceled.

602.7 A request for cancellation of the certificate shall be in writing and shall include:

¹ D.C. Official Code §§ 34-802 (2012 Repl.); 2-505 (2016 Repl.), and 34-1831 (2012 Repl.).

² 65 DCR 12461 (November 9, 2018).

- (a) A list of the locations of each PSP payphone(s), if any;
- (b) The PSP’s specific plans for terminating service and removing the pay telephone(s), or its plans for transferring the PSP’s registered pay telephones to another certified PSP in accordance with § 610; and
- (c) The date on which the PSP wishes the cancellation to become effective.

602.8 If a request for cancellation of a certificate meets the requirements under this section, the Commission shall within ten (10) days send written notice to the PSP that its certificate has been canceled.

603 [DELETED]

604 PAY TELEPHONE REGISTRATION

604.1 A PSP shall not install and/or operate a pay telephone in the District until the instrument is registered with the Commission.

604.2 Registration Applications shall be submitted for each proposed pay telephone.

604.3 Each Registration Application shall identify the proposed site of the pay telephone and state whether the pay telephone is to be located on public or private space.

604.4 If the proposed pay telephone location is located outdoors on public space, the Registration Application shall contain a copy of the public space permit for that location issued by the Public Space Committee under the Department of Transportation.

604.5 If the proposed pay telephone application is located outdoors on private space, the Registration Application shall be accompanied by a photograph of the proposed site.

604.6 If the proposed pay telephone is located in an alley, in or in front of a vacant lot, or in front of an abandoned building, the Registration Application shall be accompanied by a letter from the local ANC and/or MPD district supporting such installation.

604.7 The Registration Application shall be executed by an officer of the corporation, a partner in the case of a partnership, a designated agent of an owner, or a sole proprietor.

604.8 Each completed Registration Application shall be accompanied by a check or money order in the amount of \$50.00, which is a fee covering expenses associated

with pay telephone regulation. The check or money order shall be made payable to the D.C. Treasurer. A PSP may apply for and receive a refund in the amount of \$50.00, provided that (a) the refund request is made before the 121st day after the Commission approves the PSP’s Registration Application, and (b) the PSP certifies that it has not and will not install a pay telephone at the location specified in its Registration Application.

604.9 Upon the filing of a completed Registration Application for an outdoor pay telephone, the Commission shall notify, in writing, OPC, the ANC Chairperson, the Single Member District ANC Commissioner, and the MPD district for the area in which the pay telephone is to be located, as well as any local civic association that asks to be on the Commission’s service list, that the Commission intends to take action on the pending application. The notice shall contain the name of the PSP, the proposed location of the pay telephone, and state whether the pay telephone is to be located on private or public property.

604.10 If a Registration Application is approved, the Commission shall issue a Registration Number for each pay telephone to the PSP. A Registration Number may not be altered, reused, or transferred to another PSP or pay telephone.

604.11 The Registration Application shall be available for public inspection.

604.12 If a Registration Application or Renewal Application contains incorrect information, a PSP shall submit an amendment to the Application within thirty (30) days of the date of notification from the Commission of the error(s). All amendments must be signed by the PSP and notarized. If a PSP fails to submit the requested information within thirty (30) days of notification, the Commission shall deny the Application, and the Registration Application or Renewal Application fees shall not be refunded.

605 COMPLAINTS REGARDING THE INSTALLATION OF A PAY TELEPHONE

...

605.2 The Commission Secretary shall, within five (5) days, serve a copy of the complaint on OPC and the PSP seeking to register the pay telephone. The procedures in §§ 323 through 326 shall apply to complaints regarding complaints filed under this section.

...

606 TWO YEAR REGISTRATION RENEWAL

...

606.2 PSPs shall submit a completed Pay Telephone Registration Renewal Form by March 31 of the year in which the existing registration expires. The Renewal Form may be obtained from the Commission Secretary.

...

607 INSTALLATION

607.1 An outdoor pay telephone shall be installed within ninety (90) days after receiving approval by the Commission unless the PSP can show good cause, in writing, for delaying installation.

607.2 Failure to install an outdoor pay telephone within ninety (90) days may result in the Commission’s withdrawal of its approval.

607.3 The PSP shall notify the Commission, in writing, within ten (10) days after the date of installation of a pay telephone.

607.4 PSPs shall make reasonable efforts to ensure that outdoor pay telephones are located in areas that provide adequate lighting during the hours of darkness.

...

608 REMOVAL

...

608.3 If a PSP fails to comply with a written directive of the Commission or other District of Columbia governmental agency to remove a pay telephone, the Commission may, in its discretion, impose penalties pursuant to § 617.1, order the suspension of service to that instrument and/or order the termination of service to the PSP’s other pay telephones until such time as the PSP complies with the Commission’s or other District of Columbia governmental agency’s directive.

608.4 A pay telephone owned by a non-certified company may have dial tone service suspended as soon as the phone is identified as non-certified by the Commission. A non-certified owner will not be afforded time for corrective action pursuant to § 618. All such equipment must be removed, by the owner. The Commission will give thirty (30) days’ notice to the pay telephone owners to remove their equipment.

608.5 If the pay telephone is not removed by the owner of the pay telephone by the deadline established by the Commission, then the pay telephone may be removed by the Commission or other District of Columbia governmental agency. The owner of the pay telephone may be charged reasonable expenses for the removal.

609 PAY TELEPHONE SERVICES

...

609.2 Pay telephones shall display prominently the following information:

(a) The valid Registration Number issued to the PSP, pursuant to § 604.10;

...

610 TRANSFER OF OWNERSHIP OF REGISTERED PAY TELEPHONES

...

610.3 A Pay Telephone Transfer of Ownership form may be obtained from the Commission Secretary.

...

Section 612, INFORMAL CONFERENCE, is amended to read as follows:

612 INFORMAL COMPLAINTS

612.1 A complaint regarding the operation of a pay telephone may be filed with the Office of Consumer Services, which shall handle the matter as an informal complaint for resolution.

612.2 The procedures for informal complaints in § 323 shall apply to informal payphone complaints.

612.3 If the complaint is resolved informally, the Commission shall dismiss the matter upon the submission of a signed settlement agreement that sets forth the terms of the settlement.

612.4 Notice of informal proceedings shall be sent by certified mail to the Complainant(s), the PSP, the ANC Chairperson and Single Member District ANC Commissioner of the community in which the instrument is located, OPC, and the MPD District in which the instrument(s) is located or proposed to be located. The notice shall state that OPC is available to assist and/or represent the complainant.

612.5 If the Office of Consumer Services determines that a matter cannot be resolved informally, then within five (5) Business Days, the Office of Consumer Services shall notify the Complainant in writing and invite the Complainant to file a

Formal Complaint with the Commission. The PSP, the ANC Chairperson and Single Member District ANC Commissioner of the community in which the instrument is located, OPC, local civic association chair (if any) and the MPD District in which the instrument(s) is located shall be copied on this notification. The notification shall:

- (a) State that the Complainant has the right to file, at no cost, a Formal Complaint, if he or she so desires;
- (b) State that a Formal Complaint must be filed within fourteen (14) Days of the date of mailing of the notification or the matter shall be dismissed;
- (c) Indicate the availability of assistance and legal representation by OPC and OPC’s address and telephone number;
- (d) Indicate that the Complainant may be represented by him or herself, by counsel, by OPC, or by a third party of the Complainant’s choosing; and
- (e) Set forth the Commission’s Formal Complaint and hearing procedures.

Section 613, FORMAL HEARINGS, is amended to read as follows:

613 FORMAL COMPLAINTS AND HEARINGS

613.1 A formal complaint shall conform to the requirements of § 324. Formal hearings shall be conducted in accordance with the procedures in § 325.

613.2 Within two (2) Business Days of the filing of the Complaint, the Office of the Commission Secretary shall notify and provide the affected a Notice of hearings sent by first-class mail postage prepaid to the Complainant(s), the PSP, the ANC Chairperson and Single Member District ANC Commissioner of the community in which the instrument is located, local civic association chair (if any), OPC, and the MPD District in which the instrument(s) is located or proposed to be located. The notice shall state that OPC is available to assist and/or represent the complainant.

...

613.4 – 613.12 [DELETED]

615 DECISIONS AND APPEALS

615.1 The Hearing Officer shall render a decision within thirty (30) days after the close of the record.

615.2 Any party may appeal the Hearing Officer’s decision to the Commission pursuant to § 326. The appeal shall be served on the Complainant(s), the PSP, the ANC

Chairperson and Single Member District ANC Commissioner of the community in which the instrument is located, local civic association chair (if any), OPC, and the MPD District in which the instrument(s) is located or proposed to be located.

615.3 – 615.19 [DELETED]

Section 617, FINES, is amended to read as follows:

617 PENALTIES

617.1 Pursuant to D.C. Official Code §§ 34-706 and 34-708, a PSP that fails to comply with any lawful requirement or order of the Commission shall be subject to a fine of up to \$5,000 for each day that the PSP willfully fails to comply with the Commission’s order or directive.

617.2 Operation of a pay telephone without first registering the instrument with the Commission shall subject the PSP to a fine of up to \$5,000.

Section 618, SUSPENSION FOR VIOLATION, is amended as follows:

618 SUSPENSION OF SERVICE FOR VIOLATION

...

618.7 [DELETED]

699 DEFINITIONS

The following definitions are added to Subsection 699.1:

...

ANC – Advisory Neighborhood Commission.

MPD – Metropolitan Police Department.

OPC – Office of the People’s Counsel.

Pay Telephone Service Provider (“PSP”) – Any corporation, company, association, partnership or person engaged in the business of providing pay telephone service.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKINGRM27-2014-01, 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, and 34-2002(g) of the District of Columbia Official Code¹ 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. The proposed amendments to Section 2720 of Title 15 DCMR update the retail quality of service measures that are applicable to telecommunications service providers that have more than 10,000 access lines. The substantive changes are to Subsection 2720.2, to change the time clock for measuring installation commitments met and to Subsections 2720.6 and 2720.7, which list services included or excluded from measurement under the rules. The rules in this NOFR are the same as those in the October 26, 2018 NOPR, with two exceptions, one in Subsection 2720.2(c), which is corrected to remove a typographical error of two words, and one in Subsection 2720.3(c), to delete the “;” and the “and” and replace them with a “.”.

3. The Notice of Third Proposed Rulemaking was published on October 26, 2018,² revising the Notices of Proposed Rulemaking published on July 11, 2014,³ and November 17, 2017.⁴ Comments on the October 26, 2018 NOPR were filed by Verizon Washington, DC Inc. (Verizon DC).⁵ The Commission approved the amendments as proposed in a vote at the January 9, 2019 open meeting, with the rule becoming effective upon publication 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 2720, RETAIL QUALITY OF SERVICE MEASURES, is amended as follows:**

¹ D.C. Official Code §§ 34-802 (2012 Repl.), 2-505 (2016 Repl.) and 34-2002 (g) (2012 Repl.).

² 65 DCR 11952 (October 26, 2018).

³ 61 DCR 7057 (July 11, 2014).

⁴ 64 DCR 11936 (November 17, 2017).

⁵ *RM27-2014-01, In the Matter of the Commission’s Investigation into the Rules Governing Local Exchange Carrier Quality of Service Standards for the District*, Comments of Verizon Washington, DC Inc., filed November 26, 2018.

2720 RETAIL QUALITY OF SERVICE MEASURES

- 2720.1 All telecommunications service providers having more than ten thousand (10,000) access lines shall comply with and report on the following retail quality of service measures.
- 2720.2 Installation Commitments Met measure – This measure evaluates the percentage of times that a telecommunications service provider completed the installation of the customer’s local exchange service by the installation date. The installation date for business and residential customers is the close of business on the fifth business day following the date that the request for the installation was made or the customer-requested date, whichever is later. The following requirements apply:
- (a) The standard for this measure is ninety-five percent (95%) completion by the installation date per month;
 - (b) Results for this measure shall be calculated by dividing the number of installation dates met by the total number of installation date commitments made. Results shall be stated as a percentage rounded to the hundredth decimal place using traditional mathematical rounding;
 - (c) Data collected for this measure shall be disaggregated into residential and business customer categories and reported by those categories; and
 - (d) If the installation date is missed due to customer fault, then it shall not be included in the sample to be measured. Customer fault means that access to the customer premises is unavailable during the five day window or installation at the customer’s premise cannot be done because the premises is unsafe or if the customer requests a different installation date from the telecommunications service provider before the installation date.
- 2720.3 Trouble Reports Per One hundred (100) Lines measure – This measure evaluates the number of access lines per one hundred (100) access lines for which a customer reports a trouble. The following requirements apply:
- (a) If a customer has multiple access lines and more than one (1) access line experiences a network service problem, then each access line shall be counted separately;
 - (b) The standard for this measure is four (4) troubles per one hundred (100) lines;
 - (c) Results for this measure shall be calculated by dividing the number of initial trouble reports by the total number of access lines. This figure is then multiplied by one hundred (100). Results shall be reported to the

hundredth decimal place, rounded using traditional mathematical rounding principles.

2720.4 Out-of-service Clearing Time measure – This measure evaluates the percentage of customer troubles that are classified as out-of-service problems that are cleared within twenty-four (24) hours. The following requirements apply:

- (a) For purposes of starting the twenty-four (24) hour time clock to calculate the time period:
 - (1) If an outage report is received during normal business hours, then the time clock begins when the outage report is received by the telecommunications service provider;
 - (2) If an outage report is received outside of normal business hours, then the time clock begins at the beginning of the day on the next business day;
 - (3) If the telecommunications service provider is unable to gain access to the customer premises to repair the out-of-service condition, then the twenty-four (24) hour time clock is stopped until the provider can gain access to the property; and
 - (4) Each telecommunications service provider shall establish its normal business hours in its customer bills and on a page that is readily accessible to consumers on its website.
- (b) The standard for this measure shall be eighty percent (80%) clearance within twenty-four (24) hours;
- (c) Results for this measure shall be calculated by dividing the number of out-of-service reports cleared within twenty-four (24) hours by the total number of out-of-service reports received. The result shall be reported as a percentage rounded to the hundredth decimal place using traditional mathematical rounding; and
- (d) Data collected for this measure shall be disaggregated into residential and business customer categories and reported by those categories.

2720.5 Data for all measures shall be collected and reported on a District of Columbia-wide basis.

2720.6 Included services – The measures shall apply to the following services:

- (a) Residential access lines;

- (b) Business single line and Centrex lines; or
- (c) Voice-grade PBX trunks.

2720.7 Exceptions - The measures shall not apply to the following services:

- (a) UNE-P;
- (b) UNE-L;
- (c) DS1;
- (d) DS0;
- (e) DS3;
- (f) EEL;
- (g) Resold services;
- (h) Dedicated non-switched services;
- (i) Wide area telephone service;
- (j) Integrated service digital network services;
- (k) The special service portion of PBX service;
- (l) Broadband services;
- (m) Voice mail and customer premises equipment;
- (n) Inside wire;
- (o) Payphone equipment and service;
- (p) VoIP services; or
- (q) Failures caused by collocation or interconnection problems.

2720.8 Reporting - Each telecommunications service provider shall collect and retain accurate data demonstrating their compliance with the measures in this chapter. Data is to be collected on a monthly basis in a format established by Commission order and these rules. The following applies to the data telecommunication service providers are required to provide:

- (a) Each telecommunications service provider shall submit its monthly reports to the Commission on a quarterly basis, with the months of January, February, and March being submitted on April 30; the months of April, May, and June being submitted on July 30; the months of July, August, and September being submitted on October 30; and the months of October, November, and December being submitted on January 30 of the next year;
- (b) If a telecommunications service provider fails a measure in a quarterly report, the provider shall file an explanation for the failure and a plan to remedy the failure. If the failure was due to data clustering, customer error, or unforeseeable events, then the telecommunications service provider may request a waiver of the performance standard. The request for a waiver shall contain a detailed explanation of the reasons for granting such a waiver; and
- (c) Each telecommunications service provider shall retain its reporting data for three (3) years in the event that the records are audited by the Commission.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in The District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of proposed rulemaking action to adopt amendments to Chapter 10 (Initiative and Referendum), of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments clarify the various filing requirements at multiple stages of the initiative and referendum process; specify the Board’s notice requirements for the proper subject matter review hearing for both initiatives and referenda; expand the types of documents that non-resident circulators may submit as valid proof of residence when registering with the Board; and clarify the rules concerning signature defects on initiative or referendum petitions. This rulemaking is necessary to ensure the fair and efficient processing of initiative and referendum measures.

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

Chapter 10, INITIATIVE AND REFERENDUM, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Section 1000, GENERAL PROVISIONS, is amended to read as follows:

1000 GENERAL PROVISIONS

1000.1 This chapter governs the process by which registered qualified elector(s) of the District of Columbia may present initiative or referendum measures to the electorate for their approval or disapproval.

1000.2 For purposes of this chapter, unless otherwise provided, the following terms shall be defined as follows:

- (a) The term “Home Rule Act” means the “District of Columbia Self Government and Governmental Reorganization Act”, Public Law 93-198 (codified at D.C. Official Code §§ 1-201.01 *et seq.*), and any subsequent amendments.
- (b) The term “qualified petition circulator” means any individual who is:
 - (1) At least eighteen (18) years of age; and
 - (2) Either a resident of the District of Columbia, or a resident of another jurisdiction who has registered as a petition circulator with the Board in accordance with this chapter.

- (c) The term “initiative” means the process by which the electors of the District of Columbia may propose laws (except laws appropriating funds) and present such proposed laws directly to the registered qualified electors of the District of Columbia for their approval or disapproval.
- (d) The term “referendum” means the process by which the registered qualified electors of the District of Columbia may suspend acts of the Council of the District of Columbia (except emergency acts, acts levying taxes, or acts appropriating funds for the general operation budget) until such acts have been presented to the registered qualified electors of the District of Columbia for their approval or rejection, provided that the Chairman of the Council has transmitted the Act to the Speaker of the House of Representatives, and the President of the Senate, under D.C. Official Code § 1-206.02(c)(1) (2016 Repl.).

1000.3 In order to commence the initiative or referendum process, a registered qualified elector(s) shall file the following documents with the Board:

- (a) Five (5) hand-written or word processed copies printed on paper of good writing quality, as well as the word processor document electronic file, of the full legislative text of the initiative or referendum measure; a summary statement not exceeding one hundred (100) words; and a short title of the initiative or of the act or part of the act to be referred not exceeding fifteen (15) words;
- (b) An affidavit under oath containing the name, telephone number, and residence address of the proposer, and a statement that the proposer is a registered qualified elector of the District of Columbia; and
- (c) A copy of the statement of organization and report(s) of receipts and expenditures filed with the Office of Campaign Finance.

1000.4 If the initiative or referendum measure received does not conform to the minimum filing requirements of this section, the General Counsel, on behalf of the Board, shall refuse to accept the measure and no further action shall be taken on the measure.

1000.5 If the measure received meets the minimum filing requirements and if the measure is an initiative, the General Counsel shall provide notice in the *D.C. Register* of the measure’s receipt and the Board’s intent to review the measure at a public hearing to determine whether it presents a proper subject for initiative (“Notice of Receipt and Intent to Review”). If the measure received meets the minimum filing requirements and is a referendum, the Notice of Receipt and Intent to Review shall be posted on the Board’s website not less than forty-eight (48) hours in advance of the hearing.

- 1000.6 Pursuant to D.C. Official Code § 1-1001.16(b), the Board shall refuse to accept any measure which is not a proper subject of initiative or referendum.
- 1000.7 If the Board determines that the initiative or referendum measure presents a proper subject, or if the Superior Court of the District of Columbia grants a writ in the nature of mandamus compelling the Board to accept the measure, the Board shall accept the initiative or referendum measure and shall assign a serial number to the measure.
- 1000.8 The first initiative measure shall be numbered one (1) in numerals. Succeeding measures shall be numbered consecutively 2, 3, 4, and so on ad infinitum.
- 1000.9 The first referendum measure shall be numbered 001 in numerals. Succeeding measures shall be numbered 002, 003, 004, and so on ad infinitum.
- 1000.10 Once assigned a serial number, an initiative or referendum measure shall be known and designated on all petitions, election ballots, and proceedings as "Initiative Measure No. " or "Referendum Measure No. ."

Section 1001, ADOPTION OF BALLOT LANGUAGE, is amended to read as follows:

1001 ADOPTION OF BALLOT LANGUAGE

- 1001.1 Within twenty (20) calendar days of the date on which the Board accepts the initiative or referendum measure, the Board shall prepare and formally adopt the following at a public meeting:
 - (a) An abbreviated and impartial summary statement not exceeding one hundred (100) words in length expressing the chief purpose of the proposed measure;
 - (b) A short title for the measure not exceeding fifteen (15) words in length by which it will be readily identifiable and distinguishable from other measures which may appear on the ballot; and
 - (c) The proper legislative form of the initiative or referendum measure, where applicable, similar to the form of an act that has completed the course of the legislative process within the District of Columbia government before transmittal to Congress.
- 1001.2 For the purposes of this section, the following rules shall apply to the counting of words in the summary statement and short title:
 - (a) Punctuation is not counted;

- (b) Each word shall be counted as one (1) word except as specified in this subsection;
- (c) All geographical names shall be considered as one (1) word; for example, "District of Columbia" shall be counted as one (1) word;
- (d) Each abbreviation for a word, phrase, or expression shall be counted as one (1) word;
- (e) Hyphenated words that appear in any generally available dictionary shall be considered as one (1) word. Each part of all other hyphenated words shall be counted as a separate word;
- (f) Dates consisting of a combination of words and digits shall be counted as two (2) words. Dates consisting only of a combination of digits shall be counted as one (1) word; and
- (g) Any number consisting of a digit or digits shall be considered as one (1) word. Any number which is spelled, such as "one," shall be considered as a separate word or words. "One" shall be counted as one (1) word whereas "one hundred" shall be counted as two (2) words. The number one hundred "100," shall be counted as one (1) word.

1001.3 Within five (5) days of formally adopting the summary statement, short title, and legislative text (“the adopted language”), the General Counsel shall do the following:

- (a) Notify the proposer of the measure of the adopted language;
- (b) Submit the adopted language to the *D.C. Register* for publication; and
- (c) If the measure is a referendum, submit the adopted language to one newspaper of general circulation for publication.

1001.4 If no review of the adopted language is sought in the Superior Court pursuant to D.C. Official Code § 1-1001.16(e), the adopted language shall be considered to be certified at the expiration of the ten (10) day period for review. If the Court orders revision to the adopted language, the revised adopted language shall be considered to be certified on the date of the court order or at the expiration of the ten (10) day period for review, whichever is later.

1001.5 The certified short title shall be the title of the measure furnished with the petition, the title printed on the ballot, and the title used in any other proceedings relating to the measure.

Section 1003, SIGNATURE REQUIREMENTS, is amended to read as follows:

1003 SIGNATURE REQUIREMENTS

- 1003.1 In order for an initiative or referendum measure to obtain ballot access, it must be supported by a petition filed with the Board that contains the valid signatures of at least five percent (5%) of the registered qualified electors of the District of Columbia, provided that the total number of signatures submitted shall include at least five percent (5%) of the registered qualified electors in at least five (5) of the eight (8) election wards.
- 1003.2 The maximum number of signatures that the Board will accept for filing is two (2) times the minimum number of signatures as required by this section. Working from the first page of a petition that has been serially numbered pursuant to Subsection 1005.2 of this chapter, the Board shall only accept for filing the maximum number of signatures that may be filed pursuant to this section.
- 1003.3 The Board shall use the end-of-month official count of registered qualified electors made at least thirty (30) days prior to submission of the signatures for the particular initiative or referendum measure to determine the minimum number of signatures required for ballot access.

Section 1004, NON-RESIDENT CIRCULATORS, is amended to read as follows:

1004 NON-RESIDENT CIRCULATORS

- 1004.1 Each petition circulator who is not a resident of the District of Columbia shall, prior to circulating a petition, complete and file in-person at the Board's office a Non-Resident Petition Circulator Registration Form in which he or she:
- (a) Provides the name of the measure in support of which he or she will circulate the petition;
 - (b) Provides his or her name, residential address, telephone number, and email address;
 - (c) Swears under oath or affirms that he or she is at least eighteen (18) years of age;
 - (d) Acknowledges that he or she has received from the Board information regarding the rules and regulations governing the applicable petition circulation process, and that he or she will adhere to such rules and regulations;
 - (e) Consents to submit to the Board's subpoena power and to the jurisdiction of the Superior Court of the District of Columbia for the enforcement of Board subpoenas.

- 1004.2 Each non-resident petition circulator shall present valid proof of residence to the Board at the time he or she files the Non-Resident Petition Circulator Registration Form. Valid proof of residence is any official document showing the circulator's name and residence address. Valid proof of residence shall include the following:
- (a) A copy of current and valid government-issued photo identification;
 - (b) A utility bill for water, gas, electricity, cable, internet, telephone, or cellular phone service issued within the last ninety (90) days;
 - (c) A savings, checking, credit, or money market account statement from a bank or credit union issued within the last ninety (90) days;
 - (d) A paycheck, stub, or earning statement that includes the employer's name, address, and telephone number and was issued within the last ninety (90) days;
 - (e) A government-issued document or check from a federal or state agency, issued within the last ninety (90) days;
 - (f) A current residential lease or rental agreement;
 - (g) An occupancy statement from a homeless shelter issued within the last ninety (90) days; or
 - (h) A tuition or housing bill from a college or university issued for the current academic or housing term.

1004.3 Only upon the filing of the Non-Resident Petition Circulator Registration Form and presentation of valid proof of residence shall a non-resident be a qualified petition circulator in the District of Columbia. The non-resident's status as a qualified petition circulator shall be valid only for the circulation of the specific ballot measure petition listed on the Registration Form, provided that the information that the non-resident circulator records in the circulator's affidavit of the petition sheets he or she circulates conforms to the information on his or her Registration Form.

Section 1005, FILING PETITIONS, is amended to read as follows:

1005 FILING PETITIONS

1005.1 Before the petition is submitted, any petition pages circulated in an electronic format shall be printed at the Board's office and signed by the individual circulator who collected the signatures.

- 1005.2 At the time of submission, the proposers shall organize all petition sheets pursuant to the rules of this subsection. The petition shall not be received by the Executive Director if the proposer's submission does not conform to the following:
- (a) Petition sheets shall be organized alphabetically by the circulator's last name; and
 - (b) All petition sheets shall be serially numbered with numerals, beginning with the numeral "1".
- 1005.3 A petition, or any sheet comprising the petition shall be timely submitted. All pages of an initiative petition shall be submitted for filing no later than 4:45 p.m. on the one hundred and eightieth (180th) calendar day following the date upon which the Board provided the original petition form. All pages of a referendum petition shall be submitted for filing no later than 4:45 p.m. on the last business day before the act, or any part of the act, which is the subject of the referendum has become law. A petition, or any sheet comprising the petition, that is not timely submitted shall not be received.
- 1005.4 All timely submitted petitions shall be received by the Executive Director or his or her designee. When a petition is received, the Executive Director shall:
- (a) Count the petition pages and issue a receipt for the total number of petition pages submitted;
 - (b) Request that the custodian of the act return it to the Chairman of the Council of the District of Columbia, if the received petition is for a referendum measure;
 - (c) Obliterate any blank lines appearing on each petition page; and
 - (d) Prepare an initial total count of the signatures submitted pursuant to the rules of this section.
- 1005.5 A signature shall not be accepted, and shall not be included in the Executive Director's initial total count, if it:
- (a) Appears on a page that is not a proper reproduction of the paper form provided by the Board;
 - (b) Appears on a page which does not have a completed circulator affidavit;
 - (c) Appears on a page that was circulated by an individual who is not a qualified petition circulator; or

- (d) Is the signature of a registered voter who submitted a notarized request to disallow his or her signature from being counted on the petition, provided that the request was received prior to the time the petition is filed.

1005.6 If the initial total count indicates that a petition contains at least five percent (5%) of registered qualified electors in the District, the Executive Director shall accept the petition, post the petition for public inspection and challenge, and proceed with registration verification of petition signers in accordance with the rules of this chapter. If the petition does not contain at least five percent (5%) of registered qualified electors in the District, the Executive Director shall refuse to accept the petition and shall notify the proposer(s) in writing of the refusal.

Section 1006, PETITION CHALLENGES, is amended to read as follows:

1006 PETITION CHALLENGES

1006.1 The Executive Director or his or her designee shall post all accepted petitions, or facsimiles thereof, in the Board's office for public inspection and opportunity for challenge for ten (10) days, including Saturdays, Sundays, and holidays, beginning on the third (3rd) calendar day after the petitions are filed.

1006.2 Except as provided in this section, the Board shall adjudicate the validity of each properly filed challenge in accordance with the procedures prescribed in chapter 4 of this title. A challenge is properly filed if it:

- (a) Cites the alleged signature or circulator requirement defects, as set forth in the signature validity rules of this chapter, by line and page;
- (b) Is signed and submitted in-person at the Board's office by a qualified elector within the ten (10)-day posting period; and
- (c) Alleges the minimum number of signature defects which, if valid, would render the proposed measure ineligible for ballot access.

1006.3 Within three (3) working days of receipt of a properly filed challenge, the General Counsel or his or her designee shall serve a copy of the challenge upon the proposer by first-class mail or email.

1006.4 After receipt of a properly filed challenge, the Board's staff shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge.

1006.5 The Board shall receive evidence in support of and in opposition to the challenge and shall rule on the validity of the challenge no more than twenty (20) days after the challenge has been filed. The Board shall consider any other evidence as may be submitted, including but not limited to, documentary evidence, affidavits, and oral testimony.

- 1006.6 The Board, in view of the fact that it shall hear and determine the validity of the challenge within a limited time, may limit examination and cross-examination of witnesses to the following:
- (a) Objections and specifications of such objections, if any, to the petition; and
 - (b) Objections and specifications of such objections, if any, to the petition challenge.
- 1006.7 Based upon the evidence received, the Board shall either reject or uphold the challenge, and accordingly grant or deny ballot access to the proposed measure whose petition was challenged.
- 1006.8 If a one (1)-member Board panel makes a determination on the validity of a challenge, either the challenger or the proposer may apply to either the full Board or the District of Columbia Court of Appeals for a review of such determination within three (3) days after the announcement of the one (1)-member panel determination; provided that any appeal to the full Board must be made in time to permit the Board to resolve the matter by no later than twenty (20) days after the challenge has been filed. An appeal from a full Board determination to the Court of Appeals shall be made within three (3) days.

Section 1007, VALIDITY OF SIGNATURES, is amended to read as follows:

1007 VALIDITY OF SIGNATURES

- 1007.1 After receipt of a properly filed challenge, the Executive Director or his or her designee shall search the Board's registration records to prepare a recommendation to the Board as to the validity of the challenge based upon the signature validity rules of this section. In the Executive Director's review of the signatures and recommendation, a signature shall not be counted as valid if it contains any of the following defects:
- (a) The signer is not a registered voter;
 - (b) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
 - (c) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;
 - (d) The signature is a duplicate of a valid signature;

- (e) The signature is not dated;
- (f) The petition does not include the address of the signer;
- (g) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;
- (h) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;
- (i) The circulator of the petition failed to complete all required information in the circulator’s affidavit;
- (j) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature;
- (k) The signature was obtained outside of the presence of the circulator; or
- (l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient.

Section 1008, WATCHERS, is amended to read as follows:

1008 WATCHERS

1008.1 Two (2) persons representing the proposer(s) and two (2) persons representing any political committee or committees registered with the Office of Campaign Finance and organized in opposition to a proposed initiative or referendum measure may be present during the counting and validation procedures and shall be deemed watchers.

1008.2 To secure the presence of watchers, the proposer, or any committee registered in opposition, shall file a petition for credentials for watchers. Each petition for credentials shall be on a form furnished by the Board and shall contain the following:

- (a) The name, address, telephone number, and signature of the proposer(s) or the committee(s), together with the title of the proposed measure and its serial number;
- (b) The names, addresses, and telephone numbers of the persons authorized to represent the proposer(s) or the committee(s) and receive the badges from the Board; and

- (c) A certificate that each proposed watcher shall conform to the regulations of the Board concerning watchers and the conduct of the counting and validation process.
- 1008.3 The Board shall issue a badge for each authorized watcher, with space for the watcher’s name, the serial number of the measure, and the name of the proposer(s) or political committee(s) represented by the watcher. Badges shall be worn by the authorized watcher at all times when observing the counting and validation process.
- 1008.4 An authorized alternate watcher may, in the discretion of the proposer(s) or the political committee(s), be substituted for a watcher at any time during the counting and validation process; provided, that notice is first given to the designated representative of the Board who is present.
- 1008.5 No watcher shall at any time during the counting and validation process do the following:
 - (a) Touch any official record of the Board; or
 - (b) Interfere with the progress of the counting and validation process or obstruct in any way the process.
- 1008.6 If a watcher has any questions or claims any discrepancy, inaccuracy, or error in the conduct of the procedures, he or she shall direct his or her question or complaint to the Board designee in charge.
- 1008.7 Any watcher who, in the judgment of the Board or its designated representative, has failed to comply with any of the rules in this section may be requested to leave the area where the verification process is being conducted, and the watcher’s credentials shall be deemed canceled. An authorized alternate watcher may be substituted.

Section 1009, PETITION CERTIFICATION, is amended to read as follows:

1009 PETITION CERTIFICATION

- 1009.1 Within thirty (30) calendar days after the acceptance of an initiative or referendum petition for filing, the Board shall determine whether the petition contains the number of valid signatures necessary, in terms of percentage and ward distribution requirements, to be certified for ballot access.
- 1009.2 Upon the acceptance of a petition, the Executive Director or his or her designee shall:
 - (a) Verify the registration of each petition signer; and

- (b) Determine the number of signatures of verified registrants.
- 1009.3 The signatures of the verified registrants shall comprise the universe of signatures from which a random sample will be drawn for purposes of verifying the signatures' authenticity ("random sample universe").
- 1009.4 A signature will not be counted and included in the random sample universe if:
- (a) The signer is not a registered voter;
 - (b) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;
 - (c) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed, except that, if the Board's records indicate that the voter filed a change of address after the date on which the petition was signed but that was received on or before the petition was submitted, the signature shall be included in the random sample universe;
 - (d) The signature is a duplicate of a valid signature;
 - (e) The signature is not dated;
 - (f) The petition does not include the printed or typed address of the signer;
 - (g) The petition does not include the printed or typed name of the signer where the signature is not sufficiently legible for identification;
 - (h) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;
 - (i) The circulator of the petition failed to complete all required information in the circulator's affidavit;
 - (j) [RESERVED];
 - (k) [RESERVED]; or
 - (l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed initiative or referendum petition that was rejected or found to be numerically insufficient.
- 1009.5 Each signature in the random sample universe shall be ascribed to the ward in which the signer was a duly registered voter on the date the petition was signed,

except that if the Board’s records indicate that the voter filed a change of address after the date on which the petition was signed, but that was received on or before the petition was submitted, the signature shall be included in the ward of the voter’s new address.

- 1009.6 If the number of signatures in the random sample universe does not meet or exceed the established ward and District-wide requirements, the Board shall reject the petition as numerically insufficient.
- 1009.7 If the number of signatures in the random sample universe meets or exceeds the established minimum ward and District-wide requirements, the Board shall supply the Data Management Division of the Office of Planning with the signatures in the random sample universe, broken down by ward. The Data Management Division shall draw and identify for the Board a sample of one hundred (100) signatures from each ward to be verified, except where:
- (a) The Data Management Division determines that sampling the signatures of a given ward would not be necessary for the Board to make a determination to accept or reject the petition; or
 - (b) The Data Management Division determines that a sample larger than one hundred (100) must be drawn in order for the Board to make a determination to accept or reject the petition, and thus draws and identifies an appropriate sample size.
- 1009.8 In making the determination as to the authenticity of a signature, the Board shall disqualify a signature if the signature appearing on the petition does not reasonably resemble the signature on file in the Board’s records.
- 1009.9 The Board shall report the number of authentic signatures in each ward sample (“random sample results”) to the Data Management Division. Using the random sample results, the Data Management Division shall employ formulas from the fields of probability and statistics to determine the following:
- (a) Whether a ward equals or exceeds the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be accepted;
 - (b) Whether a ward does not equal or exceed the required number of authentic signatures with ninety-five percent (95%) confidence, and should thus be rejected; or
 - (c) Whether a larger sample should be drawn since no decision could be made with ninety-five percent (95%) confidence from the sample used.

- 1009.10 If is the Data Management Division determines that at least five (5) of the eight (8) election wards have the required number of valid signatures, then it shall use a stratified random sampling formula to combine the figures from all wards which were sampled to determine whether the entire number of authentic signatures appearing on the petition is equal in number to five percent (5%) of the registered electors in the District of Columbia with ninety-five percent (95%) confidence. The Data Management Division shall request that the Board verify additional signatures for authenticity if a larger sample is needed to make a determination.
- 1009.11 If the total number of authentic signatures equals or exceeds the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically sufficient for ballot access.
- 1009.12 If the total number of authentic signatures fails to equal or exceed the ward and District-wide signature requirements with ninety-five percent (95%) confidence, the Board shall certify the petition as numerically insufficient to qualify for ballot access.

All persons desiring to comment on the subject matter of this proposed rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 1015 Half Street S.E., Washington D.C. 20003. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboe.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. CASE NO. 18-16

**(Text and Map Amendments to Change Certain Zone Names)
(Mapping Phase)**

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 (2018 Rep1.)), hereby gives notice of its intent to amend the Zoning Map to change certain zone names to link common base zones to geographic identifiers.

This proposed approach is similar to how the Zoning Regulations of 1958 (ZR58) identified properties subject to an overlay, by first identifying the base zone and then the overlay’s initials. For example, the ZR58 R-4/CAP zone, which became RF-3 under the Zoning Regulations of 2016 (ZR16), is proposed to be renamed RF-1/CAP.

Although the Commission at this point is only proposing changes to the Zoning Map, it anticipates that the Office of Planning (OP) will offer text amendments to implement these changes together with such reorganization of the affected land use titles as OP considers appropriate.

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* and not before the Commission has taken proposed action on implementing text amendments and the public comment period for those amendments is completed.

The following amendments to the Zoning Map are proposed to change certain zone names. The proposed new names are listed in the right column. Where a cell is blank, no change is proposed.

1958 Name	ZR16 Name	Proposed Name Change 2018
Subtitle D - Residential House (R)		
R-1-A	R-1A	R-1A
R-1-B	R-1-B	R-1B
R-2	R-2	
R-3	R-3	
R-1-A/TSP	R-6	R-1A/TS
R-1-B/TSP	R-7	R-1B/TS

1958 Name	ZR16 Name	Proposed Name Change 2018
R-1-A/FH-TSP	R-8	R-1A/FH
R-1-B/FH-TSP	R-9	R-1B/FH
R-2/FH-TSP	R-10	R-2/FH
R-1-A/NO/TSP	R-11	R-1A/TS/NO
R-1-B/NO	R-12	R-1B/NO
R-3/NO	R-13	R-3/NO
R-1-A/WH	R-14	R-1A/WH
R-1-B/WH	R-15	R-1B/WH
R-1-B/SSH1	R-16	R-1B/SH
R-1-B/SSH2	R-16	R-1B/SH
R-3/FB	R-17	R-3/FB
R-1-B (Gtwn)	R-19	R-1B/GT
R-3 (Gtwn)	R-20	R-3/GT
R-1A/CBUT	R-21	R-1A/CBUT
Subtitle E – Residential Flat (RF)		
R-4 and R-4/D	RF-1	
R-4/DC	RF-2	RF-1/DC
R-4/CAP	RF-3	RF-1/CAP
NEW ZONE	RF-4	
NEW ZONE	RF-5	
Subtitle F – Residential Apartments (RA)		
R-5-A	RA-1	
R-5-B, DD/R-5-B	RA-2	
R-5-C	RA-3	
R-5-D	RA-4	
R-5-E	RA-5	
R-5-A/NO	RA-6	RA-1/NO
R-5-B/CAP	RA-7	RA-2/CAP
R-5-B/DC	RA-8	RA-2/DC
R-5-D/DC	RA-9	RA-4/DC
R-5-E/DC	RA-10	RA-5/DC
R-5-B/RC	RC-1	RA-2/RC

1958 Name	ZR16 Name	Proposed Name Change 2018
SP-1	MU-1	
SP-2	MU-2	
C-1	MU-3-A	MU-3A
	MU-3-B	MU-3B
C-2-A	MU-4	
C-2-B -1	MU-5-A	MU-5A
C-2-B -2	MU-5-B	MU-5B
C-2-C	MU-6	
C-3-A	MU-7	
C-3-B	MU-8	
C-3-C	MU-9	
CR	MU-10	
C-4	MU-30	MU-15
W-0	MU-11	
W-1	MU-12	
W-2	MU-13	
W-3	MU-14	
SP-1/DC	MU-15	MU-1/DC
SP-2/DC	MU-16	MU-2/DC
C-2-A/DC	MU-17	MU-4/DC
C-2-B/DC	MU-18	MU-5A/DC
C-2-C/DC	MU-19	MU-6/DC
C-3-B/DC	MU-20	MU-8/DC
C-3-C/DC	MU-21	MU-9/DC
CR/DC	MU-22	MU-10/DC
SP-2/CAP	MU-23	MU-2/CAP
C-2-A/CAP	MU-24	MU-4/CAP
C-2-A/CHC	MU-25	MU-4/CHC
C-2-/CAP/CHC	MU-26	MU-4/CAP/CHC
C-2-A/NO	MU-27	MU-4/NO
C-3-A/FT	MU-28	MU-7/FT

1958 Name	ZR16 Name	Proposed Name Change 2018
CR/FT	MU-29	MU-10/FT
C-2-A/RC	RC-2	MU-4/RC
C-2-B/RC	RC-3	MU-5/RC
Sub H – Neighborhood Commercial		
C-1/MW	NC-1	MU-3A/MW
C-2-A/TK	NC-2	MU-4/TK
C-2-A/CP	NC-3	MU-4/CP
C-2-A/WP	NC-4	MU-4/WP
C-2-B/WP	NC-5	MU-5A/WP
C-3-A/ES	NC-6	MU-7/ES
C-2-A/GA	NC-7	MU-4/GA
C-3-A/GA	NC-8	MU-7/GA
C-2-A/HS-H	NC-9	MU-4/H-H
C-2-B/HS-H	NC-10	MU-5A/H-H
C-2-C/HS-H	NC-11	MU-6/H-H
C-3-A/HS-H	NC-12	MU-7/H-H
C-3-B/HS-H	NC-13	MU-8/H-H
C-2-A/HS-A	NC-14	MU-4/H-A
C-3-A/HS-A	NC-15	MU-7/H-A
C-2-A/HS-R	NC-16	MU-4/H-R
C-2-B/HS-R	NC-17	MU-5A/H-R

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by email at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

DC MAYOR’S OFFICE ON ASIAN AND PACIFIC ISLANDER AFFAIRS**DC MAYOR’S COMMISSION ON ASIAN AND PACIFIC ISLANDER AFFAIRS****NOTICE OF REGULAR MEETING**

The DC Mayor’s Commission on Asian and Pacific Islander Affairs will be holding its regular meeting on January 16, 2019 at 6:30pm.

The meeting will be held at the MOAPIA office at One Judiciary Square, 441 4th Street NW, Suite 721N, Washington, DC 20001. The location is closest to the Judiciary Square metro station on the red line of the Metro. All commission meetings are open to the public. If you have any questions about the commission or its meetings, please contact oapia@dc.gov.

The DC Commission on Asian and Pacific Islander Affairs convenes meetings to discuss current issues affecting the DC Asian and Pacific Islander (AAPI) community.

MEETING AGENDA**DC Commission on Asian and Pacific Islander Affairs Monthly Meeting****Wednesday, January 16, 2019, 6:30 pm****Meeting Location: 441 4th Street NW Room 721 North Washington, DC 20001**

Call to Order

Introduction of Commissioners

Quorum

Approval of Agenda

Approval of October 2018 Meeting Minutes

Executive Reports and Business Items

1. Director's Report, Director DeGuzman, MOAPIA.

2. Staff Report, Ngoc Trinh, MOAPIA.

Chinese New Year Celebration Parade and Festival

Sunday, February 10, 2019, 1pm, 6th and I St NW.

State of Chinatown

1. Chaia Tacos, 615 I St. NW

2. New Year Festival and Parade, Sunday, February 10, 2019, 11 am lunch, 1 pm Parade.

3. Chinatown Senior Health Center, Wah Luk House, 800 6th St NW (Proposed Plan)

DC Public Schools (DCPS)

1. Preparation for Confirmation Hearing of the new Public School Chancellor by DC Council.

2019 Goals for MOAPIA/COAPIA

1. Mayoral goals for second term affecting AAPI communities

2. Strategic plan from MOAPIA and how COAPIA can support success

Community Engagement

1. Ideas to increase involvement by community in monthly COAPIA meetings

2. Organizations/Individuals that we could bring in to advise decisions surrounding MOAPIA strategy and initiative implementation

Miscellaneous Items

Meeting Adjournment

Next Meeting:

Wednesday, February 20, 2019, 6:30 pm

MOAPIA,

441 4TH St NW Room 721 North

Washington DC

Questions:

John Tinpe Chairman, John.Tinpe@dcbc.dc.gov

Ben Takai, Vice Chair & Secretary BenTakai@dcbc.dc.gov

Ngoc Trinh, MAOPIA Ngoc.Trinh@dc.gov

www.apia.dc.gov

DEPARTMENT OF BEHAVIORAL HEALTH
NOTICE OF FUNDING AVAILABILITY (NOFA)
RFA# RM0 DCOR012819

DC Opioid Response (DCOR) Prevention Grant

Purpose/Description of Project

The Department of Behavioral Health (DBH) is soliciting applications for a DC Opioid Response (DCOR) Prevention Grant. Eligible applicants are expected to implement evidence-based prevention strategies including, but not limited to: opioid awareness programs, group-level interventions, environmental strategies, policy change advocacy, etc., targeting one or more high need communities to prevent opioid misuse among youth and young adults in the District of Columbia.

Prevention efforts shall target youth and young adults ages 12 to 25 living in high need communities. Furthermore, for the purposes of this grant, all eight (8) Wards have been defined as “high need communities” for prevention.

The premise of this DCOR Prevention grant is that implementing prevention strategies at the community level where residents live and work, will, over time, lead to measurable and sustained changes in the District. Through community level partnerships, the District can more effectively overcome the opioid crisis and achieve the goal of the DCOR grant. Grantees are expected to implement a combination of an evidence-based intervention and environmental prevention strategies geared toward achieving the targeted outcomes of the DCOR grant.

Substance use disorder (SUD) prevention research suggests that youth and young adults do not engage in substance use solely because of personal characteristics, but rather due to a complex set of risk and protective factors in their environment. These risk and protective factors include the rules and regulations of the social institutions to which individuals belong (e.g., trust, social ties, relationships and exchanges among people); the norms of the communities in which they live; the messages to which they are exposed; and the availability of alcohol and other drugs to minors.¹

Eligibility

- Ability to enter into an agreement with DBH requiring compliance with all District of Columbia laws and regulations governing Substance Use Disorders and Mental Health Grants (22A DCMR Chapter 44).
- A 501(c)(3), or ability to enlist the services of a fiscal agent to apply for the funding on behalf, if applicant is not 501(c)(3).

¹ SAMHSA: Risk and Protective Factors. <https://www.samhsa.gov/capt/practicing-effective-prevention/prevention-behavioral-health/risk-protective-factors>

Length of Award

Grant awards will be made for a period of six (6) months from the award date. Grant may be continued for up to one (1) additional year based on documented project success, availability of funding, and DBH Director's approval of a Notice of Grant Award (NOGA) via a *Continuation Modification*. Grant recipients will be expected to begin project implementation on April 1, 2019.

Available Funding

A total of \$800,000 will be available to fund eight (8) DCOR prevention grantees with individual awards not to exceed \$100,000. Grants will be awarded by DBH using grant funds from United States Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA) State Opioid Response (SOR) Grant.

Anticipated Number of Awards

DBH anticipates eight (8) awards representing each of the eight (8) Wards in the District of Columbia not to exceed \$100,000.

Request for Application (RFA) Release

The RFA will be released Monday, January 28, 2019. The RFA will be posted on the website of the Office of Partnerships and Grants, www.opgs.dc.gov under the District Grants Clearinghouse. A copy of the RFA may be obtained from the DBH Community Services Administration, located at 64 New York Avenue, NE, Washington, DC 20002, 3rd Floor, from Compliance Specialist, Katherine Cooke Mundle during the hours of 8:15 a.m. – 4:45 p.m. beginning January 28, 2019.

Pre-Application Conference

A pre-application conference will be held at DBH, 64 New York Avenue, NE, Washington, DC, 20002, 2nd Floor, Conference Room 242 on Wednesday, February 6, 2019 from 10:00 a.m. – 12:00 p.m. ET. For more information, please contact Katherine Cooke Mundle at katherine.mundle@dc.gov or (202) 727-7639.

Note: Please use the West Entrance (closer to P Street NE) at security guard station and bring government issued ID.

Deadline for Applications

The deadline for submission is Thursday, February 28, 2019, at 4:45 p.m. ET.

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

WEDNESDAY, JANUARY 23, 2019 AT 10:00 AM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001

D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, January 23, 2019 at 10am. The meeting will be held in Room 1112 of the Citywide Conference Center on the 11th Floor of 441 Fourth St., N.W., Washington, DC. The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Members' Written Comments on Draft Reports:
 - (A) First Draft of Report #26, *Sexual Assault and Related Provisions*
 - (B) First Draft of Report #27, *Human Trafficking and Related Statutes*
 - (C) First Draft of Report #28, *Stalking*
 - (D) First Draft of Report #29, *Failure to Arrest*
 - (E) First Draft of Report #30, *Withdrawal Defense & Exceptions to Legal Accountability and General Inchoate Liability*
- III. Adjournment.

D.C. CRIMINAL CODE REFORM COMMISSION

NOTICE OF PUBLIC MEETING POSTPONEMENT

**WEDNESDAY, JANUARY 9, 2019 AT 10:00 AM
441 4TH STREET N.W., ROOM 1112, WASHINGTON, D.C., 20001**

D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

The previously scheduled meeting for Wednesday, January 9, 2019, at 10 am for the D.C. Criminal Code Reform Commission and its Criminal Code Revision Advisory Group has been postponed to Wednesday, January 23, 2019, at 10am.

Notice of the any further changes will be posted on the agency’s website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or richard.schmechel@dc.gov.

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
OFFICE OF PUBLIC CHARTER SCHOOL FINANCING AND SUPPORT**

**ANNOUNCES JANUARY 17, 2019 PUBLIC MEETING
FOR THE DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL CREDIT
ENHANCEMENT COMMITTEE**

The Office of the State Superintendent of Education (OSSE) hereby announces that it will hold a public meeting for the District of Columbia Public Charter School Credit Enhancement Committee as follows:

**12:30 p.m. – 2:00 p.m.
Thursday Jan. 17, 2019
1050 First St. NE, Washington, DC 20002
Conference Room 536 (LeDroit Park)**

For additional information, please contact:

Debra Roane
Financial Program Specialist
Office of Public Charter School Financing and Support
Office of the State Superintendent of Education
1050 First St. NE, Fifth Floor
Washington, DC 20002
(202) 478-5940
Debra.Roane@dc.gov

The draft agenda for the above-referenced meeting will be:

- I. Call to Order
- II. Approval of agenda for the Jan. 17, 2019, committee meeting
- III. Approval of minutes from Dec. 20, 2018, committee meeting
- IV. Review Conflict of Interest – Transaction Disclosure Checklist
- V. Mundo Verde Public Charter School – application for \$1,985,948 direct loan

Any changes made to the agenda that are unable to be submitted to the DC Register in time for publication prior to the meeting will be posted on the [public meetings calendar](#) no later than two (2) business days prior to the meeting.

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION
HEALTHY YOUTH AND SCHOOLS COMMISSION**

NOTICE OF 2019 MEETING SCHEDULE

The Healthy Youth and Schools Commission (“Commission”) hereby gives notice of the annual schedule of meetings for the 2019 Calendar Year. The Commission holds quarterly public meetings at the Office of the State Superintendent located at 1050 First Street NE.

DATE	TIME	LOCATION
February 27, 2019	3:00-5:00pm	1050 First Street NE Washington, DC 20002
May 22, 2019	3:00-5:00pm	1050 First Street NE Washington, DC 20002
August 21, 2019	3:00-5:00pm	1050 First Street NE Washington, DC 20002
November 20, 2019	3:00-5:00pm	1050 First Street NE Washington, DC 20002

Any changes to this schedule will be reflected on the District of Columbia Office of Open Government website located at <http://www.open-dc.gov>. For questions regarding this schedule of meetings, please contact:

Caitlin Shauck
Policy Analyst
Office of the State Superintendent of Education
Division of Health and Wellness
1050 First Street NE
Washington, DC 20002
202-442-9274
Caitlin.Shauck@dc.gov

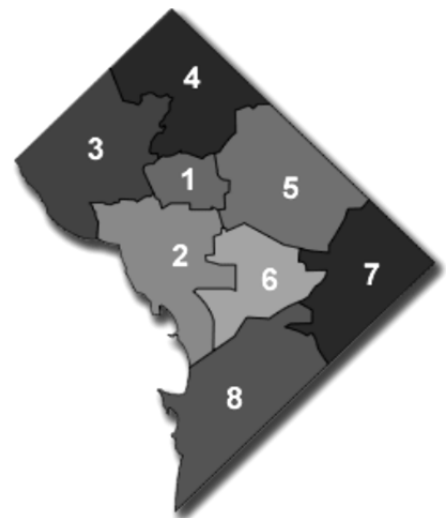
**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION SUMMARY
As Of December 31, 2018**

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	49,070	3,100	634	211	207	12,328	65,550
2	33,152	5,937	254	238	172	11,654	51,407
3	40,606	6,380	375	204	162	11,824	59,551
4	51,199	2,277	540	125	184	9,460	63,785
5	55,988	2,519	608	176	287	10,355	69,933
6	59,518	7,879	532	356	281	15,110	83,676
7	50,620	1,383	439	86	224	7,424	60,176
8	49,324	1,526	480	88	220	8,079	59,717
Totals	389,477	31,001	3,862	1,484	1,737	86,234	513,795
Percentage By Party	75.80%	6.03%	.75%	.29%	.34%	16.78%	100.00%

DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS
AS OF THE END OF DECEMBER 31, 2018

COVERING CITY WIDE TOTALS BY:
WARD, PRECINCT AND PARTY

ONE JUDICIARY SQUARE
1015 HALF STREET, SE SUITE 750
WASHINGTON, DC 20003
(202) 727-2525
<http://www.dcboe.org>



D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 1 REGISTRATION SUMMARY
As Of December 31, 2018

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,849	35	8	5	7	320	2,224
22	4,112	432	29	18	16	1,085	5,692
23	3,150	242	43	14	21	854	4,324
24	2,873	284	28	24	10	857	4,076
25	4,141	462	48	22	11	1,158	5,842
35	3,944	221	58	21	11	893	5,148
36	4,575	250	49	14	22	1,065	5,975
37	3,924	177	43	13	25	939	5,121
38	3,103	141	43	15	16	804	4,122
39	4,391	178	68	17	14	1,006	5,674
40	4,049	197	85	12	15	1,075	5,433
41	3,883	211	76	13	20	1,089	5,292
42	1,930	93	24	9	9	502	2,567
43	1,926	74	25	8	7	402	2,442
137	1,220	103	7	6	3	279	1,618
TOTALS	49,070	3,100	634	211	207	12,328	65,550

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 2 REGISTRATION SUMMARY
As Of December 31, 2018

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
2	996	178	8	10	9	562	1,763
3	1,807	376	17	12	13	700	2,925
4	2,142	548	10	14	11	851	3,576
5	2,187	612	15	22	13	838	3,687
6	2,520	819	19	20	18	1,337	4,733
13	1,387	235	7	9	6	443	2,087
14	3,129	476	29	26	10	1,003	4,673
15	3,256	405	36	25	14	976	4,712
16	3,636	461	30	27	16	1,027	5,197
17	5,174	661	31	38	25	1,585	7,514
129	2,565	423	12	12	13	983	4,008
141	2,643	337	21	12	12	702	3,727
143	1,710	406	19	11	12	647	2,805
TOTALS	33,152	5,937	254	238	172	11,654	51,407

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 3 REGISTRATION SUMMARY
As Of December 31, 2018**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,359	408	11	8	5	602	2,393
8	2,513	635	26	7	11	823	4,015
9	1,304	488	8	11	9	512	2,332
10	1,984	409	20	12	11	732	3,168
11	3,654	840	48	42	21	1,333	5,938
12	514	170	1	5	4	224	918
26	3,156	364	24	14	9	926	4,493
27	2,561	242	21	10	3	594	3,431
28	2,685	466	40	14	18	831	4,054
29	1,413	220	14	11	9	434	2,101
30	1,332	210	11	4	3	324	1,884
31	2,536	302	19	9	13	599	3,478
32	2,895	298	29	9	12	614	3,857
33	3,037	271	26	5	5	690	4,034
34	4,154	438	37	15	8	1,200	5,852
50	2,305	281	18	12	12	554	3,182
136	923	74	9	2	2	283	1,293
138	2,281	264	13	14	7	549	3,128
TOTALS	40,606	6,380	375	204	162	11,824	59,551

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 4 REGISTRATION SUMMARY
As Of December 31, 2018**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,456	69	29	9	6	400	2,969
46	2,962	102	30	9	15	519	3,637
47	3,633	140	38	10	18	767	4,606
48	2,913	131	34	5	5	584	3,672
49	946	47	14	3	10	229	1,249
51	3,447	507	25	9	11	657	4,656
52	1,284	149	10	2	7	232	1,684
53	1,281	77	24	3	4	250	1,639
54	2,452	92	31	4	7	469	3,055
55	2,545	80	18	5	22	454	3,124
56	3,293	99	36	13	14	666	4,121
57	2,567	74	27	8	11	518	3,205
58	2,363	64	21	5	4	398	2,855
59	2,661	84	28	11	7	436	3,227
60	2,252	76	23	6	12	638	3,007
61	1,668	57	16	3	4	312	2,060
62	3,233	128	22	4	4	411	3,802
63	3,964	144	59	4	15	715	4,901
64	2,408	68	22	5	6	397	2,906
65	2,871	89	33	7	2	408	3,410
Totals	51,199	2,277	540	125	184	9,460	63,785

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 5 REGISTRATION SUMMARY
As Of December 31, 2018**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,709	214	68	14	21	1,019	6,045
44	3,028	243	33	13	21	695	4,033
66	4,828	115	45	9	18	694	5,709
67	2,973	108	23	5	9	446	3,564
68	2,025	169	25	12	18	421	2,670
69	2,182	78	20	3	11	315	2,609
70	1,543	72	23	0	4	252	1,894
71	2,525	68	23	7	10	400	3,033
72	4,566	154	37	13	28	781	5,579
73	2,041	99	25	7	10	386	2,568
74	5,106	282	61	21	23	1,076	6,569
75	4,269	239	46	26	23	896	5,499
76	1,841	108	24	10	11	428	2,422
77	3,080	128	31	6	15	585	3,845
78	3,151	106	46	7	25	530	3,865
79	2,221	81	26	4	15	426	2,773
135	3,255	184	38	15	18	658	4,168
139	2,645	71	14	4	7	347	3,088
TOTALS	55,988	2,519	608	176	287	10,355	69,933

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 6 REGISTRATION SUMMARY
As Of December 31, 2018

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,883	627	43	32	20	1,406	7,011
18	5,114	396	45	22	19	1,199	6,795
21	1,234	67	9	7	1	263	1,581
81	4,832	390	53	21	20	1,021	6,337
82	2,679	266	26	14	5	647	3,637
83	6,236	829	47	46	31	1,684	8,873
84	2,065	421	20	12	11	568	3,097
85	2,829	514	19	15	13	768	4,158
86	2,303	261	20	11	16	445	3,056
87	2,794	302	21	7	17	635	3,776
88	2,188	310	25	10	7	517	3,057
89	2,729	641	26	24	10	800	4,230
90	1,680	244	13	8	15	501	2,461
91	4,344	444	33	19	22	1,007	5,869
127	4,405	324	49	27	33	944	5,782
128	2,692	241	30	13	10	645	3,631
130	798	325	6	4	3	281	1,417
131	3,757	1,004	30	43	20	1,216	6,070
142	1,956	273	17	21	8	563	2,838
TOTALS	59,518	7,879	532	356	281	15,110	83,676

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 7 REGISTRATION SUMMARY
As Of December 31, 2018**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,529	92	20	5	6	302	1,954
92	1,612	36	12	1	5	244	1,910
93	1,683	44	21	2	10	260	2,020
94	2,093	62	19	6	10	297	2,487
95	1,760	54	13	1	3	290	2,121
96	2,519	63	16	0	11	373	2,982
97	1,447	46	13	2	8	239	1,755
98	2,025	49	22	6	20	294	2,416
99	1,643	51	17	8	21	315	2,055
100	2,619	52	17	4	10	337	3,039
101	1,675	37	16	6	5	205	1,944
102	2,518	63	18	3	14	332	2,948
103	3,667	81	37	7	13	535	4,340
104	3,345	96	35	3	22	508	4,009
105	2,516	78	20	4	11	415	3,044
106	2,952	65	24	3	12	408	3,464
107	1,874	58	13	1	8	265	2,219
108	1,106	33	5	0	3	144	1,291
109	994	43	3	3	1	115	1,159
110	3,924	102	24	10	13	472	4,545
111	2,575	64	36	3	6	435	3,119
113	2,306	57	21	2	7	300	2,693
132	2,238	57	17	6	5	339	2,662
TOTALS	50,620	1,383	439	86	224	7,424	60,176

D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
WARD 8 REGISTRATION SUMMARY
As Of December 31, 2018

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,302	65	17	0	12	352	2,748
114	3,925	154	53	13	29	710	4,884
115	2,938	84	26	5	11	651	3,715
116	4,307	104	45	6	22	690	5,174
117	2,269	49	21	5	9	376	2,729
118	2,915	89	35	3	17	449	3,508
119	2,869	119	34	6	16	504	3,548
120	2,209	50	15	2	4	305	2,585
121	3,664	80	26	7	9	518	4,304
122	1,912	50	21	1	8	291	2,283
123	2,570	195	29	19	20	474	3,307
124	2,816	74	23	2	11	392	3,318
125	4,759	106	37	5	19	793	5,719
126	4,186	151	51	9	14	795	5,206
133	1,389	45	8	2	1	190	1,635
134	2,347	52	26	1	5	313	2,744
140	1,947	59	13	2	13	276	2,310
TOTALS	49,324	1,526	480	88	220	8,079	59,717

**D.C. BOARD OF ELECTIONS
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS
CITYWIDE REGISTRATION ACTIVITY**

For voter registration activity between 11/30/2018 and 12/31/2018

NEW REGISTRATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Beginning Totals	388,426	30,890	3,853	1,454	1,743	85,801	512,167
Board of Elections Over the Counter	12	1	0	0	0	3	16
Board of Elections by Mail	28	5	0	0	0	3	36
Board of Elections Online Registration	42	10	0	1	0	23	76
Department of Motor Vehicle	395	60	2	6	3	169	635
Department of Disability Services	3	0	0	0	0	0	3
Office of Aging	0	0	0	0	0	0	0
Federal Postcard Application	0	0	0	0	0	0	0
Department of Parks and Recreation	0	0	0	0	0	0	0
Nursing Home Program	1	0	0	0	0	1	2
Dept. of Youth Rehabilitative Services	0	0	0	0	0	0	0
Department of Corrections	2	0	0	0	0	0	2
Department of Human Services	3	0	0	0	0	1	4
Special / Provisional	0	0	0	0	0	0	0
All Other Sources	2,306	129	17	16	4	658	3,130
+Total New Registrations	2,784	204	19	23	7	855	3,891

ACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Reinstated from Inactive Status	182	17	2	1	0	50	252
Administrative Corrections	3	1	0	0	0	0	4
+TOTAL ACTIVATIONS	405	18	2	1	0	50	256

DEACTIVATIONS	DEM	REP	STG	LIB	OTH	N-P	TOTAL
Changed to Inactive Status	0	0	0	0	0	0	0
Moved Out of District (Deleted)	0	0	0	0	0	0	0
Felon (Deleted)	1	0	0	0	0	1	2
Deceased (Deleted)	2	0	0	0	0	0	2
Administrative Corrections	2,029	86	8	4	7	420	2,554
-TOTAL DEACTIVATIONS	2,032	86	8	4	7	421	2,558

AFFILIATION CHANGES	DEM	REP	STG	LIB	OTH	N-P	
+ Changed To Party	426	79	23	22	9	321	
- Changed From Party	-312	-104	-27	-12	-15	-372	
ENDING TOTALS	389,477	31,001	3,862	1,484	1,737	86,234	513,795

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF EXTENDED SOLICITATION FOR PUBLIC COMMENTS

Underground Storage Tank Regulations

This notice is to inform all interested members of the public that the Department of Energy and Environment (Department) is extending the time for public review and comment on the Underground Storage Tank Regulations, which was published in the *D.C. Register* on December 28, 2018, at 65 DCR 13962.

The public comment period was originally scheduled to close on January 28, 2019. **The public comment period will now end on February 11, 2019.**

The primary purpose of the proposed rulemaking is to incorporate new requirements of the 2015 amendments to the federal underground storage tank regulations at 40 C.F.R. Part 280 so that the District can maintain state program approval under 40 C.F.R. Part 281. The new requirements include regulation of previously deferred field-constructed underground storage tanks and airport hydrant systems, testing of spill prevention and leak detection equipment, containment sump testing, and periodic walkthrough inspections. The rulemaking also updates the requirements for corrective action after releases from underground storage tanks, consolidates and updates fee requirements, and makes clarifying amendments and corrections to the regulations.

The proposed rules are available for viewing at: <https://doee.dc.gov/service/underground-storage-tank-program>. Additionally, a copy of these proposed rules can be obtained for viewing at DOEE offices, located at 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, during normal business hours.

All persons desiring to comment on the proposed regulations should file comments in writing no later than February 11, 2019. Comments should identify the commenter and be clearly marked “DOEE Underground Storage Tank Proposed Rule Comments.” Comments may be (1) mailed or hand-delivered to DOEE, 1200 First Street, N.E., 5th Floor, Washington, DC 20002, Attention: DOEE Underground Storage Tank Regulations, or (2) sent by e-mail to ust.doee@dc.gov, with the subject indicated as “DOEE Underground Storage Tank Proposed Rule Comments.”

**DEPARTMENT OF ENERGY AND ENVIRONMENT
NOTICE OF FUNDING AVAILABILITY**

**Overnight Meaningful Watershed Educational Experiences for Fifth Grade Students in
the District of Columbia**

The Department of Energy and Environment (DOEE) seeks eligible entities to continue DOEE's commitment to provide Overnight Meaningful Watershed Educational Experiences (OMWEE) to fifth grade students enrolled in DC Public Schools and DC Public Charter Schools. The OMWEE program offers District students the opportunity to spend three (3) days and two (2) nights learning about their local watersheds and the Chesapeake Bay while immersed in a non-urban environment. This hands-on outdoor program also provides professional development for teachers, advances the integration of environmental literacy into classroom curriculum, and helps prepare District students to be competitive in the green economy.

The project period is one (1) year, with the option of up to two (2) additional years, for a total of three (3) years. \$550,000 is available for the first year for one award.

Beginning 1/18/2019, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

Download from the Department's website, www.doe.dc.gov. Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

Email a request to 2019OvernightMWEE.grant@dc.gov with "Request copy of RFA 2019-1911-WPD" in the subject line.

Pick up a copy in person from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Kara Pennino at (202) 654-6131 and mention this RFA by name.

Write DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Kara Pennino RE:2019-1911-WPD" on the outside of the envelope.

The deadline for application submissions is 3/1/2019, at 4:30 p.m. Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to 2019OvernightMWEE.grant@dc.gov.

Eligibility: All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies
- Universities/educational institutions; and
- Private Enterprises.

For additional information regarding this RFA, write to: 2019OvernightMWEE.grant@dc.gov.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY**

OFFICE OF GOVERNMENT ETHICS

2019 SCHEDULE OF ETHICS BOARD MEETINGS

In accordance with D.C. Official Code § 1–1162.04, the Office on Government Ethics provides notice of the 2019 Schedule of Meetings of the District of Columbia Board of Ethics and Government Accountability. All Meetings are scheduled on Thursdays at 10:00 a.m., and will be held at the Board of Ethics and Government Accountability, 441 4th Street, N.W., Suite 540S, Washington, DC 20001. The Board may exercise its discretion and reschedule a regular meeting or call special meetings when necessary with reasonable notice to the public.

- January 10, 2019 @12
- February 7, 2019
- March 14, 2019 @ 12
- April 4, 2019
- May 2, 2019
- June 6, 2019
- July 11, 2019 @ 12
- August 1, 2019
- September 5, 2019
- October 3, 2019
- November 7, 2019
- December 5, 2019

FRIENDSHIP PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Friendship Public Charter School is seeking bids from prospective candidates to provide:

- **Hospital/Homebound/Interim Alternative Placement Instruction** - FPCS seeks proposals from vendors who provide elementary, secondary, and special education teachers and related service providers to work with students on a one-to-one basis in the hospital, at home, or in an interim alternative placement.
- **Branded, Personalized and Promotional Goods and Related Services** - FPCS seeks proposals from vendors to provide timely, well-priced branded and personalized items. Vendors with an online promo store and general item list are preferred but not required.
- **High Speed Wan, Internet Service, sip & Telephone** - FPCS seeks proposals from vendors who provide dedicated high-speed connections to the Internet and Telephone.

The full scope of work will be posted in a competitive Request for Proposal that can be found on FPCS website at <http://www.friendshipschools.org/procurement/>. Proposals are due no later than 4:00 P.M., EST, **Monday, February 18th, 2019**. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org

D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY

NOTICE OF CLOSED MEETING

Homeland Security Commission

January 17, 2019

3:00 p.m. to 5:00 p.m.

441 4th Street, NW

Washington, D.C. 20001

Room 1112 on Floor 11 South

On January 17, 2018 at 3:00 p.m., the Homeland Security Commission (HSC) will hold a closed meeting pursuant to D.C. Code § 2-575(b), D.C. Code § 7-2271.04, and D.C. Code § 7-2271.05, for the purpose of discussing the annual report.

The meeting will be held at 441 4th Street, NW, Washington, D.C. 20001 in room 1112 on floor 11, South Tower.

For additional information, please contact Sarah Case-Herron, Chief of Policy and Legislative Affairs, by phone at 202-481-3107 or by email at sarah.case-herron@dc.gov.

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****Architectural Services**

KIPP DC is soliciting proposals from qualified vendors for Architectural Services. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM EST, on February 1, 2019. Questions can be addressed to kevin.mehm@kippdc.org

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL TARIFF

GT2017-02, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO ADD RATE SCHEDULE NO. 7;
and

FORMAL CASE NO. 1137, IN THE MATTER OF THE APPLICATION OF WASHINGTON GAS LIGHT COMPANY FOR AUTHORITY TO INCREASE RATES AND CHARGES FOR GAS SERVICE

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 District of Columbia Code (D.C. Code) and in accordance with Section 2-505 of the D.C. Code¹ of its final tariff action in the above-captioned proceeding.

2. On August 10, 2018, Washington Gas Light Company (WGL or Company) filed a revision to Rate Schedule No. 7, High Load Factor Rate Proposal for Combined Heat and Power (CHP) and Distributed Generation (DG) facilities, collectively (CHP/DG) in the District of Columbia.² The rate schedule establishes a High Load Factor Rate for Commercial & Industrial customers with a Unitized Rate of Return equal to or greater than 1.0 at a fixed rate. WGL's proposed revision corrects an inadvertent error in the tariff which left out language authorizing the Company to assess for the District of Columbia Sustainable Energy Trust Fund (SETF) surcharge and the District of Columbia Energy Assistance Trust Fund (EATF) surcharge to customers receiving service under Rate Schedule No.7.³

3. To affect these changes, WGL proposes to amend the following tariff page of P.S.C. of D.C. No. 3:

NATURAL GAS TARIFF, P.S.C. of D.C. No. 3
First Revised Page No. 27AB

¹ D.C. Code §§ 2-505 (2016 Repl.) and 34-802 (2012 Repl.).

² *Formal Case No. 1137, In the Matter of the Application of Washington Gas Light Company for Authority to Increase Rates and Charges for Gas Service* (“*Formal Case No. 1137*”), Washington Gas Light Company’s High Load Factor Rate Proposal Tariff Revision, filed August 10, 2018.

³ *Formal Case No. 1137*, Washington Gas Light Company’s CHP Tariff Revision, filed August 10, 2018. See D.C. Code §§ 8-1774.10(b)(4) and 8-1774.11(b)(4), requiring assessment for the SETF and EATF to be applied to the sale of every therm of natural gas in the District of Columbia, with the exception of therms sold to Residential Essential Service customers.

4. A Notice of Proposed Tariff (NOPT) regarding the tariff revision was published in the *D.C. Register* on November 16, 2018.⁴ No comments were filed in response to the NOPT. Based on the Commission’s review of the tariff filing, the Commission finds that WGL’s proposed revisions correct the oversight of failing to include the authorizing language allowing WGL to assess for the SETF and EATF.

5. The Commission at its regularly scheduled Open Meeting held on January 9, 2019, took final action approving WGL’s correction to Rate Schedule No. 7, High Load Factor Rate Proposal for Combined Heat and Power and Distributed Generation facilities adding language authorizing WGL to assess the District of Columbia SETF surcharge and EATF surcharges. The corrected High Load Factor Rate Tariff will become effective upon publication of this Notice of Final Tariff in the *D.C. Register*.

⁴ 65 DCR 12905 (November 16, 2018).

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF**FORMAL CASE NO. 988, IN THE MATTER OF THE DEVELOPMENT OF UNIVERSAL SERVICE STANDARDS AND A UNIVERSAL SERVICE TRUST FUND FOR THE DISTRICT OF COLUMBIA**

1. The Public Service Commission of the District of Columbia (Commission), pursuant to its authority under D.C. Official Code § 34-802 (2001), and D.C. Official Code § 34-2003 (2018 Supp.) hereby gives notice of its intent to act upon the Application of Verizon Washington, DC Inc. (Verizon DC)¹ in the above-captioned matter. Pursuant to D.C. Official Code § 2-505 (2001), the Commission will act upon the Application in not less than 30 days after the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. On December 20, 2018, Verizon DC filed an application requesting authority to amend the following tariff page:

**GENERAL REGULATIONS TARIFF P.S.C.-D.C.-NO. 201
Section 1A, 12th Revised Page 3**

3. Verizon DC identifies the proposed tariff amendment as an update to its District of Columbia Universal Service Trust Fund (DC USTF) surcharge, which is required by Chapter 28 of the Commission's Rules of Practice and Procedure. The surcharge is being updated to true up the 2017-2018 payments with the amounts actually billed to customers, and to adjust the surcharge for the 2019 assessment. Verizon DC provides confidential calculations in its Attachment 1. Verizon DC notes that its calculations in Attachment 1 are based on an implementation date of April 1, 2019. Any differential will be trued-up in the next DC USTF surcharge filing pursuant to 15 DCMR § 2815.4.²

4. With the approval of this Application, the monthly per line surcharge will be \$0.05 per non-Centrex line and \$0.01 per Centrex line. Verizon DC represents that this Application does not change the surcharge for Centrex or non-Centrex lines. Verizon DC requests approval of this tariff by mid-March 2019, so that this tariff would become effective April 1, 2019.³

5. The complete text of this Application is on file with the Commission. The proposed tariff revision is on file with the Commission and may be reviewed at the Office of the

¹ *Formal Case No. 988, In the Matter of the Development of Universal Service Standards and the Universal Service Trust Fund for the District of Columbia*, District of Columbia Universal Service Trust Fund Surcharge Compliance Filing - 2019 Surcharge (Verizon DC Application), filed December 20, 2018.

² Verizon DC Application at 2.

³ Verizon DC Application at 2.

Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, NW, Suite 800, Washington, DC 20005 between the hours of 9:00 am and 5:30 pm Monday through Friday. Copies of Verizon DC's Application may be obtained by visiting the Commission's website at www.dcpsc.org. Once at the website, open the "eDocket" tab, click on the "Search database" and input "FC 988" as the case number and "1224" as the item number. Copies of the Verizon DC Application may also be purchased, at cost, by contacting the Commission Secretary at (202) 626-5150 or psc-commissionsecretary@dc.gov.

6. All persons interested in commenting on Verizon DC's Application may submit written comments and reply comments not later than 30 and 45 days, respectively, after publication of this notice in the *D.C. Register* with Brinda Westbrook-Sedgwick, Commission Secretary, at the above address. After the comment period has expired, the Commission will take final action on Verizon DC's Application.

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

Notice is hereby given that the following named persons have been recommended for appointment as Notaries Public in and for the District of Columbia, effective on or after February 15, 2019.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4th Street, NW, Suite 810 South, Washington, D.C. 20001 within seven (7) days of the publication of this notice in the *D.C. Register* on January 18, 2019. Additional copies of this list are available at the above address or the website of the Office of the Secretary at www.os.dc.gov.

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

Effective: February 15, 2019

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Abdul-Malik	Mansur T.	The NHP Foundation 1090 Vermont Avenue, NW, Suite 400	20005
Acheampong	Nanayaa	Wells Fargo 2000 L Street, NW	20036
Allen	Cloe'	Agriculture Federal Credit Union 1400 Independence Avenue, SW	20250
Amos	Isha R.	Jaci Management, LLC 910 15th Street, SE	20003
Anderson	Derrick D.	Self 2625 3rd Street, NE, Apt. #301	20002
Andrews	Carla Lynette	Self 3403 21st Street, NW	20020
Arboleda	Julio German	Wells Fargo Bank 1301 Pennsylvania Avenue, NW	20004
Atkinson	Kelly M.	KLNB 1130 Connecticut Avenue, NW, Suite 600	20036
Augustine	Sheryl	PAI 1300 19th Street, NW, Suite 200	20036
Ayele	Frehiwot Zenebe	Bank of America 3100 14th Street, NW	20010
Barnes	Garrett H.	Special Olympics, 12th Floor 1133 19th Street, NW, 12th Floor	20036
Battle	Latasha	Precision Wall Tech 605 Raleigh Place, SE	20032
Biggs	Sara C.	American University 4400 Massachusetts Avenue, NW	20016
Blake	John K.	Neighborhood Legal Services Program 64 New York Avenue, NW, Suite 180	20002
Bond	Ruby C.	Fannie Mae 1100 15th Street, NW	20001

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

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Brosnan-Sell	Mary Thelka	Brownstein Hyatt Farber Schreck, LLP 1155 F Street, NW, 12th Floor	20004
Brown-Coward	Heather N.	Stoel Rives, LLP 1150 18th Street, NW	20036
Bucher	Mallory A.	Municipal Securities Rulemaking Board 1300 I Street, NW, Suite 1000	20005
Budhai	Bianca N.	Levi & Korsinsky 1101 30th Street, NW, Suite 115	20007
Burchette	Pamela S.	Mitchell Silberberg & Knupp, LLP 1818 N Street, NW, 7th Floor	20036
Calomaris	Julia	Bank Fund Staff Federal Credit Union 1725 I Street, NW	20006
Cam	Sophonie	Swick and Shapiro, PC 1101 15th Street, NW, Suite 205	20005
Carter	Jinean L.	Self 1730 Tamarack Street, NW	20012
Chicas	Rebeca	PNC Wealth Management 800 17th Street, NW	20006
Chin-Quee	Matthew	Planet Depos, LLC 1100 Connecticut Avenue, NW, Suite 950	20036
Chowdhry	Najmul H.	Department of Youth Rehabilitation Services 1000 Mt. Olivet Road, NW	20001
Cleckley	Wanda D.	Law Office of Geoffrey D. Allen 1030 15th Street, NW	20005
Clymer	Charlotte	Self 1821 E Capitol Street, SE, Apt 101	20003
Cordes	James	Neal R. Gross & Company 1323 Rhode Island Avenue, NW	20005
Dahreddine	Elizabeth K.	Capitol Title Insurance Agency, Inc 210 7th Street, SE	20003

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

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Davis	Annette M.	Transit Employees Federal Credit Union 2440 Market Street, NE	20018
Davis	Bethany Jean	Boyden Gray & Associates 801 17th Street, NW, Suite 350	20006
Davis	Lou-Anne Susan	Law Offices of John E. McCullough 1413 K. Street, NW, 15th Floor	20005
Del Bene	Andrew John	Neal R. Gross & Company 1323 Rhode Island Avenue, NW	20005
Dillard	Jacqueline D.	Special Olympics, Inc 1133 19th Street, NW, 12th Floor	20036
Edwards	Janice L. Moore	US Green Building Council 2101 L Street, NW, Suite 500	20037
Epstein Begal	Kira	Kira Epstein, LLC 3201 New Mexico Avenue, NW, Suite 220	20016
Evans	Tenasha L.	The New Macedonia Baptist Church 4115 Alabama Avenue, SE	20019
Finn	Margot H.	DLA Piper 500 8th Street, NW	20004
Fitzsimon	Joshua	Bryant Miller Olive, PC 1100 13th Street, NW, Suite 810	20005
Francis	Monica	M.C. Dean, Inc 2951 V Street, NE	20018
Francis-Walker	Jewel	Washington Gas 1000 Maine Avenue, SW	20024
Frimpong-Houser	Ama S.	Capital Area Immigrants' Rights Coalition 1612 K Street, NW	20006
Gaskin	M. Shanteau	Capstone Title & Escrow 1010 Wisconsin Avenue, NW, Suite 600	20007

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public****Effective: February 15, 2019****Page 5**

Hailemariam	Etsegenet	Bank Fund Staff Federal Credit Union 1725 I Street, NW	20006
Hall	Chrystal L.	The Peter N. G. Schwartz Development Company, LLC 1350 Connecticut Avenue, NW	20036
Ham	Shunnon	St Coletta of Greater Washington 1901 Independence Avenue, SE	20003
Handy	Natasha	Duane Morris, LLP 505 9th Street, NW, Suite 1000	20004
Hehir	Alicia	Eaton Workshop 1201 K Street, NW	20005
Hill	Desiree	KaBOOM!, Inc 4301 Connecticut Avenue, NW, Suite ML-1	20008
Holmstead	Elizabeth T.	Self 2858 29th Place, NW	20008
Hughes	Leslie M.	Boyden Gray & Associates 801 17th Street, NW	20006
Janneh	Karimah Y.	Simpson Thacher & Bartlett, LLP 900 G Street, NW	20001
Johnson	Monique	Washington Gas 1000 Maine Avenue, SW	20024
Jones	Dorothy R.	United States Memorial Foundation 701 Pennsylvania Avenue, NW	20004
Jones	Ivan L.	Self 3362 Denver Street, SE	20020
Jones	Pamela M.	Randle Highlands Elementary School (DCPS) 1650 30th Street, SE	20020
Jones	Patricia A.	Seyfarth Shaw, LLP 975 F Street, NW	20004

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 Recommendations for Appointments as DC Notaries Public

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Jones	Shirley W.	Self 3362 Denver Street, SE	20020
Jordan	Diana G.	District Department of Transportation 55 M Street, SE, 7th Floor	20003
Jordan	German	Industrial Bank 4812 Georgia Avenue, NW	20011
Kasdan	David A.	Worldwide Reporting, LLP 529 14th Street, SE	20003
Katzin	Laura	National Strategies 1990 K Street, NW, Suite 302	20006
Khundzak	Ana	Maglio Christopher & Toale 1775 Pennsylvania Avenue, NW, Suite 225	20006
Lee	Eun J.	Travelers Companies, Inc 700 13th Street, NW	20005
Legesse	Selamawit	Self 3500 14th Street, NW, #801	20009
Leigh	Cierra A.	Department of Commerce Federal Credit Union 1401 Constitution Avenue, NW, Room B0038A	20230
Lopez	Stephen E.	Self (Dual) 207 10th Street, SE	20003
Lyons	Tracey W.	Shook Hardy & Bacon, LLP 1155 F Street, NW, Suite 200	20004
Manter	Alexander	Peckar & Abramson, PC 2055 L Street, NW	20036
Marsh-Hunter	Stacie L.	Transit Employees Federal Credit Union 2440 Market Street, NE	20018
Matos Concepcion	Larissa D.	Bank of America 3100 14th Street, NW	20010

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

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Matthews	Regina M.	Wilmer Cutler Pickering Hale and Dorr, LLP 1875 Pennsylvania Avenue, NW	20006
Matthews	Rian	CityDance, Inc 2001 10th Street, NW	20001
Mckenzie	Marcia M.	Rock Creek Title, LLC 1008 Pennsylvania Avenue, SE	20003
McSears	Denice	District of Columbia Retirement Board 900 7th Street, NW	20001
Miller	Donnell	Self 3201 Warder Street, NW	20010
Minddzak	Carol A.	Latham & Watkins, LLP 555 Eleventh Street, NW	20004
Mojica	Rosa	MAR Construction, LLC 2810 6th Street, NE	20017
Molnar	Wendy Susan	Office of Official Reporters 1718 Longworth House Office Building	20515
Montazeri	Homa	Wells Fargo Bank 5201 MacArthur Boulevard, NW	20016
Nash	Cydne Smith	Self (Dual) 1714 33rd Place, SE	20020
Nelson	Kerri	National Restaurant Association 2055 L Street, NW, Suite 700	20036
Orr	Enrico	Global Zero 1342 Florida Avenue, NW	20009
Palm	Sumintra	Grantmakers in Health 1100 Connecticut Avenue, NW, Suite 1200	20036
Parsley	Crystal K.	Foushee's Tax & Financial Management Service, Inc. 3608 Alabama Avenue, SE	20020

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

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Perez	Connie L.	Self (Dual) 416 7th Street, NE	20002
Potler	Jonathan	Planet Depos, LLC 1100 Connecticut Avenue, NW, Suite 950	20036
Proute	Georgette R.	Octane 1436 U Street, NW, Suite 103	20009
Pryor	Sonovia	Universal Service Administrative Company 700 12th Street, NW, Suite 900	20005
Quinsland	Kierstin	Miriam's Kitchen 2401 Virginia Avenue, NW	20037
Ramirez	Sherry	Bates White, LLC 2001 K Street, NW, North Building, Suite 500	20006
Richardson	Orriel L.	Self (Dual) 1819 Channing Street, NE	20018
Ridges	Mae L.	Institute of Museum and Library Services 955 L'Enfant Plaza North, SW, Suite 4000	20024
Rinick	Jen	World Wildlife Fund 1250 24th Street, NW	20037
Roach	Crystal Rene	JP Morgan Chase Bank 130 M Street, SE	20003
Russell	Richard W.	Neal R. Gross & Company 1323 Rhode Island Avenue, NW	20005
Safavieh	Elnaz	TD Bank 1611 Wisconsin Avenue, NW	20007
Sands	Peter	Potomac Construction Group 1734 20th Street, NW	20009
Scales	Joy N.	Self 4908 9th Street, NW	20011

**D.C. Office of the Secretary
Recommendations for Appointments as DC Notaries Public****Effective: February 15, 2019****Page 9**

Schellin	Sharon S.	District of Columbia Office of Zoning 441 4th Street, NW, Suite 200S	20001
Sierra	Karen	Legal Counsel for the Elderly 601 E Street, NW	20011
Smith	Ingrid	Robert A. Ades & Associates, P.C. 80 M Street, SE, Suite 330	20003
Smith	Shenica Lynette	Mary's Center 2333 Ontario Road, NW	20009
Stephens	Karen Rena	Universal Service Administrative Company 700 12th Street, NW, Suite 900	20005
Thacker	Donald R.	Ace- Federal Reporters, Inc 1625 I Street, NW, Suite 790	20006
Thomason	Dustin Kyle	Planet Depos, LLC 1100 Connecticut Avenue, NW, Suite 950	20036
Tillman	Chandra Mackall	Center on Budget and Policy Priorities 820 First Street, NE, Suite 510	20002
Tyler	GerNika	AdvantEdge Workspaces 2101 L Street, NW, Suite 800	20037
Vargas	Byron	Wells Fargo Bank 3325 14th Street, NW	20010
Ventura	Elizabeth	Premier Bank, Inc. 1160 First Street, NE, #470	20002
Walk	Ruth V.	Howard University WHUR FM 529 Bryant Street, NW	20059
Walton	Kevin C.	Urban Brokers, LLC 2007 Vermont Avenue, NW	20001
Ward	Charles	Advantage Financial Federal Credit Union 175 N Street, NE	20002

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Wells	Cynthia	Bates White, LLC 2001 K Street, NW, North Building, Suite 500	20006
Wolff	Richard	Counselors Title, LLC 4400 Jenifer Street, NW, Suite 2	20015
Wright	Adrienne	Valor Development 4619 41st Street, NW	20016
Wright	Kemery A.	Self 3822 V Street, SE	20020
Zalewski	Brenda M.	The Levy Group Limited, LLC 1321 1/2 Wisconsin Avenue, NW	20007

DISTRICT OF COLUMBIA SENTENCING COMMISSION**NOTICE OF PUBLIC MEETING**

The Commission meeting will be held on Tuesday, January 15, 2019 at 5:00 p.m. The meeting will be held at 441 4th Street, N.W. Suite 430S Washington, DC 20001. Below is the planned agenda for the meeting. The final agenda will be posted on the agency's website at <http://sentencing.dc.gov>

For additional information, please contact: Mia Hebb, Staff Assistant, at (202) 727-8822 or email mia.hebb@dc.gov

Agenda

1. Review and Approval of the Minutes from the December 11, 2018 Meeting - Action Item, Judge Lee.
2. Annual Report Timeline – Informational Item, Barbara Tombs-Souvey.
3. Survey of Lapse and Revival Procedures in Other Jurisdictions – Informational Item, Kara Dansky.
4. Presentation of Requested Research Findings – Informational Item, Mehmet Ergun.
 - a. Lapsed and Revived Convictions
 - b. Impact of Juvenile Adjudications on CH Scores
5. Discussion of Post Release Issue - Discussion Item, Kara Dansky.
6. Schedule Next Meeting – February 19, 2019.
7. Adjourn.

TWO RIVERS PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Gym Flooring Surface Replacement**

Two Rivers PCS is soliciting proposals from qualified, competent, knowledgeable, and experienced flooring installation companies that will provide the full replacement of a 60' x 55' indoor resilient athletic surface for school gymnasium. Proposals are due February 22, 2019. The **RFP with bidding requirements** can be obtained by contacting, Gail Williams via email at **procurement@tworiverspcs.org**.

**WASHINGTON CONVENTION AND SPORTS AUTHORITY
(T/A EVENTS DC)**

NOTICE OF PUBLIC MEETINGS

The Board of Directors of the Washington Convention and Sports Authority (t/a Events DC), in accordance with the District of Columbia Self-Government and Governmental Reorganization Act of 1973, D.C. Official Code §1-207.42 (2006 Repl., 2011 Supp.), and the District of Columbia Administrative Procedure Act of 1968, as amended by the Open Meetings Amendment Act of 2010, D.C. Official Code §2-576(5) (2011 Repl., 2011 Supp.), hereby gives notice that it has scheduled the following meetings for 2019:

January 17, 2019
February 14, 2019
March 14, 2019
April 11, 2019
May 9, 2019
June 13, 2019
July 11, 2019
September 12, 2019
October 10, 2019
November 14, 2019
December 12, 2019

With the exception of January 17, 2019, meetings take place in the 1101 Boardroom, 1101 K Street, N.W., Third Floor, Washington, D.C. 20005, beginning at 10 a.m. The meeting on January 17, 2019 will take place in Room 103A of the Walter E. Washington Convention Center, 801 Mt. Vernon Place, N.W., Washington, D.C. 20001, beginning at 10 a.m. The Board's agenda includes reports from its Standing Committees.

For additional information, please contact:

Sean Sands
Chief of Staff
Washington Convention and Sports Authority
t/a Events DC

(202) 249-3012
sean.sands@eventsdc.com

WASHINGTON GLOBAL PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS**

Washington Global Public Charter School in accordance with section 2204(c) of the District of Columbia School Reform Act of 1995 solicits proposals for the following services:

- Special Education Services

Proposal Submission

A Portable Document Format (pdf) election version of your proposal must be received by the school no later than **4:00 p.m. EST on Tuesday, January 29, 2019** unless otherwise stated in associated RFP's. Proposals should be emailed to bids@washingtonglobal.org.

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

Interested parties and vendors will state their credentials and qualifications and provide appropriate licenses, references, insurances, certifications, proposed costs, and work plan. Please include any pertinent disclosures that may be present.

Scope of Work

Washington Global Public Charter School invites authorized VENDORS of special education services to provide proposals for the purpose of providing competitive pricing and quality service.

Washington Global Public Charter School envisions a system that is based on the following:

- Educational and psychological testing (including initial and re-evaluations)
- Occupational therapy programming to include therapeutic services, screenings, and evaluations
- Speech & Language programming to include therapeutic services, screenings, and evaluations
- Consultation and administrative services, including MDT/IEP meetings, consultation as requested on as needed basis, teacher meetings, quarterly progress reports, IEP development, analyze existing data, evaluation results, SEDS trainings, schedule creation, or requirements to perform services requested by the school outside of IEP hours.

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Substitute Teacher Services**

Washington Leadership Academy Public Charter School is seeking proposals for short and long term substitute teacher services in all subjects for high school students. Services will take place at WLA's campus.

Please include the following in your RFP:

- Rate/hour/service
- Qualifications of substitute teachers
- Licenses
- References of other DC charter schools

Deadline for Proposals: Friday, February 1

Please submit bids to Mandy Leiter, Operations Manager: mleiter@wlapcs.org

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, January 24, 2019 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | | |
|----|---|------------------|
| 1. | Call to Order | Chairman |
| 2. | Summary of Internal Audit Activity -
Internal Audit Status | Internal Auditor |
| 3. | Executive Session | Chairman |
| 4. | Adjournment | Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, February 7, 2019 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | |
|---|-----------------------|
| 1. Call to Order | Board Chairman |
| 2. Roll Call | Board Secretary |
| 3. Approval of January 3, 2019 Meeting Minutes | Board Chairman |
| 4. Committee Reports | Committee Chairperson |
| 5. CEO/General Manager | CEO/General Manager |
| 6. Action Items
Joint-Use
Non Joint-Use | Board Chairman |
| 7. Other Business | Board Chairman |
| 8. Adjournment | Board Chairman |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Finance and Budget Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, January 24, 2019 at 11:00 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | |
|--|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. December, 2018 Financial Report | Committee Chairperson |
| 3. Agenda for February, 2019 Committee Meeting | Committee Chairperson |
| 4. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, January 22, 2019 at 9:30 a.m. The meeting will be held in the Board Room (4th floor) at 5000 Overlook Avenue, S.W., Washington, D.C. 20032. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dewater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dewater.com.

DRAFT AGENDA

- | | | |
|----|---------------------|-------------------------|
| 1. | Call to Order | Committee Chairman |
| 2. | Monthly Updates | Chief Financial Officer |
| 3. | Committee Work plan | Chief Financial Officer |
| 4. | Other Business | Chief Financial Officer |
| 5. | Adjournment | Chief Financial Officer |

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

Application No. 17005-A of Studio Theatre, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved in BZA Order No. 17005, to allow additions to existing buildings to allow for the building’s use as a legitimate theater in the ARTS-3 Zone at premises 1501-1509 14th Street N.W. (Square 241, Lot 128).

HEARING DATE (17005):	April 22, 2003
DECISION DATE (17005):	April 22, 2003
ORDER ISSUANCE DATE (17005):	April 25, 2003
MODIFICATION DECISION DATE:	January 9, 2019

SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE

BACKGROUND

On April 22, 2003, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Studio Theatre LLC (the “Applicant”) in Application No. 17005 for special exceptions from the rear yard requirements under § 774, the roof structure requirements of § 771, and from the requirement that 50% of the surface area of the street wall along 14th Street at the ground level be used for display windows and entrances under §§ 1903 and 1906, to allow additions to existing buildings (to be consolidated into a single building on a single record lot) for use as a legitimate theater in the Arts/C-3-A District¹ at premises 1501, 1507 and 1509 14th Street, N.W. (Square 241, Lots 830, 834, and 835). The Board issued Order No. 17005 on April 25, 2003. (Exhibit 1B.)

MOTION FOR MODIFICATION OF CONSEQUENCE

On November 16, 2018, the Applicant submitted a request for modification of consequence to Order No. 17005. Specifically, the Applicant seeks to modify the approved plans by extending the third floor of the structure to the rear property line. In Application No. 17005, the Board granted special exception relief from the rear yard requirements for the lower two floors to extend to the property line, therefore the proposed modification would extend the rear yard nonconformity to the third floor, but would not introduce any new nonconformities nor any additional areas of relief. The Applicant provided proposed modified plans for the record. (Exhibit 1A.)

¹ The 1958 Zoning Regulations, which were in effect when BZA Case No. 17005 was heard and decided, were repealed and replaced in their entirety by the 2016 Zoning Regulations on September 6, 2016. As the zone districts were renamed in the 2016 Zoning Regulations, the Arts/C-3-A District is now the ARTS-3 District.

The Merits of the Request for Modification of Consequence

The Board found that the Applicant’s request complies with 11 DCMR Subtitle Y § 703.4, which defines a modification of consequence as a “proposed change to a condition cited by the Board in the final order, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Board.” The Board found that, though a previously approved area of special exception relief is being expanded, the request for modification raises no new issues of fact that would require a public hearing.

Pursuant to Subtitle Y §§ 703.8-703.9, the request for modification of consequence shall be served on all other parties to the original application and those parties shall be allowed at least ten days to submit a response to the request. The Applicant provided notice of the request to Advisory Neighborhood Commission (“ANC”) 2F, the only other party to the underlying application, on November 16, 2018. (Exhibit 1.) ANC 2F submitted a report indicating that at a regularly scheduled, properly noticed public meeting on December 5, 2018, at which a quorum was present, the ANC voted 5-0 to support the proposed modification of consequence. (Exhibit 6.)

The Applicant also served its request on the Office of Planning (“OP”). OP submitted a report recommending approval of the proposed modification of consequence. (Exhibit 7.) The District Department of Transportation also submitted a report indicating that it had no objection to the request. (Exhibit 8.)

As directed by 11 DCMR Subtitle Y § 703.4, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for a modification of consequence. Based upon the record before the Board and having given great weight to the ANC and OP reports filed in this case, the Board concludes that in seeking a modification of consequence to Order No. 17005, the Applicant has met its burden of proof under 11 DCMR Subtitle Y § 703, that the proposed modification has not changed any material facts upon which the Board based its decision on the underlying application that would undermine its approval.

A decision by the Board to grant this request would not be adverse to any party. 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 for modification of consequence is hereby **GRANTED, AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 1B.**

In all other respects, Order No. 17005 remains unchanged.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Lesylleé M. White, and Robert E. Miller to APPROVE; Carlton E. Hart not participating.)

**BZA APPLICATION NO. 17005-A
PAGE NO. 2**

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: January 10, 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.

**BZA APPLICATION NO. 17005-A
PAGE NO. 3**

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

Application No. 19722 of Kline Operations, LLC, as amended, pursuant to 11 DCMR Subtitle X § 901.2 for special exceptions under Subtitle C § 1502.1(c)(4) for the penthouse side setback and Subtitle I § 205.1 for the rear yard, and pursuant to 11 DCMR Subtitle X § 1000.1 for variances under Subtitle C § 901.1 for the number of loading berths, Subtitle C § 904.2 for the width of access aisle to loading berth, Subtitle I § 207.1 for closed court dimensions, and Subtitle I § 612.4 from the floor-to-ceiling clearance height requirement, to allow a hotel in the D-4-R Zone at premises 923-927 5th Street, N.W. (Square 0516, Lots 827, 828, 829, and 833).¹

HEARING DATES: March 28, 2018, April 4, 2018, May 16, 2018, June 20, 2018
DECISION DATE: July 18, 2018

DECISION AND ORDER

On January 29, 2018, Kline Operations, LLC (the “Applicant”), the contract purchaser of the subject premises, submitted a self-certified application (the “Application”), as subsequently amended, requesting special exception relief from the requirements for penthouse side setback and rear yard and variance relief from the requirements for loading berths, width of access aisle to loading berth, closed court dimensions, and floor-to-ceiling clearance height, to allow a 153-key hotel in the D-4-R zone at 923-927 5th Street N.W. (Square 0516, Lots 827, 828, 829, and 833) (the “Property”).² For the reasons explained below, and following public hearings, the majority of the Board of Zoning Adjustment (the “Board”) voted to approve the Application.³

PRELIMINARY MATTERS

Notice of Application and Notice of Public Hearing. By memoranda dated February 5, 2018, the Office of Zoning sent notice of the application to the Office of Planning (“OP”); Advisory

¹ The Applicant initially requested special exception relief from Subtitle C § 1500.3(c) to use the penthouse as a cocktail lounge. That request was subsequently removed from the project prior to approval. (*See Ex. 90.*)

² The Application was modified after the initial filing to request additional relief. The Applicant added a request for variance relief from the requirements of Subtitle C § 904.2, which governs the width of access aisle to a loading berth. The Applicant also added a request for variance relief from Subtitle I § 612.4 for the floor-to-ceiling clearance height requirement in the Mount Vernon Triangle Principal Intersection Sub-Area.

³ The Board voted 4-0-1 to approve the requested special exception for rear yard relief and variances for loading berth, width of access aisle, closed court dimensions and floor to ceiling clearance height. The Board voted to 3-1-1 to approve the special exception for the penthouse side setback.

Neighborhood Commission 6E (“ANC”), the ANC for the area within which the subject property is located; the single-member district ANC 6E05; the Office of Advisory Neighborhood Commissions; the District Department of Transportation (“DDOT”); each of the four At-Large Councilmembers; and the Chairman of the Council. (Ex. 17-27.) A public hearing was initially scheduled for March 28, 2018. Pursuant to 11 DCMR Subtitle Y § 402.1, the Office of Zoning mailed notice of the public hearing to the Applicant and the owners of property within 200 feet of the subject Property on February 5, 2018. (Ex. 28.) Notice of the public hearing was also published in the *D.C. Register* on February 9, 2018.

Requests for Party Status. The Applicant and the ANC were automatically parties in this proceeding. The Board reviewed four requests for party status in opposition to the Application. The first request was from 450K CAP LLC (“450K CAP”) dated March 13, 2018. (Ex. 43.) The second request was from Aubrey Stephenson dated March 13, 2018. (Ex. 44.) At a hearing on April 4, 2018, the Board granted the party status requests of both 450K CAP and Mr. Stephenson. The Applicant did not object to these party status requests.

The third request for party status was from Michael D. Smith dated March 13, 2018. (Ex. 42.) However, Mr. Smith did not appear at the Board’s hearing on April 4, 2018, and, as such, Mr. Smith’s party status request was deemed withdrawn. (*See* 11-Y DCMR § 404.10.) The fourth party status request was from Andy Shallal on behalf of Busboys and Poets dated June 8, 2018. (Ex. 79.) Mr. Shallal did not appear at the Board’s hearing on June 20, 2018, and the request was also deemed withdrawn. *Id.*

Public Hearings. The Board conducted a public hearing on April 4, 2018. At the end of the hearing, the Board requested additional information and continued the hearing to May 16, 2018. The Applicant requested a postponement of the continued hearing, which the Board granted. Accordingly, the Board held the continued hearing on June 20, 2018.

Applicant’s Case. The Applicant provided evidence and testimony in support of the Application. The Applicant produced expert testimony from Erwin Andres of Gorove/Slade Associates (“Gorove/Slade”) regarding traffic, loading and related transportation issues. The Applicant also produced expert testimony from Stephen Varga, an expert in land use and planning, regarding the Project’s consistency with the D-4-R zone. The Project architect, Peter Fillat, also spoke in an expert capacity regarding design elements of the Project, including the functional necessity of requested relief as it pertains to the Project’s rear yard and penthouse specifications.

ANC Report. At a regularly scheduled and duly noticed public meeting held on March 6, 2018, with a quorum present, the ANC voted unanimously, by a vote of 5-0-0, to adopt a resolution supporting the Application, including all requests for relief. (Ex. 61.) At the time of the ANC’s vote in support on March 6, 2018, the Applicant had not requested relief pursuant to Subtitle C § 904.2 for the loading access aisle. Thereafter, the ANC’s Planning and Zoning Subcommittee recommended approval of the relief from Subtitle C § 904.2, but the full ANC did not take a

formal vote on the relief. The ANC also requested conditions of approval for the Application, but the Board did not adopt the ANC's proposed conditions for reasons to be explained below.

OP Report. By report dated March 23, 2018, the OP recommended approval of all requested areas of relief, except for the Applicant's request for special exception from the penthouse setback requirements of Subtitle C § 1502.1(c)(4). (Ex. 52.) OP submitted a second, supplemental report dated May 10, 2018 (Ex. 72) and a third supplemental report dated June 12, 2018 (Ex. 84) continuing to recommend denial of the penthouse setback relief after the Applicant's modifications to the Project plans. After the June 20, 2018 hearing, the Applicant again revised the Project plans and removed penthouse habitable space. Accordingly, by report dated July 6, 2018, OP recommended approval of the penthouse setback relief pursuant to Subtitle C § 1502.1(c)(4). (Ex. 91.) At the public hearings on the Application, OP also recommended its approval of the requested areas of relief.⁴

DDOT Report. DDOT submitted two reports. In DDOT's first report, dated March 14, 2018, DDOT supported the approval of the requested special exceptions and variances conditioned on the implementation of a loading management plan proposed by the Applicant. (Ex. 45.) In the report, DDOT found persuasive the Applicant's Transportation Assessment Memorandum prepared by the Applicant's traffic expert, Gorove/Slade. (Ex. 45.) DDOT's second report, dated May 11, 2018, was filed in response to Board comments during the April 4, 2018 hearing and reiterated DDOT's support for the Application. (Ex. 74.) In the second report, DDOT confirmed that the Applicant had correctly compiled trip generation data for the Project, and that the Project did not meet the threshold requirements for a Comprehensive Transportation Review. (Ex. 74.) DDOT's second report also notes that Gorove/Slade's proposed turning maneuvers for loading access are not irregular for the District of Columbia. (Ex. 74.)

Parties in Opposition. 450K CAP is the owner of the property located at 450 K Street N.W. (Exs. 43, 78.) 450K CAP complained of loss of light, air and views from its property as well as increased alley traffic. (Exs. 43, 78.) 450K CAP also noted objections to the use of the alley for loading access, and the noise caused by increased loading and traffic activity from the hotel. (Exs. 43, 78.) 450K CAP argued that the Applicant had not met the standard for variance relief because the Property was not exceptional and the Applicant did not face a practical difficulty. (Ex. 78.) As to the special exception for the rear yard, 450K CAP asserted at the hearing that the relief would have an adverse affect on 450K CAP. In support of its positions, 450K CAP submitted expert statements and testimony from Joe Mehra regarding traffic and loading impacts. (Ex. 62.) 450 K CAP did not object to the penthouse side setback relief.

The second party in opposition, Mr. Stephenson, is the owner of the property located at 462 K Street N.W. (Ex. 67A.) Mr. Stephenson complained of noise and potential property damage associated with the construction of the hotel. (Ex. 67A.) Mr. Stephenson also raised issues

⁴ OP's recommendation of approval for the penthouse setback relief was submitted in writing following the close of the hearing on June 20, 2018.

relating to increased traffic and blockage of the alley as well as potential negative impact on his property value. (Ex. 67A.)

FINDINGS OF FACT

THE SUBJECT PROPERTY

1. The subject Property is an assemblage of four lots located at 923-927 5th Street N.W. (Square 516, Lots 827, 828, 829, and 833) with a total land area of 6,639 square feet.
2. The Property is located in the D-4-R zone. A small portion of the Property (18'-wide x 72'-deep) is within the Mount Vernon Triangle Principal Intersection Sub-Area (the "MVT/PIA"). The MVT/PIA has particular dimensional, design and use requirements. The remainder of the Property is outside the MVT/PIA.
3. The Property is irregularly shaped due to the unique "L-shaped" Lot 833 that fronts on 5th Street N.W. and wraps around the rear of Lots 827, 828, and 829.
4. The rear of Lot 829 is not flush with Lot 833, which contributes to the Property's irregular shape. As a result, the rear of the Property's northern side lot line is pulled in from the front, northern side lot line by three feet. Accordingly, the Property is not rectangular in shape.
5. Due to the Property's unique shape, the Property does not abut Lots 832 to the north or Lot 61 to the east. Rather, the Property is separated from those lots by the "stem" of Lots 834 and 881, respectively.
6. The Property is 60' wide along 5th Street. The rear of the Property is only approximately 57' wide due to the shape of Lot 833.
7. The Property is unimproved except for facades of previously razed buildings on Lot 827 and Lot 829.
8. The Property abuts an alley to the north, which is known as Prather Court (the "Alley"). While the Alley varies in width from 30-feet-wide to 20-feet-wide, due to the Property's unique shape, the portion of the Alley that abuts the Property is only 11.5' in width.
9. 5th Street is 80'-wide.
10. The Property has no curb cut. It is only accessible from the 11.5'-wide alley to the rear.
11. The Property is located in the Mount Vernon Triangle neighborhood, which is comprised primarily of retail, restaurants, and large apartment buildings. The Mount

Vernon Triangle is completing its transition from a PDR area to a neighborhood of high-rise apartments and non-residential uses as permitted by the zoning and recommended in the Comprehensive Plan.

12. The historic buildings to the north have recently undergone renovations.
13. The Walter E. Washington Convention Center is located approximately three blocks from the Property. Additionally, two blocks to the west is the “Capitol Crossing” mixed-use development that is currently under construction.
14. The Property is located in the Mount Vernon Triangle Historic District, and the Applicant obtained concept approval from the District’s Historic Preservation Review Board.
15. The Property is well-serviced by public transportation. The Property is 0.3 miles from the Gallery Place/Chinatown Metro Station, and 0.7 miles from Union Station. The Property also has direct access to numerous bus lines, including the P6, D4, 74, 80, 70, X2, and Circulator. There are a number of Capital Bikeshare stations and ZipCar vehicles within 0.5 miles of the Property.

THE APPLICANT’S PROPOSAL

16. The Applicant proposes to subdivide the four lots that comprise the Property into a single lot and construct a hotel with up to 152 rooms (the “Project”).
17. The Project will have a total building height of 99’ with 11 stories plus a 10’-tall mechanical penthouse. The Applicant initially proposed a two-story penthouse with habitable space, but revised the Project plans to incorporate a one-story penthouse with only mechanical space. (Ex. 90.)
18. Since the Property abuts a neighboring property that is improved with a contributing historic structure that is built to a lower height, the Project is required to provide a 1:1 side penthouse setback. However, the proposed Project only provides an eastern side penthouse setback that is 6’4⁵/₈” and the western side penthouse setback that is 5’8¹/₈”.
19. The Project will have a total floor area ratio (“FAR”) of 9.93. The Applicant is acquiring credits in order to exceed the maximum permitted non-residential FAR of 3.5, as permitted in the D-4-R zone.
20. The ground floor of the Project is proposed to be 19’8” in height and 24’ in depth. A portion of the ground floor is within the MVT/PIA, which requires a minimum ground floor that is 22’ in height to a depth of 36’.
21. The Project will have a rear yard of 1.5 feet. Pursuant to Subtitle I § 205.1, a rear yard in the D zone must be a minimum depth of 2.5 inches per one foot of building

height, but no less than 12 feet. The Project proposes a building height of 99', which would require a minimum rear yard of 20.6'.

22. The rear façade of the Project has windows on only the northern portion of the building in order to maintain privacy for adjacent properties to the east across the Alley.
23. Similarly, the northern façade of the Project is designed with windows on only the front half of the building to maintain privacy for adjacent properties that front on K Street N.W.
24. There will be a closed court on the northern and southern side of the proposed Project. The northern-facing closed court is proposed at 6'2" in width and 322.9 sq. ft., but must be 18'5" in width with an area of 684.5 sq. ft. The southern-facing closed court is proposed at 6'2" in width and 204.7 sq. ft., but must be 16.66' in width with an area of 555.6 sq. ft.
25. The Project will not provide any parking, which is not required in the D-4-R zone.
26. The Project will have one loading berth to the rear of the proposed building with access from the Alley. Under Subtitle C § 901.1, two loading berths are required for a lodging use with 50,000 to 100,000 gross floor area. The proposed Project will have approximately 66,884 gross floor area and, thus, two loading berths are required. A service/delivery space is not required for a lodging use.
27. The Project's loading berth is accessed from the Alley, which is 11.5'-wide at the rear of the Property. As such, the Alley is less than the required 12' in width for an access aisle or driveway to a loading berth.

THE BZA APPLICATION AND REQUESTED RELIEF

28. On January 29, 2018, the Applicant submitted the self-certified Application seeking special exception relief from the requirements for penthouse setback (Subtitle C § 1502.1(c)(4)) and rear yard (Subtitle I § 205.5) and variance relief from the requirements for loading berths (Subtitle C § 909.1) and closed court (Subtitle I § 207.1).
29. On February 15, 2018, the Applicant requested additional special exception relief to permit the use of penthouse habitable space for a restaurant or cocktail lounge pursuant to Subtitle C § 1500.3. The Applicant later revised the proposed Project to remove any penthouse habitable space and, as such, withdrew this request for special exception relief.
30. On February 27, 2018, the Applicant requested additional variance relief from the requirement for floor-to-ceiling height in the MVT/PIA pursuant to Subtitle I § 612.4.

31. On March 14, 2018, the Applicant requested additional special exception relief from Subtitle C § 904.2 for the minimum required width of an access aisle or driveway leading to a loading berth.

PENTHOUSE SETBACK

32. The Applicant originally proposed a two-story, 20'-tall penthouse that featured one story of habitable space for a restaurant or cocktail lounge and a second story for mechanical equipment. (Exs. 14, 68.)
33. During the pendency of the Application, the Applicant reduced the size of the penthouse, and eventually removed the second story and limited the penthouse height to 10' and to contain only mechanical equipment. (Ex. 90.)
34. The front and rear penthouse setbacks are 10'-deep, which are fully compliant with the Zoning Regulations. (Ex. 90.)
35. Though the Applicant reduced the design of the penthouse, the penthouse side setbacks are 6'4⁵/₈" on the eastern side and 5'8¹/₈" on the western side. To comply with the requirements of Subtitle C § 1502.1(c)(4), the penthouse must be set back at a 1:1 ratio, which would equal 10'. (Ex. 90.)
36. The Applicant submitted sun studies in the record that demonstrate the penthouse setback relief will not have an adverse effect on neighboring properties. (Ex. 68, Ex. E.)
37. The overall height of the penthouse is in harmony with the surrounding properties in the neighborhood.
38. The Applicant demonstrated that a strict application of the setback requirements would result in an unreasonable design for the penthouse mechanical equipment. (Ex. 68.)
39. A fully compliant penthouse would also result in a long and narrow design that would be visually intrusive in the neighborhood.

REAR YARD

40. The Project was initially designed with no rear yard, but the Applicant revised the Project plans to include a 1.5-foot rear yard to promote light and air for neighboring properties. (Exs. 39, 90.)
41. The Project will be buffered from any structures to the rear by 10', which includes the width of the Alley.
42. The Applicant redesigned the eastern-facing portion of the Project so that there are no windows facing directly into the building at 450 K Street, N.W. (Ex. 90; 6/20/18 Hearing Transcript ("Tr.") at p. 155.)

43. The property at 450 K Street N.W. was built with western-facing windows that are “at-risk.” (Ex. 39; 4/4/18 Hearing Tr. at p. 131.)
44. The hotel use for the Project will limit any adverse effects because, unlike an apartment building or an office, hotel guests are in their room for a shorter period of time. (6/20/18 Hearing Tr. at pp. 268-269.)
45. The Applicant has agreed to install translucent window treatments for the eastern-facing windows in order to protect the privacy of neighboring properties, including the property owned by 450K CAP (Ex. 39, Ex. 52; 4/4/18 Hearing Tr. at pp. 116-117.)

LOADING

46. The Applicant proposes one loading berth on the ground level of the Project, which will be accessed from the Alley. (Ex. 90.)
47. The Property is an interior lot and there is no curb cut for loading access from 5th Street N.W. It is unlikely that DDOT would authorize a curb cut from 5th Street N.W. (Ex. 39.)
48. The Applicant has designed the loading berth on a diagonal in order to account for the width of the Alley. (Ex. 90.)
49. DDOT issued two reports confirming that it has no objection to the requested loading relief in the Application. (Exs. 45, 74.)
50. The Applicant’s traffic expert, Mr. Andres, evaluated the proposed loading in accordance with DDOT guidelines and found that one loading berth is sufficient to meet the needs of the proposed hotel use. (Exs. 68B, 70.)
51. Gorove/Slade also produced turning diagrams that demonstrate the proposed loading berth can be accessed by trucks, including trucks that are 30 feet in length. (Ex. 68B, 70.)
52. DDOT found that the proposed loading access and necessary turning radius is “not irregular” for a property in the District. (Ex. 74.)
53. Mr. Andres testified that the width of the Alley is “more than adequate” for the anticipated loading traffic. (4/4/18 Hearing Tr. at p. 141.)
54. The Applicant agreed to a Loading Management Plan that was designed to mitigate any potential adverse impacts on neighboring properties and the Alley. (Exs. 45, 70.)

CLOSED COURT

55. The Applicant proposes a closed court from floors 3 through 11 on both the southern and northern sides of the Project. (Ex. 90.)
56. A building with a lodging use in the D-4-R zone must have a closed court that is 2.5 inches wide for each foot of height, but no less than 12'-wide, and the area of the court must be twice the square of the court's width, but no less than 250 sq. ft.
57. For the proposed Project, the northern-facing closed court is proposed at 6'2" in width and 322.9 sq. ft., but must be 18'5 in width with an area of 684.5 sq. ft. The southern-facing closed court is proposed at 6'2" in width and 204.7 sq. ft., but must be 16.66' in width with an area of 555.6 sq. ft.
58. If the Applicant provided fully compliant closed courts, the resulting building would be approximately 25 feet in width for the center portion of the building. (Ex. 39.)
59. A 25'-wide building would not meet certain Building Code requirements. (Ex. 39.)
60. The Applicant cannot design the Project without the two closed courts because windows cannot be located on the lot lines. Such a design would result in units that do not have access to light and air and, therefore, are not habitable under the Building Code. (Ex. 39.)
61. The proposed hotel operator requires vertical duct risers along the corridors, which further decreases the potential width of the closed courts. (Ex. 39.)

FLOOR-TO-CEILING HEIGHT IN THE MVT/PIA

62. The MVT/PIA is a subarea of the Downtown (D) Zones, the objective of which is to require uses and building design that offer a focal point for food, beverage, and entertainment. (11-I DCMR § 612.1.)
63. The Property is located in the "B" module of the MVT/PIA, which requires the ground floor to be 22' in height for at least 50% of the depth of the ground floor. (11-I DCMR § 612.4.)
64. A relatively small portion of the Property that is approximately 18' wide by 72' deep is located in the MVT/PIA. (Ex. 39, Tab F.)
65. The proposed Project's ground floor is 19'8" in height to a depth of 24'. (Ex. 90.)
66. For the Applicant to gain an extra two feet of height in a small portion of the northwest corner of the Project would require a substantial redesign, including loss of a significant portion of the third floor. (Exs. 39, 52.)

67. A reconfiguration would require the alteration of the facades on the Property, which would be unlikely to be considered consistent with the purposes of the Historic Landmark and Historic District Protection Act of 1978. (Ex. 39.)

ACCESS AISLE TO LOADING BERTH

68. Due to the Property's unique shape, the Property's frontage on the Alley is 11.5'. The Zoning Regulations require that an access aisle or driveway to a loading berth be a minimum of 12' in width.
69. There is no alternative access aisle for the Project's loading berth, as there is no curb cut on 5th Street N.W. (Ex. 39.)
70. The Alley's system is extensive in Square 516 and varies in width from 30-foot-wide to 20-foot-wide elsewhere.
71. The Applicant's traffic expert provided an AutoTurn analysis to demonstrate that a 30-foot truck could maneuver within the Alley and adequately access the Project's loading berth. (Ex. 70.)

EXCEPTIONAL CONDITIONS

72. The Property is a uniquely shaped assemblage of four lots that features a rear lot line that is jogged. As a result of the Property's unique shape, the Property is more than three feet narrower in the rear than in the front.
73. The Property is an interior lot that abuts an 11.5-foot-wide portion of the Alley. The other large lots that abut the Alley have broad frontages on the Alley, which expand up to 30-foot wide.
74. The Property's width is narrow in comparison to non-rowhome properties in the square. The other non-rowhome (non-rowhouse) lots in the square are more than 80 feet in width, with several over 100 feet in width.
75. The portion of the Property that is located in the Mount Vernon Triangle Principal Intersection Sub-Area is 18 feet by 72 feet, which is an unusually small and narrow portion of a property to be located in the Sub-Area.
76. The exceptional conditions affecting the Property are unique to the neighborhood and distinguish the Property from nearby properties.

PRACTICAL DIFFICULTIES FOR CLOSED COURT, LOADING BERTH NUMBER AND ACCESS, AND MVT FLOOR-TO-CEILING HEIGHT

77. The Applicant would face a practical difficulty with strict compliance of the court

requirements because the resulting building would be extremely narrow at approximately 25 feet in width.

78. If the Applicant removed the courts on the northern and southern sides of the proposed Project, then the Applicant could not incorporate windows on either of those sides because the resulting building would be flush on the lot line. The building code does not permit windows on a lot line.
79. It is practically difficult for the Applicant to design the Project with a second loading berth due to the Property's limited 11.5-foot-wide frontage on the Alley.
80. The Applicant could not meet the ramping and clearance requirements for loading berths if the Applicant were required to provide two loading berths for the Project.
81. Strict application of the loading access requirement would create a practical difficulty for the Applicant because the Property cannot have a curb cut from 5th Street N.W., and the portion of the Alley abutting the Property is only 11.5-feet in width.
82. It would be practically difficult for the Applicant to design and construct the lobby and ground floor space with the required floor-to-ceiling clearance height because only a small portion of the Property is located in the Mount Vernon Triangle Principal Intersection Sub-Area.
83. A Project design that is fully compliant with the floor-to-ceiling clearance height would necessarily reduce the proposed third floor of the building.

NO SUBSTANTIAL DETRIMENT TO PUBLIC GOOD OR ZONE PLAN

84. The Project furthers the intent and goals of the D-4-R zone by redeveloping vacant, underutilized lots with a high-density hotel use. The proposed lobby and ground level will also provide ample space to meet the goals of the Mount Vernon Triangle Principal Intersection Sub-Area to activate the streetscape and promote pedestrian-friendly uses.
85. The Project, including the proposed courts, has been designed in a way that promotes light and air for neighboring properties and simultaneously incorporates historic preservation elements.
86. The loading needs of the hotel can be accommodated with one loading berth. The loading relief will not be of detriment to the public good, but any negative impact will be limited by the Applicant's proposed Loading Management Plan.

CONCLUSIONS OF LAW

Special Exceptions

The Applicant requests special exception relief pursuant to Subtitle C § 1502.1(c)(4) from the requirement for penthouse side setback and Subtitle I § 205.1 from the requirement for rear yard in order to construct the proposed hotel at the Property. The Board is authorized under § 8 of the Zoning Act, D.C. Official Code § 6-641.07(g)(2) (2012 Repl.) to grant special exceptions, as provided in the Zoning Regulations. Subtitle X § 901.2 provides that the Board may grant special exceptions when it finds that the grant will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, subject to specific conditions.

Relief granted through special exception is presumed appropriate, reasonable, and compatible with other uses in the same zone. The Board's discretion "is limited to a determination of whether the exception sought meets the requirements of the regulations. *See First Baptist Church of Washington v. D.C. Bd. of Zoning Adjustment*, 432 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)). Once the applicant has met its burden, the Board ordinarily must grant the application. *See id.*

Penthouse Side Setback Relief (Subtitle C § 1502.1(c)(4))

The Board may grant relief from the penthouse setback requirements of Subtitle C § 1502.1(c)(4) by special exception if the Board finds that the Project meets the specific conditions set forth under Subtitle C § 1504.1 and the general special exception conditions under Subtitle X § 901.2. In particular, the Applicant must demonstrate that strict application of the setback requirements would result in construction that is unduly restrictive, prohibitively costly, or unreasonable, or is inconsistent with building codes (Subtitle C § 1504.1(a)); that the relief requested would result in a better design of the roof structure without appearing to be an extension of the building wall (Subtitle C § 1504.1(b)); that the relief requested would result in a roof structure that is visually less intrusive (Subtitle C § 1504.1(c)); that operating difficulties such as meeting D.C. Construction Code, Title 12 DCMR requirements for roof access and stairwell separation or elevator stack location to achieve reasonable efficiencies in lower floors, size of building lot, or other conditions relating to the building or surrounding area make full compliance unduly restrictive, prohibitively costly or unreasonable (Subtitle C § 1504.1(d)); that every effort has been made for the housing for mechanical equipment, stairway, and elevator penthouses to be in compliance with the required setbacks (Subtitle C § 1504.1(e)); and the intent and purpose of the Zoning Regulations is not materially impaired by the structure, and the light and air of adjacent buildings is not affected adversely (Subtitle C § 1504.1(f)).

In this case, the Applicant requires relief of 3'7³/₈" on the northern side of the penthouse and 4'3⁷/₈" on the southern side of the penthouse abutting the courts. The Board notes that the

penthouse satisfies the 1:1-side setback elsewhere. As discussed below, three out of the four voting Board members concluded that the Applicant has met each of the special conditions under Subtitle C § 1504.1, as follows. 450K CAP did not testify regarding concerns about the side setback relief.

Consistent with Subtitle C § 1504.1(a), the Board finds that the Applicant has demonstrated that strict application of the penthouse side setback requirements in the minimal areas around the courts results in construction that is unduly restrictive, prohibitively costly, unreasonable, or inconsistent with the building code. The Applicant provided evidence sufficient to prove that, due to the narrow width of the Property and its interior, mid-block location that necessitates the creation of closed courts to locate windows for bedroom units along the north and south building facades, full compliance with the 1:1 penthouse side setback requirements around the court areas would be unduly restrictive and unreasonable for the proposed penthouse design. As it relates to the elevator and stair overruns, the Applicant's architect testified that to move the elevator and stair to accommodate the 1:1 setbacks in these areas would end up "being impossible to get the other parts of the [mechanical] program to work." (4/4/18 Hearing Tr. at p. 109.)

There is also substantial evidence in the record that the Applicant could not provide functional mechanical equipment to operate a hotel absent relief from the penthouse setback requirements. The Applicant's architect testified that the mechanical equipment could not be grouped tighter because "it's a function of being [able] to service the [mechanical] units and having the right amount of air circulation around the units." (6/20/18 Hearing Tr. at p. 169.) The Applicant demonstrated that compliant side setbacks would not allow for Variant Refrigerant Flow ("VRF") components to have ample circulation space on the rooftop, and that such mechanical opponents "would not work properly" in the basement. (4/4/18 Hearing Tr. at p. 110.) The VRF units are 5.5' in height and could not be moved to other parts of the roof because they would not be appropriately set back. (6/20/18 Hearing Tr. at pp. 170, 174.) The Board members who approved this relief determined that the Applicant had met this requirement and that the Applicant could not continue to adjust the penthouse to comply with the Zoning Regulations. The Board finds that compliance with the penthouse side setback requirements would result in construction that is unduly restrictive, unreasonable and inconsistent with the building code because the Applicant could not design functioning mechanical equipment or incorporate stairs and an elevator overrun.

Pursuant to Subtitle C § 1504.1(b), the Board finds that the requested side setback relief will result in a better design that does not appear as an extension of the building wall. The Applicant reduced the penthouse design from the plans filed with the initial application. The initial design featured a two-story penthouse that is 20 feet in height with one story dedicated for a cocktail lounge or restaurant use and the second story to mechanical equipment. As noted by the OP, this design was not preferred because "it's designed to look like an extension of the building wall, that it would be considerably more intrusive." (4/4/18 Hearing Tr. at p. 135.) Accordingly, the Applicant revised the design of the penthouse so that it is only one story for mechanical equipment only. Most notably, the approved penthouse design provides for a distinct penthouse

structure; whereas, the initial design appeared more as an extension of the lower stories. As such, Subtitle C §1504.1(b) has been met.

Pursuant to Subtitle C § 1504.1(c), the Board finds that the side setback relief will result in a roof structure that is visually less intrusive. The proposed Project will meet the 1:1 setback from the front and rear of the building, as well as most of the sides, but for the area around the closed court insets, which will limit any visual intrusion along 5th Street or to the rear of the Project. The height of the proposed penthouse is lower than the penthouse height requirement of the zone and is comparable in massing and height of other penthouses on large building within the square. As noted above, the Applicant's redesign of the penthouse lowered the height of the penthouse and further distinguished the penthouse from the massing of the rest of the building.

Pursuant to Subtitle C § 1504.1(d), the Board finds that the Applicant will experience operating difficulties in meeting certain construction code requirements regarding stairwell separation and elevator stack location. In addition to that described above, the Project architect testified directly to this point, stating that “we can't move [the stairs] any closer together. And we can't move them in the middle [of the building], because a hotel, typically, is a double-loaded corridor.” (6/20/18 Hearing Tr. at p. 171.) The architect continued that the elevator bank and stairwells are “as far apart as could possibly can be [sic], because we have, again, hotel rooms on the exterior of the building.” (6/20/18 Hearing Tr. at p. 171.) Likewise, the Project architect testified that the VRF mechanical systems could not be located anywhere else on the roof while remaining in compliance with the penthouse screening requirements. (6/20/18 Hearing Tr. at p. 174.)

Pursuant to Subtitle C § 1504.1(e), the Board finds that the Applicant adequately demonstrated that every effort has been made to house mechanical equipment, stairway, and elevator penthouses in compliance with the required side setbacks. The record is replete with evidence and testimony that the Applicant extensively redesigned the penthouse. (Exs. 68, 90.) The penthouse design went through multiple iterations before the Applicant determined to remove the second story. Further, as the Project architect testified, “we have done studies to show that if we did a non-occupied [one story] penthouse, we still are not compliant.”⁵ (6/20/18 Hearing Tr. at p. 157.) Therefore, the Board finds that the Applicant has met this condition.

Pursuant to Subtitle C § 1504.1(f), the Board finds that the intent and purpose of the Zoning Regulations is not materially impaired by the Project, and the light and air of adjacent buildings is not affected adversely. With the exception of the side setbacks, the Applicant's proposed penthouse design is fully compliant with the Zoning Regulations, including full 1:1 setbacks in the front and rear of the Project. Further, the penthouse satisfies the 1:1 setback requirement on certain areas of the side setbacks, just not around the closed courts. The Applicant has proposed a penthouse that is 10 feet in height, 50% lower than the maximum 20-foot height in the D-4-R zone. (*See* Subtitle I § 532.5.) The penthouse design aligns with the massing and height of

⁵ The Applicant did not submit the one-story mechanical penthouse design until after the hearing on June 20, 2018. Nonetheless, the Applicant testified, through the Project architect, that such a design could not be compliant with the penthouse setback requirements.

nearby penthouses in the Mount Vernon neighborhood. The penthouse design is in harmony with historic preservation goals, as reflected by the concept approval of the Project by the Historic Preservation Review Board (“HPRB”). Further, the Applicant provided sun studies that demonstrated the penthouse does not create shadows on adjacent properties. (Ex. 68, Tab E.) The sun studies were submitted based on a previous design with a 20’ penthouse; however, the Board finds the sun studies persuasive because the Applicant reduced the size of the proposed penthouse since producing the sun studies. The proposed courts on the southern and northern sides of the Project will also limit any impact on light and air. Accordingly, the Board finds that the Applicant has met this final condition under Subtitle C § 1504.1.

For the reasons discussed above, and in accordance with Subtitle X § 901.2, the three out of the four voting Board members concluded that approval of the requested special exception relief for penthouse side setbacks will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property. The Board finds that the Project is in harmony with the intent of the penthouse side setback regulations because the penthouse, as designed, is not visually intrusive as viewed from adjacent streets. The northern and southern courts provide visual depth so that the penthouse does not present as another story, but a distinct rooftop structure. Additionally, the Board finds that the penthouse setback is respectful of the neighboring historic structures.

Rear Yard Relief (Subtitle I § 205.1)

The Board may grant relief from the rear yard requirements of Subtitle I § 205.1 by special exception provided the Board finds that the Project meets the specific conditions set forth under Subtitle I § 205.5 and the general special exception conditions under Subtitle X § 901.2. Pursuant to Subtitle I § 205.5, the Applicant must establish that no window to a residence use is located within 40 feet of another facing building (Subtitle I § 205.5(a)); no window to an office use shall be located within 30 feet of another facing office window, nor 18 feet in front of a facing blank wall (Subtitle I § 205.5(b)); a greater distance may be required between windows in a facing building than the minimum prescribed in (a) or (b) if necessary to provide adequate light and privacy to habitable rooms as determined by the angle of sight lines and the distance of penetration of sight lines in such habitable rooms (Subtitle I § 205.5(c)); and the building must provide adequate off-street service functions, including parking and loading areas and access points (Subtitle I § 205.5(d).) As outlined below, the Board finds that the Applicant has met these special conditions and is therefore entitled to relief from the rear yard requirement in the D-4-R zone.

The Board finds that the requirements of Subtitle I § 205.5(a)-(b) are not applicable to the Project because the Applicant proposes a hotel, which falls under the lodging use definition in the Zoning Regulations. (See Subtitle B § 200.2(u).) The Zoning Regulations provide separate and distinct use categories for a residential use and an office use. To that end, the Board credits OP’s report that the District’s Zoning Administrator confirmed in a meeting that the Applicant’s proposed hotel use is not a residential use and, therefore, is not subject to Subtitle I § 205.5(a)-

(b). (Ex. 52.) As such, the requirements of Subtitle I § 205.5(a)-(b) governing the distance between windows of adjacent properties does not apply to the Project.

Pursuant to Subtitle I § 205.5(c), the Board finds that the proposed rear yard provides adequate light and privacy to habitable rooms as determined by the angle of sight lines and distance of penetration in such habitable rooms. After submitting the initial design, the Applicant revised the Project to incorporate a 1.5-foot-wide rear yard. In addition to the 8.5-foot-wide portion of the Alley that abuts the Project's rear yard, the Project will be separated from 450 K by ten feet, which will provide adequate light and privacy to habitable rooms. Likewise, the Board credits the Applicant for redesigning the eastern-facing portion of the Project so that there are no windows facing directly into the building at 450 K Street N.W. (Ex. 90.) The Board also notes that there will be no windows on the rear portion of the Project's southern elevation, which will limit any privacy impact on the building at 462 K Street N.W. The Applicant also agreed to install translucent window treatments for the eastern-facing windows in order to protect the privacy of residents at 450 K Street N.W.

Pursuant to Subtitle I § 205.5(d), the Board finds that the Project will provide adequate off-street service functions, including parking and loading areas and access points. As detailed in more depth below, the Board concludes that the Project will have adequate loading facilities to meet the needs of the planned hotel use. While parking is not required in the D-4-R zone, the Applicant engaged with two nearby private parking garages to provide additional parking for hotel guests and staff. (Ex. 39, Tab C.) The Board credits the conclusions of the Applicant's traffic expert as well as DDOT that the Project's parking, loading and access points will be adequate.

Further, the Board finds that the Applicant has met the general special exception conditions pursuant to Subtitle X § 901.2 for rear yard relief. The Board concludes that approval of the requested special exception relief for rear yard will be in harmony with the general purpose and intent of the Zoning Regulations and Maps and will not tend to affect adversely the use of neighboring property.

The Board credits the testimony of the Applicant's expert in land use and planning, Stephen Varga, and OP's analysis that the rear yard relief is in harmony with the intent of the Zoning Regulations because the D-4-R Zone promotes the development of high-density neighborhoods in the Mount Vernon Triangle area. (4/4/18 Hearing Tr. at pp. 112-113; 6/20/18 Hearing Tr. at p. 183.) Further, the Board agrees with Mr. Varga that relief from the rear yard requirements is permitted by special exception in the D zones because many of the lots are small and narrow, as is the case with the Property. (4/4/18 Hearing Tr. at p. 113.) The Board notes that strict application of the rear yard requirement would result in a structure only 90 feet in depth that would further exacerbate the Applicant's ability to meet other zoning standards, including the penthouse setback, court dimension, and loading requirements.

The Board also finds that the rear yard relief will not affect adversely the use of neighboring property. 450K CAP objected to the Applicant's requested rear yard relief stating that it would have a negative effect on the light and air available to its property. (Ex. 78.) 450K CAP claimed that the proposed 1.5-foot-wide rear yard would "result in a very narrow light well that will be detrimental to the tenants in the 450K Building who face the hotels' rear wall, substantially impacting their light and air, as well as privacy and views." (Ex. 78.)

As to light and air, the Board notes that 450K CAP acknowledged that its building was built to its western property line, which means that the western-facing windows are "at-risk." (6/20/18 Hearing Tr. at p. 229.) Further, the building at 450 K Street N.W. is much taller than the proposed Project, further limiting the Project's impact on light and air. (6/20/18 Hearing Tr. at pp. 216-217.) To that end, the Board credits the Applicant's sun study demonstrating that the Project will have a minimal impact on light and air in comparison to by-right construction at the Property. (Ex. 68, Tab D.) When evaluating adverse effects on neighboring property, the D.C. Court of Appeals has approved the Board's use of comparing the proposed structure to a by-right structure. *See Draude v. D.C. Bd. of Zoning Adjustment*, 527 A.2d 1242, 1253 (D.C. 1987). In *Draude*, the Court found that the comparison of a proposed project to a matter-of-right project was a reasonable standard when seeking to determine whether an addition to a property was "objectionable." *See id.* The Board has followed this direction when evaluating solar studies in other cases. *See* BZA Case No. 16536 (order reflects Board consideration of shadow study comparison between proposed project and matter-of-right project); *see also* BZA Case Nos. 18886, 19230.

As to privacy and views, 450K CAP produced images reflecting the potential views from the Project into residences at 450 K Street N.W. (Ex. 78, Tab A.) However, the Board finds that the Applicant has proposed a building design that is sensitive to the privacy of neighboring properties, including 450 K Street N.W. As outlined above, the Applicant redesigned the Project's eastern elevation so that there would be no windows facing directly into 450 K Street N.W. (Ex. 90.) The Board also credits the Applicant's testimony that the nature of the proposed hotel use will create minimal impact on the privacy of neighboring properties. In particular, the Applicant's architect testified that a hotel user is different than a residential or office user in that the hotel user "primarily goes there to sleep. And then they wake up in the morning and they go off to their way." (6/20/18 Hearing Tr. at p. 269.) As such, "the amount of daylight hours and actual living time in this building is substantially different and less than if it were a residential use or an office us [sic]." (6/20/18 Hearing Tr. at p. 269.) As with light and air, the Board also notes that any claimed privacy impacts were exacerbated by the fact that the building at 450 K Street N.W. is built to the western property line, and that property does not have its own rear yard. Finally, the Board notes that it is well settled that an adjacent property owner is not entitled to views across another property. *See Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004).

Mr. Stephenson, the other party in opposition, objected to the rear yard relief on the grounds that it could cause his property value to decrease. (6/20/18 Hearing Tr. 233.) However, Mr. Stephenson did not produce any evidence that would support this assumption and stated to the

Board, through counsel, that he did not have any appraisals or numbers to confirm this claim. (6/20/18 Hearing Tr. 239.) Accordingly, the Board does not find Mr. Stephenson’s objection regarding the rear yard relief to be persuasive. In making this finding the Board is not shifting the burden of proof to Mr. Stephenson, but simply noting that Mr. Stephenson offered no credible evidence to allow the Board to evaluate his assertion.

In sum, the Applicant has met its burden for special exception relief from the rear yard requirements of Subtitle I § 205.1.

Area Variances

The Applicant seeks area variances from the requirements for the number of loading berths under Subtitle C § 901.1, the width of access aisle to loading berth under Subtitle C § 904.2, closed court dimensions under Subtitle I § 207.1, and the floor-to-ceiling clearance height requirement in the Mount Vernon Triangle Principal Intersection Sub-Area under Subtitle I § 612.4. The Board is authorized under § 8 of the Zoning Act to grant variance relief where, “by reason of exceptional narrowness, shallowness, or shape of a specific property at the time of the original adoption of the regulations or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,” the strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property, provided that relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map. (See 11 DCMR Subtitle X § 1000.1.)

Extraordinary or Exceptional Conditions. For the purposes of variance relief, the extraordinary or exceptional conditions affecting a property can arise from a confluence of factors provided that the extraordinary condition affects only a particular property. See *Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1168 (D.C. 1990). Here, the Board finds that the Property is faced with an extraordinary or exceptional condition as a result of a confluence of four factors: (1) The Property is an assemblage of four lots that create a unique shape due to the “L-shaped” Lot 833 that fronts on 5th Street N.W. and wraps around the rear of Lots 827, 828, and 829; (2) The Property has limited access to the Alley; (3) The Property is narrow in comparison to non-rowhome lots in Square 516 and the nearby Mount Vernon Square neighborhood; and (4) A small portion of the Property is located in the MVT/PIA.

The Board finds that the Property’s exceptional conditions are distinct and unique to the neighborhood. See *Ait-Ghezala v. D.C. Bd. of Zoning Adjustment*, 148 A.3d 1211, 1217 (D.C. 2016). The Board notes that no other properties in the neighborhood have a “jogged” shape like the Property. A majority of the non-rowhome lots nearby are exceedingly large and, as such, the Property is smaller than a majority of such lots in the neighborhood. Likewise, the Board notes that many other properties have broad frontages on the Alley and do not face the same narrow

alley width as the Property. In addition to the small portion of the Property in the MVT/PIA, this confluence of factors makes the Property exceptional and unique for the neighborhood.

450K CAP argues that the Property is not exceptional because it is a “rectangular property” and is “larger than most lots in this square.” (6/20/18 Hearing Tr. at p. 215.) The Board does not find these arguments persuasive. As will be discussed below, the Property’s unique “jogged” shape directly creates a practical difficulty with strict application of the loading requirements. The Board finds that the Property is not rectangular but is, in fact, uniquely shaped so that there is minimal access to the Property from the Alley. Further, the Board finds that the Property is smaller than many other lots in Square 516. This is particularly notable given that the Property is located in the D-4-R zone, which is intended for higher-density development. As such, the Board rejects 450K CAP’s arguments and finds that the Property is faced with extraordinary and exceptional conditions in satisfaction of the first prong of the variance test.

Practical Difficulties. An applicant for area variance relief is required to show that the strict application of the zoning regulations would result in “practical difficulties.” See *French v. D.C. Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (D.C. 1995). A show of practical difficulty requires “[t]he applicant to demonstrate that ... compliance with the area restriction would be unnecessarily burdensome.” See *Metropole Condominium Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1084 (D.C. 2016) (quoting *Fleishman v. D.C. Bd. of Zoning Adjustment*, 27 A.3d 554, 561-62 (D.C. 2011)). In determining whether an applicant faces a practical difficulty, the Board may consider factors including the added expense and inconvenience to the applicant inherent in alternatives that would not require the requested variance relief. See *Barbour v. D.C. Bd. of Zoning Adjustment*, 358 A.2d 326, 327 (D.C. 1976).

As to the closed court relief, the Board finds that the Applicant will face a practical difficulty with strict application of the closed court requirements, which would result in a building that is unusually narrow and lacking functionality as a hotel. The Board notes that strict compliance with the closed court requirements would require a closed court on the northern and southern sides of the building that are approximately 18.3 feet in width. The resulting building would be approximately 25 feet wide and highly impractical as a hotel, particularly in light of the Applicant’s planned double-loaded corridors. The Board also notes that the Applicant cannot eliminate the proposed courts because the resulting building would not permit the installation of windows on the northern or southern side of the Project. This would create a practical difficulty because the Applicant could not comply with Building Code requirements for habitable rooms.

As to the floor-to-ceiling clearance requirement, the Board finds that the Applicant faces a practical difficulty with strict compliance due to the design challenges associated with only a small portion of the Project being located in the Mount Vernon Triangle Principal Intersection Sub-Area. The Board notes that only an 18-foot wide by 72-foot deep section of the Property is located in the Sub-Area. Strict application of this requirement would require the Applicant to design portions of the ground floor and second floor with different ceiling heights. The Board also concurs with OP that given the historic buildings to the north, strict application of this

requirement would result in the Applicant losing a substantial portion of the third story for only two additional feet of height on the ground level. (Ex. 52.) Further, HPRB opined on the proposed design and concluded that changes to the height of the proposed floor-to-ceiling clearance would necessitate further reconfiguration and would likely fail to meet historic preservation demands due to the existing historic façade on the Property.

As to the loading berth, the Board finds that the Applicant would face a practical difficulty in incorporating the required two loading berths at the Property as a result of several factors. First, given the narrow width of the Property and the Alley, the Project would have to be substantially redesigned in order to accommodate a second loading berth. Such a redesign would result in the loss of a large portion of the ground level to provide the requisite turning movements for a second loading berth. As designed, the Applicant has already had to place the loading berth on a diagonal, as opposed to the standard 90-degree angle. Further, the Board finds that the nature of the Property would make installing a second loading space below grade effectively impossible while also remaining compliant with ramping and clearance requirements for the access.

As to the width of the access aisle to loading, the Board finds that the absence of a curb cut from 5th Street N.W. coupled with the fact that DDOT is unlikely to approve a curb cut as creating practical difficulties for the Applicant to comply with the loading requirement. The Applicant does not have a viable alternative to the Alley because the Applicant cannot provide a curb cut off 5th Street for loading access. The Applicant’s traffic expert testified that “the DDOT design and engineering manual which ... states explicitly that if you have access to an alley you must use the alley for [loading] access.” (4/4/18 Hearing Tr. at p. 142.) In this regard, the Board notes that counsel for 450K CAP concurred that “DDOT doesn’t like loading off of streets.” (6/20/18 Hearing Tr. at p. 224.) Accordingly, the Applicant would face a practical difficulty with strict compliance with the 12-foot-wide access aisle requirement because the Project must utilize the existing Alley for loading access.

No Substantial Detriment to Public Good or Zone Plan. The Board finds that approval of the requested variance relief will not result in substantial detriment to the public good or cause any impairment to the zone plan. As previously discussed, the Applicant proposes to construct an aesthetically-pleasing and pedestrian-friendly hotel in one of the highest density zones in the District – a zone that *prioritizes* development of vibrant and active lodging and nightlife uses. Accordingly, the Board credits the testimony of Mr. Varga as well as the OP that the Project fulfills the intent and purpose of the D-4-R zone and Mount Vernon Triangle Sub-Area and satisfies numerous Comprehensive Plan and small area plan recommendations. (4/4/18 Hearing Tr. at pp. 111-114, Ex. 52, Ex. 60, Tab B.)

As to the closed court relief, the Board finds that the Project will provide adequate light and air to surrounding properties. The Board notes that the court relief will not have a substantial impact on either the three-story historic property to the north or the historic property to the south, as these buildings are both much lower in height than the proposed Project. The courts preserve historic preservation goals as reflected in HPRB’s concept approval of the Project design.

As to the floor-to-ceiling clearance height, the Board credits OP's conclusion that the objectives of the Mount Vernon Triangle Principal Intersection Sub-Area have been met through the Project, as proposed. In particular, the Applicant proposes a 20-foot tall ground floor level with a coffee shop that is open to the public. This proposed utilization of the ground floor space will accomplish the goals of the Sub-Area to promote walkability and active uses on the ground level.

As to the relief for the loading berth and access aisle, the Board finds that the relief will not have a substantial detriment on the public good or the zone plan. As explained below, the Board credits the conclusions of DDOT regarding the loading-related relief as well as the evidence and testimony from the Applicant's traffic expert. The Board notes that 450K CAP and Mr. Stephenson held a contrary view but, as will also be explained below, finds their arguments unpersuasive.

DDOT issued two reports on the Project, both of which confirm that DDOT has no objection to the requested relief. (Exs. 45, 74). Of particular note, DDOT found that one loading berth would meet the needs of the Project provided the Applicant implemented the Loading Management Plan. (Ex. 45.)

The Applicant's traffic expert confirmed DDOT's conclusion that the loading facilities will meet the needs of the Project. (Ex. 70.) The Applicant's traffic expert from Gorove/Slade submitted three memorandums in the case record and testified at two hearings regarding the loading relief. Gorove/Slade provided information as to the number of deliveries predicted for the Project, including a letter from the proposed hotel operator confirming that two deliveries per day are expected for the Project. (Ex. 70; 6/20/18 Hearing Tr. at p. 262.) The Board credits the statements of the proposed hotel operator over the claims of 450K CAP and Mr. Stephenson that the Project would likely require additional loading trips. (Exs. 62, 78, 80.) Accordingly, the Board finds that one loading berth will be sufficient to meet the needs of the Project and will not be of detriment to the public good.

Similarly, 450K CAP argued that the Project would create too much activity in the Alley. (6/20/18 Hearing Tr. at pp. 210-211.) 450K CAP did not provide any basis for this anecdotal assertion. To that end, the Board notes that 450K CAP also has access to its building's loading through the Alley. (6/20/18 Hearing Tr. at pp. 230-231.) Notwithstanding, the Board credits the Applicant's Loading Management Plan, as confirmed by DDOT, to mitigate any negative impact that the Project's loading activities may have on neighboring properties along the Alley. (Ex. 45.) The Loading Management Plan is an express condition of the Board's approval for the Project. The Board also notes that there are multiple entry points along the Alley that can provide access points for neighboring properties, and the "east-west" portion of the Alley is 30 feet wide, providing ample space for vehicles to navigate. (6/20/18 Hearing Tr. at p. 264.)

450K CAP also claims that the Alley is not wide enough to allow for trucks to access the Project's loading berth. (Exs. 62, 78, Tab C.) 450K CAP questions the findings of Gorove/Slade as to the necessary turning radius for trucks in the Alley. (Exs. 62, 78.) The Board does not find

450K CAP's argument to be persuasive. First, as Gorove/Slade notes, the width of the Alley is the same whether the Applicant is seeking zoning relief or constructing a by-right building at the Property. (Ex. 68, Tab C.) Nonetheless, Gorove/Slade produced numerous detailed turning diagrams that sufficiently demonstrate the Alley is accessible for trucks up to 30 feet in length. (Ex. 68, Tab C, Ex. 70.) Gorove/Slade created the turning diagrams using the "AutoTURN" program, a method that is acceptable by the Board as accurately depicting the Alley conditions and turning movements of trucks. (Ex. 68, Tab C.) Indeed, DDOT confirmed that while the movements in the alley are "constrained," the condition "is not irregular in the District's alley networks. (Ex. 74.) DDOT also noted that the buildings at 450 K Street N.W. and 459 I Street N.E. have loading bays off the Alley, suggesting that trucks are able to appropriately maneuver within the Alley. (Ex. 74.)

Both 450K CAP and Mr. Stephenson raised concerns regarding the potential for the Project's loading to affect the use of their properties. (Exs. 62, 80.) The Board relies on the Applicant's Loading Management Plan to limit any effects of the Project's loading on neighboring properties. In particular, the Board notes that the Applicant has agreed that no trucks will queue along 5th Street N.W., deliveries will be scheduled so that the capacity of the Project's loading space is not exceeded, trucks may not be larger than 30 feet in length, and loading operations will be limited to 7:00 a.m. to 7:00 p.m. These conditions, as well as others, will help to limit any effect the Applicant's loading facilities would have on neighboring properties or the public good.

Through its traffic expert, Mr. Mehra, 450K CAP also claimed that the Applicant was required to produce a Comprehensive Transportation Review but failed to do so. (Exs. 62, 78.) The Board finds the assertions made by Mr. Mehra to be unpersuasive. DDOT confirmed that the Applicant was not required to produce a Comprehensive Transportation Review. (Ex. 74.) As to any alleged impacts of the Project on parking or transportation networks, the Board finds that the Project is not required to provide any parking because it is within the D-4-R zone. Nonetheless, the Applicant has implemented several methods to limit any potential effect on parking. In particular, the Applicant produced letters of intent to reserve 20 parking spaces in nearby private parking garages. (Ex. 39, Tab C.) The Applicant has also worked extensively with DDOT and will request a no parking loading zone directly in front of the Project for drop-offs. (Ex. 39.) The Board also notes that the Property is located in a transit-rich, walkable part of the District. Additionally, the Applicant is providing bicycle parking in excess of that required under the Zoning Regulations.

Great Weight

The Board is required to give "great weight" to the recommendations made by OP. (D.C. Official Code § 6-623.04.) For the reasons discussed above, the Board concurs with OP's recommendation that the application, including all areas of relief requested, should be approved.

The Board is also required to give "great weight" to the issues and concerns raised by the affected ANC. (D.C. Official Code §§ 1-309.10(d)(3)(A).) Great weight means

acknowledgement of the issues and concerns of the ANC and an explanation of why the Board did or did not find their views persuasive.⁶

On March 6, 2018, ANC 6E voted unanimously to support relief under Subtitle C § 1502.1(c)(4) for the penthouse side setback and Subtitle I § 205.1 for the rear yard, and variances under Subtitle C § 901.1 for the number of loading berths, Subtitle I § 207.1 for closed court dimensions, and Subtitle I § 612.4 from the floor-to-ceiling clearance height requirement. The ANC also voted to support the special exception relief for use of the penthouse as a cocktail lounge or bar, although the Applicant later withdrew this relief. At the time of the ANC's vote of support, the Applicant had not added its request for relief under Subtitle C § 904.2 for the width of access aisle to loading berth. Nonetheless, Commissioner Anthony Brown, who is the Chair of the ANC's Zoning and Planning Subcommittee, testified that the Subcommittee had considered the relief under Subtitle C § 904.2 and voted to support the relief. (6/20/18 Hearing Tr. at pp. 255-256.) The Board finds that the ANC had notice of the Applicant's request for relief under Subtitle C § 904.2, but the ANC chose not to vote on this area of relief and did not state any issues or concerns in the case record.

While the ANC voted to support the aforementioned relief, the ANC conditioned its overall support on the Board's implementation of three conditions in order to address issues and concerns raised by community members. The ANC raised the following issues and concerns in connection with the requested conditions:

- “Residents expressed concern that a hotel in the middle of block on 5th Street would increase the already high traffic area with visitors and vendors loading and off-loading in front of the future hotel. To address this concern, ANC 6E conditioned its support on the applicant requesting three reserved parking spaces in front of the property on 5th Street from the District Department of Transportation”; and
- “The narrow alleyway behind the hotel is utilized by residents and vendors for four residential buildings in addition to several businesses. To address this concern, ANC conditioned its support on the applicant working with the surrounding property owners to construct a workable plan to prevent congestion and accidents in the narrow alleyway.”⁷

⁶ The D.C. Court of Appeals has interpreted the “great weight” regulatory requirement to mean that the BZA must acknowledge the ANC's concerns and articulate reasons why those concerns and issues were rejected and the relief requested from the zoning regulations was granted. See *Metropole Condo Asso. V. Bd. of Zoning Adjust.* citing *Kopff v. District of Columbia Alcoholic Beverage Control Bd.*, 381 A.2d 1372, 1384 (D.C. 1977) (“We conclude that ‘great weight’ ... means ... that an agency must elaborate, with precision, its response to the ANC issues and concerns.”); see also *Levy v. District of Columbia Bd. of Zoning Adjustment*, 570 A.2d 739, 746 (D.C. 1990) (“[T]he [Board] is required ... to give issues and concerns raised by the ANC ‘great weight’ [through] ‘the written rationale for the government decision taken.’”). However, the Court is clear that the Board is only required to give great weight to those issues and concerns that are “legally relevant” to the relief requested. *Bakers Local 118 v. D.C. Bd. of Zoning Adjustment*, 437 A.2d 176, 179 (D.C. 1981).

⁷ The third condition requested by the ANC concerns hours for the penthouse habitable space, which was later removed from the Project.

The Board found that the project will not result in adverse parking or traffic impacts and therefore the conditions proposed are unnecessary. Further, the Commission cannot compel DDOT to reserve parking spaces or the Applicant to meet with others. The first is within DDOT's sole discretion and the second violates the Applicant's right of free association. The Board is not mistaking "its lack of authority to approve the proposals for a lack of jurisdiction to assess the impact of the proposals on the surrounding neighborhood". *See Levy v. D.C. Bd. of Zoning Adjustment*, 570 A.2d 739, 750–51 (D.C. 1990). Rather, the Board finds that neither condition is legally required.

Based on 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 a special exception under Subtitle C § 1502.1(c)(4) for the penthouse side setback and Subtitle I § 205.1 for the rear yard, and variances under Subtitle C § 901.1 for the number of loading berths, Subtitle C § 904.2 for the width of access aisle to loading berth, Subtitle I § 207.1 for closed court dimensions, and Subtitle I § 612.4 from the floor-to-ceiling clearance height requirement, for the premises at 923-927 5th Street N.W. (Square 0516, Lots 827, 828, 829, and 833). Accordingly, it is **ORDERED** that the application is **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 90 AND THE FOLLOWING CONDITIONS:**

1. Trucks shall be restricted from queuing and loading along 5th Street, N.W.
2. Vendors and on-site tenants shall be required to coordinate and schedule deliveries, and a loading coordinator shall be on duty during delivery hours.
3. Trucks accessing the on-site loading space shall be limited to a maximum of 30 feet in length.
4. No more than one 30-foot truck shall be allowed in the loading area.
5. Deliveries shall be scheduled such that the loading space's capacity is not exceeded.
6. In the event that an unscheduled delivery vehicle arrives while the loading space is full, that driver shall be directed to return at a later time when the loading space will be available so as to not impede the alley that passes adjacent to the loading space.
7. Inbound and outbound truck maneuvers shall be monitored to ensure that trucks accessing the loading space do not block vehicular traffic.
8. Trucks using the loading space shall not be allowed to idle.
9. Trucks must follow all District guidelines for heavy vehicle operation.

- 10. Loading space operations shall be limited to daytime hours, 7:00 AM – 7:00 PM, with signage indicating these hours posted prominently at the loading space.
- 11. The Applicant shall provide bicycle parking spaces required by zoning.
- 12. The Applicant shall ensure adequate TDM marketing at each step in the booking and arrival process for guests.
- 13. The Applicant shall facilitate employee carpool matching services sponsored by the Metropolitan Washington Council of Governments.
- 14. The Applicant shall install Transportation Information Centers (electronic screens) within the hotel’s lobby, which will display information related to local transportation alternatives.

The Vote

For relief under Subtitle I § 205.1 for the rear yard, Subtitle C § 901.1 for the number of loading berths, Subtitle C § 904.2 for the width of access aisle to loading berth, Subtitle I § 207.1 for closed court dimensions, and Subtitle I § 612.4 from the floor-to-ceiling clearance height requirement

VOTE: 4-0-1 (Carlton E. Hart, Lorna L. John, Anthony J. Hood, and Lesylleé M. White (by absentee ballot) to APPROVE; Frederick L. Hill not participating).

For relief under Subtitle C § 1502.1(c)(4) for the penthouse side setback

VOTE: 3-1-1 (Carlton E. Hart, Lorna L. John, and Lesylleé M. White (by absentee ballot) to APPROVE; Anthony J. Hood opposed; 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: January 9, 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 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.

BZA APPLICATION NO. 19722

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

Application No. 19787 of 2604 29th Street LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the inclusionary zoning requirements of Subtitle C § 1001.2(e)(3), to construct a rear addition to the existing flat that is to be converted into a 12-unit apartment house in the RA-1 Zone at premises 2604 29th Street, S.E. (Square 5643, Lot 18).

HEARING DATE: September 12, 2018

DECISION DATE: September 12, 2018

ORDER

SELF-CERTIFICATION

Preliminary Matters

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.) In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Agency Reports

Affected Advisory Neighborhood Commission

The site of this application is located within the jurisdiction of Advisory Neighborhood Commission ("ANC") 7B, which is automatically a party to this application. The ANC submitted a Form 129 indicating that at a regularly scheduled, properly noticed public meeting on August 16, 2018 at which a quorum was present, the ANC took no vote on the application. (Exhibit 43.) Since there was no ANC vote, there is no ANC position in this case.

Form 129 includes space for an ANC to state its issues and concerns and its recommendation. Notwithstanding the absence of any vote, the ANC responded in both spaces, "see attachment." The attachment was entitled "material substance" and stated six concerns. However, the Board cannot consider these to be the ANC's concerns without a vote adopting them.

Office of Planning

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Ex. 36.) OP's report explained that the Applicant is opting in to Inclusionary Zoning ("IZ") requirements in order to use inclusionary bonus density. In this case, opting in to

IZ requires that eight percent of the project’s gross floor area, or 747 square feet (“sq. ft.”), be set-aside as IZ dwelling units, but the Applicant proposes to devote all 1,460.4 sq. ft. of the requested inclusionary bonus density toward two IZ units. OP found the requested bonus density to be consistent with existing development in the RA-1 Zone, which provides for areas predominately developed with low to moderate density, including low-rise apartments. OP also found the proposed development to comply with the development standards for the RA-1 Zone as to height, lot occupancy, side and rear yard, and massing. OP concluded that the requested bonus density would not appear to adversely affect the use of neighboring property given that the development will provide increased side yards and rear yard buffers to allow sufficient light and air to adjacent properties.

The District Department of Transportation

The District Department of Transportation (“DDOT”) submitted a timely report indicating that it had no objection to the application. (Exhibit 34.) DDOT found that the requested relief would have no adverse impacts on the travel conditions of the District’s network. Although DDOT noted that the proposed project has the potential to generate minor impacts to on-street parking, DDOT had no objection to the approval of the requested special exception.

The Hearing

At the public hearing on September 12, 2018, neighbors living on 29th Street and Denver Street, Tyrone Jennifer and Alberta Hargrove, testified in opposition of the application. Both objected to the proposed density of the project and expressed concerns about overcrowding and available parking in the neighborhood. (Hearing Transcript (“Tr.”) at 143-148.) Ms. Hargrove’s house abuts the rear of the proposed project, and she testified that the demolition work and construction of the addition could damage her property, that the addition may encroach on her property line, and that alley access for residents of 29th, 30th, and Denver Streets could be disturbed. She also questioned whether an existing fence that appears to be on the Applicant’s property is actually encroaching onto her neighbor’s property.

The Board also heard testimony from ANC Commissioner Hammond Marlin. The Form 129 indicated that Commissioner Hammond Marlin would present the ANC’s report. Such a presentation would necessarily be limited to a statement that no vote was taken. However, the Commissioner used her testimony to raise concerns about the proposed project’s increased density being inconsistent with the low-rise appearance that characterizes the surrounding apartment types; the potential reduction of available street parking in the surrounding neighborhood; the lack of clarity from the Applicant on whether the units will be rental or ownership; and enforcement of the Applicant’s commitment to provide IZ units. Since the ANC took no vote, none of these positions can be ascribed to it, but must be regarded as the Commissioner’s personal view, which the Board will address in its discussion of the merits.

Several letters of opposition to the application were submitted to the case record by neighbors living in the 2900 block of Denver Street. The letters reiterate the concerns that were raised in the public hearing testimony of Mr. Jennifer and Ms. Hargrove. (Exhibits 46, 47, 48, 49, 50, and 51.) In addition, residents of 29th, 30th, Erie, and Denver Streets, and Alabama Avenue and Naylor Road, submitted a petition signed by 46 people who oppose the application because they believe the proposed density will negatively impact the Hillcrest community. (Exhibit 52.)

No letters in support of the application were submitted to the case record.

The Project

The applicant proposes to construct a rear and third story addition to an existing flat, converting it to an apartment house having 12 units. Eight of the units would be included in the addition and since that is less than ten units, compliance with Inclusionary Zoning requirements would not be required. The Applicant wishes to voluntarily subject its property to the Inclusionary Zoning Regulations and to use bonus density available to mandatory Inclusionary Developments to construct a rear and third story addition.

Subsection C § 1001.2(e)(3) provides that for voluntary Inclusionary Developments the “use of the bonus density provided in Subtitle C § 1002 in the ... or the RA-1 Zones shall require special exception approval pursuant to Subtitle X, Chapter 9.” The RA-1 Zone allows a maximum floor area ratio (“FAR”) of 0.9 (7,878.6 sq. ft.), and with the requested bonus density would permit a FAR of 1.08 (9,454.32 sq. ft.). The Applicant indicates that the project would provide a FAR of 1.07 (9,339 sq. ft.).

Although the minimum amount of gross floor area that must be set aside for this development is 747 square feet, the Applicant will devote all 1,460.4 sq. ft. of the requested inclusionary bonus density toward two IZ units.¹

The RA-1 Zone provides for areas predominantly developed with low- to moderate-density development. The requested bonus density would result in an additional 1,460.4 square feet in the development, which would fit within the existing bulk regulations for the zone.

The development would comply with height, lot occupancy, rear yard, and side yard requirements, and would be consistent with surrounding development, which provides a variety of housing types, including apartment houses.

¹ OP’s report (Ex. 36) indicates that the Applicant will provide 12 IZ units, and the Applicant’s statement (Ex. 9) indicates that all units will be affordable. However, at the September 12, 2018 public hearing, the Applicant clarified in its testimony that 2 IZ units will be provided not 12. (Tr. at 117-118.) The remaining units will be market rate, but made available to households with housing vouchers.

The development would provide buffers from adjacent development, including increased side yards and rear yard, and would be consistent with adjacent existing development, including apartment houses located to the south.

The project would comply with or exceed minimum development regulations, allowing sufficient light and air to adjacent properties.

A residential property owned by Ms. Alberta Hargrove abuts the rear of the proposed project. The back of Ms. Hargrove's house and the proposed addition is separated by approximately 85 to 100 feet. A survey was completed showing the existing fence on the Applicant's property not the neighbors. (Tr. at 149-150.)

The Applicant's self-certification indicated that two parking spaces would be required and provided. Later, the Applicant stated that seven spaces would be provided. (Tr. at 134.)

The Merits

The Inclusionary Zoning Regulations are codified in Chapter 10 of Subtitle C of the Zoning Regulations of 2016 (Title 11 DCMR). Residential developments that are subject to the regulations by paragraphs (a) through (d) of 11-C DCMR § 1001.2, must, pursuant to 11-C DCMR § 1003, set aside the greater of a percentage of their residential gross floor area or their achievable bonus density area as Inclusionary Units for households earning 60% or 80% of the median family income depending upon whether the Inclusionary Unit is for rent or for sale, respectively. Developments subject to the Inclusionary Zoning Regulations may utilize a bonus density of up to 20% over the matter of right limits.

Subsection C § 1001.2(e) allows owners of developments that are not subject to the Inclusionary Zoning Regulations to voluntarily participate in the program. The Applicant owns an existing residential development in an RA-1 Zone and wishes to voluntarily participate in the program and to utilize 1,460.4 square feet of bonus density to construct a rear and third story addition. Subparagraph (3) of 11-C DCMR § 1001.2(e) provides that voluntary IZ developments located in in the RA-1 Zone must obtain special exception approval to utilize such bonus density, which the Applicant seeks here.

Pursuant to Section 8 of the Zoning Act of 1938, D.C. Official Code § 6-641.07 (g), the Board is authorized to hear and decide, in accordance with the provisions of the regulations adopted by the Zoning Commission, requests for special exceptions. The Zoning Commission has provided that the Board may grant a special exception if in the Board's judgment doing so will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps, subject to specific conditions. (11-X DCMR § 901.2.) In this case, the Zoning Commission established no specific conditions to allow for the special exception to be granted.

The Board concludes that this special exception standard has been met. As noted by OP, the requested bonus density is consistent with existing development in the RA-1 Zone, which provides for areas predominately developed with low to moderate density, including low-rise apartments. The proposed development will comply with the development standards for the RA-1 Zone as to height, lot occupancy, side and rear yard, and massing. The Board also concurs with OP that the requested bonus density will not tend to adversely affect the use of neighboring property given that the development will provide increased side yards and rear yard buffers to allow sufficient light and air to adjacent properties. With respect to Ms. Hargrove's concerns, the Board finds the distance between the back of her house and the proposed addition is sufficient to result in no adverse impacts to her. The addition will not encroach on Ms. Hargrove's property as she asserts, and a survey shows that the existing fence is on the Applicant's property not the neighbor's.

The Board notes that DDOT found that the requested relief would have no adverse impacts on the travel conditions of the District's network. Although DDOT noted that the proposed project has the potential to generate minor impacts to on-street parking, the Applicant has agreed to provide five more parking spaces than the two proposed, and the Board concludes that this will be sufficient to mitigate impacts on available street parking. Since the Board is relying upon this representation as one of its bases for finding no adverse impact, it is making it a condition of its approval.

Through letters and testimony, members of the public and an ANC Commissioner raised concerns about the proposed project's increased density being inconsistent with the low-rise appearance that characterizes the surrounding apartment types; the potential reduction of available street parking in the surrounding neighborhood; the lack of clarity from the Applicant on whether the units will be rental or ownership; and enforcement of the Applicant's commitment to provide IZ units.

The second issue has been addressed above.

As to the first issue, the project will increase overall density as the Applicant proposes to convert the property from an existing two-story two-unit flat consisting of 2,580 sq. ft. in gross floor area ("GFA") to a three-story 12-unit apartment house consisting of 9,339 square feet in GFA. However, the substantial majority of the proposed increase in density is permitted as a matter of right in the RA-1 Zone without the inclusionary bonus density relief sought by the Applicant.

In the RA-1 Zone, a GFA or FAR totaling 0.9 (7,878.6 sq. ft.) is permitted as a matter of right. Therefore, the maximum 20% of inclusionary bonus density would allow a GFA or FAR totaling 1.08 (9,454.32 sq. ft.). Here, the Applicant seeks a total FAR of 1.07 (9,339 sq. ft.), which amounts to 0.17 FAR or 1460.4 sq. ft. more than the 7,878.6 sq. ft. permitted as a matter of right. Thus, absent any bonus density zoning relief, the Applicant can increase the existing GFA of the

property from 2,580 sq. ft. to 7,878.6 sq. ft. because the RA-1 Zone provides for low to moderate density development, including low-rise apartments.

As to the third issue, the Applicant will be required to specify whether the Inclusionary Units will be for sale or rental at the time it files a certificate of inclusionary zoning compliance and therefore the issue is of no relevance here. As to ensuring the Applicant will comply with its commitments, the Zoning Regulations require a minimum set-aside of 747 square feet. However, to ensure that additional IZ gross floor area will be provided, the Board will add a condition of approval requiring two IZ units with a combined gross floor area of 1,460.4 square feet.

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).) Based on the hearing testimony and the evidence in the case record, the Board finds that the request for special exception relief meets the general special exception standards of Subtitle X § 901.2. Therefore, granting the inclusionary bonus density relief would be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps and would not adversely affect the use of neighboring properties.

Great Weight

The Board is required to give "great weight" to OP recommendations. (D.C. Official Code § 6-623.04 (2012 Repl.)) In this case, OP recommended approval of the application. The Board has carefully considered OP's recommendation in support of the application and for the reasons stated in this Order agrees that approving the special exception relief is appropriate.

ANC Report

The Board is also required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give "great weight" to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 7B. Here, the ANC through the submission of a Form 129, submitted a report indicating that at a properly noticed meeting, with a quorum present, it took no vote on the application. As a result, there is nothing to give great weight to.

Based upon the record before the Board, and having given great weight to the recommendations made in the OP report filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 901.2, that the Applicant's request to use inclusionary bonus density relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the

requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS AT EXHIBIT 11 – ARCHITECTURAL PLANS AND ELEVATIONS and EXHIBIT 33A - PREHEARING SUBMISSION: TAB A (FLOOR PLANS) - AND WITH THE FOLLOWING CONDITIONS:**

1. For the life of the project there shall be at least seven zoning compliant parking spaces on the property.
2. For the life of the project there shall be two dwelling units with at least 1,460.4 square feet of combined gross floor area that are subject to the provisions of Chapter 10 of Title 11-C DCMR.

VOTE: 5-0-0 (Frederick L. Hill, Peter G. May, Lesylleé M. White, Lorna L. John, and Carlton E. Hart 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: January 4, 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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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. 19885 of Lorens Helmchen, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504 from the penthouse enclosing walls requirement of Subtitle C § 1500.9 and the penthouse setback requirements of Subtitle C § 1502.1 (b) and (c), to repair and replace the existing roof access stair and roof deck in the RF-1 Zone at premises 16 10th Street N.E. (Square 941, Lot 821).

HEARING DATES: December 12, 2018; December 19, 2018; and January, 9, 2019
DECISION DATE: January 9, 2019

SUMMARY ORDER

SELF-CERTIFICATION

The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 50 (Final Revised); Exhibits 45, 38, 18 (Prior Revised); Exhibit 3 (Original).)¹ In granting the certified relief, the Board of Zoning Adjustment ("Board" or "BZA") made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

The Board provided proper and timely notice of the public hearing on this application by publication in the *D.C. Register* and by mail to Advisory Neighborhood Commission ("ANC") 6A and to owners of property located within 200 feet of the site. The site of this application is located within the jurisdiction of ANC 6A, which is automatically a party to this application. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 8, 2018, at which a quorum was present, the ANC voted 6-0 to support the application. (Exhibits 32 and 41.)

The Office of Planning ("OP") submitted a timely report recommending approval of the application. (Exhibit 34.) OP submitted a supplemental report recommending approval of the Applicant's revised plans. (Exhibit 51.) The District Department of Transportation ("DDOT") submitted a timely report indicating that it had no objection to the application. (Exhibit 35.)

¹ The Applicant revised the notes and computations for the proposed penthouse in several self-certification forms, but did not amend the relief that was originally captioned and advertised. The final computations for the approved penthouse design are provided in the Applicant's attachment to Form 135 in Exhibit 50.

As directed by 11 DCMR Subtitle X § 901.3, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case pursuant to Subtitle X § 901.2, for a special exception under Subtitle C §§ 1500.4, 1504, 1500.9 and 1502.1 (b) and (c). No parties appeared at the public hearing in opposition to this application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

Based upon the record before the Board and having given great weight to the OP and ANC reports, the Board concludes that the Applicant has met the burden of proof, pursuant to 11 DCMR Subtitle X § 901.2, and Subtitle C §§ 1500.4, 1504, 1500.9 and 1502.1 (b) and (c), that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map. The Board further concludes that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 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 48.**

VOTE: 3-0-2 (Frederick L. Hill, Lorna L. John, and Lesylleé M. White to APPROVE; Carlton E. Hart and Peter A. Shapiro not participating, not voting.)

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

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

FINAL DATE OF ORDER: January 10, 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

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THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

2019 Monthly Meeting Schedule

The Zoning Commission of the District of Columbia, in accordance with § 103.1 of the District of Columbia Municipal Regulations, Title 11-Z, Zoning, hereby gives notice that it has scheduled the following meetings. Meetings are held in the Jerrily R. Kress Memorial Hearing Room, Suite 220-South of 441 4th Street, N.W., #1 Judiciary Square, beginning at 6:30 p.m.

The dates of the Monthly Meetings for the following year of the Zoning Commission of the District of Columbia are as follows:

Regular Monthly Meeting	Second Monthly Meeting
January 14, 2019	January 28, 2019
February 11, 2019	February 25, 2019
March 11, 2019	March 25, 2019
April 8, 2019	April 29, 2019
May 13, 2019	--
June 10, 2019	June 24, 2019
July 8, 2019	July 29, 2019
September 9, 2019	September 23, 2019
October 21, 2019	--
November 18, 2019	--
December 9, 2019	--

Please note that these dates are subject to change.

Additional meetings as needed may be called by the presiding officer or by three (3) members. However, no meetings or hearings are held in the month of August.

The proposed agenda for each meeting is posted in the office of the Commission and available to the public at least four days prior to the meeting.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 02-38I
Z.C. CASE NO. 02-38I**

**Waterfront 375 M Street, LLC and 425 M Street, LLC
(Second-Stage PUD & Modification of Significance to First-Stage PUD @ Square 542)
September 17, 2018**

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public hearings on April 5, 2018 and May 10, 2018, to consider an application from Waterfront 375 M Street, LLC and 425 M Street, LLC (together, the “Applicant”) for approval of a second-stage planned unit development (“PUD”) and a modification of significance to a previously approved first-stage PUD for property located at 375 M Street, N.W. (Square 542, Lot 825) (“East M”) and 425 M Street, N.W. (Square 542, Lot 826) (“West M”) (together, the “M Street Sites”), all in accordance with the Commission’s first-stage approval of the M Street Sites in Z.C. Order No. 02-38A (“Application”). The Commission considered the Application pursuant to Subtitle X, Chapter 3 and Subtitle Z of the District of Columbia Zoning Regulations, Title 11 of the District of Columbia Municipal Regulations (“DCMR”). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT

The Application, Parties, and Hearing

1. On April 5, 2017, the Applicant filed an application for a second-stage PUD and a modification of significance to an approved first-stage PUD for the M Street Sites. The Application, as amended, proposes to convert the primary use of the approved buildings on the M Street Sites (the “East M Building” and the “West M Building,” or together the “M Street Buildings”) from office use to residential use and to include neighborhood-serving office space in addition to the previously approved ground-floor retail. Following discussions with Advisory Neighborhood Commission (“ANC”) 6D, the ANC in which the M Street Sites are located, the Applicant also incorporated a community center into the East M Building. The modified PUD maintains the approved density, height, and setbacks of the M Street Buildings that were approved in the first-stage PUD. The proposed development on the M Street Sites is hereinafter referred to as the “Project.”
2. On May 10, 2017, ANC 6D submitted a setdown form recommending that the Commission should not set down the Application for a public hearing because it would not be in the best interests of the Southwest residents and would not create the type of vibrant “town center” envisioned for Waterfront Station in the small area plan for the Southwest known as the Southwest Neighborhood Plan (the “SW Plan”). (Exhibit [“Ex.”] 10.)
3. On June 2, 2017, the Office of Planning (“OP”) submitted a setdown report recommending that the Commission set down the Application for a public hearing and

- identifying some items for which more information or clarification was needed from the Applicant prior to the public hearing. (Ex. 11.)
4. At its public meeting held on June 12, 2017, the Commission voted to set down the Application for a public hearing. The Commission noted that the ANC had concerns with the Application and requested that the Applicant continue to work with the ANC to address their outstanding issues.
 5. On August 15, 2017, the Applicant filed a prehearing submission. (Ex. 13-13K.) The prehearing submission responded to the following questions and issues raised by the Commission at the setdown meeting and by OP in its setdown report: (i) the Project's consistency with the SW Plan and its ability to create a thriving and vibrant town center; (ii) the ability of the proposed residential and neighborhood-serving office uses to support ground-floor retail; (iii) a market analysis prepared by Partners for Economic Solutions ("PES") providing evidence of the weak office market and high residential market in the Southwest neighborhood; (iv) a plan to implement a retail marketing strategy for the M Street Sites; (iii) updated architectural plans and elevations responding to a variety of comments and technical corrections from OP, including updated façade designs and a greater number of balconies; (iv) a response to ANC 6D's initial comments on the Applicant's transportation scoping form submitted to the District Department of Transportation ("DDOT"); (v) an initial transportation demand management ("TDM") plan for the M Street Sites; (vi) an initial public benefits and amenities package for the M Street Sites; (vii) a phasing plan for the M Street Sites; and (viii) initial design flexibility language for development of the M Street Sites. The prehearing submission also included an Inclusionary Zoning ("IZ") unit size and location exhibit, a letter from the Office of the Deputy Mayor for Planning and Economic Development ("DMPED") consenting to the filing of the Application, and a letter confirming the Applicant's compliance with all First Source Employment and Certified Business Entity ("CBE") Agreements required by the first-stage PUD to date.
 6. A Notice of Public Hearing was published in the *D.C. Register* on September 8, 2017. The Notice of Public Hearing was mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 16.)
 7. On August 22, 2017, the Waterfront Tower Condominium Board ("Waterfront Tower") submitted an advanced party status request form. (Ex. 14.) Waterfront Tower is located at 1101 3rd Street, S.W., directly to the east of the East M Building. In its party status request, Waterfront Tower stated that the Project would have negative environmental, economic, and social impacts, and would decrease access, security, and safety around its property.
 8. On September 15, 2017, the Applicant submitted a letter in opposition to Waterfront Tower's party status request. (Ex. 19.) The Applicant's letter described how Waterfront Tower did not meet the party status criteria of 11-Z DCMR § 404.14 because it did not demonstrate that its interests would be significantly, distinctively, or uniquely affected by the Application.

9. On October 30, 2017, the Commission voted to approve Waterfront Tower’s request for party status, finding that its interests would be uniquely affected by the Project.
10. On October 27, 2017, the Applicant submitted a Comprehensive Transportation Review (“CTR”) report prepared by Gorove/Slade Associates and dated October 17, 2017. (Ex. 32-32A.) The CTR concluded that the M Street Sites would not have a detrimental impact to the surrounding transportation network assuming that all planned site design elements and mitigation and TDM measures are implemented.
11. On November 2, 2017, the Applicant submitted a letter requesting a postponement of the public hearing, scheduled for November 30, 2017, to provide time for the Applicant to work with the ANC and other community groups and residents. (Ex. 35.) The Commission approved the request and rescheduled the public hearing to February 22, 2018. A Notice of Rescheduled Public Hearing was published in the *D.C. Register* and mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 35, 36.)
12. On January 10, 2018, the Applicant submitted a letter requesting a further postponement of the public hearing to provide additional time for the Applicant to continue to work with the ANC and other community groups and residents. (Ex. 47.) The Commission approved the request and rescheduled the public hearing to April 5, 2018. A Notice of Rescheduled Public Hearing was published in the *D.C. Register* and mailed to the owners of property located within 200 feet of the M Street Sites and to ANC 6D. (Ex. 35, 36.)
13. On March 16, 2018, the Applicant filed a supplemental prehearing submission. (Ex. 62-62F.) The supplemental prehearing submission included the following information and materials: (i) an update on how the Project will successfully create a town center, as evidenced through the results of a pedestrian study documenting existing site activity and a Retail Assessments and Recommendations Report addressing the ideal retail mix, public space improvements, and marketing strategies needed to create a vibrant town center; (ii) an update on the Applicant’s community engagement campaign and results thereof, including a proposed Community Benefits Agreement (“CBA”) with the ANC; (iii) a shadow study demonstrating the impact of the modified PUD on casting shadows on Waterfront Tower; (iv) a transportation memo describing updates to the Project based on requests from the ANC and Waterfront Tower; (v) an updated benefits and amenities package for the M Street Sites; (vi) updates to the design flexibility language requested for the M Street Sites; and (vii) updated architectural plans and elevations showing all revisions to the Project since filing the prehearing submission.
14. On March 26, 2018, OP submitted a hearing report recommending approval of the Application subject to the condition that for the life of the Project, the M Street Buildings shall reserve no less than 32,400 square feet of space for office uses, as “office” is defined at Exhibit 13, p. 27, paragraph nine. (Ex. 64.) The OP report also included a variety of additional comments and questions, which the Applicant subsequently addressed at the public hearing and in Exhibit 76-76B2, as described in Findings of Fact (“FF”) Nos. 17, 23, and 30(c).

15. On March 26, 2018, DDOT submitted a hearing report stating no objection to the Application with the conditions that the Applicant (i) fund and conduct a safety study at the intersection of 4th and M Street, S.W.; and (ii) implement the TDM plan proposed by the Applicant in the CTR dated October 17, 2017, with additional revisions listed on page 4 of the DDOT report. (Ex. 32, 63.)
16. On April 4, 2018, ANC 6D submitted a resolution stating that at its regularly scheduled and properly noticed public meeting on March 19, 2018, ANC 6D voted 5-0-0 in support of a motion of conditional support of the Application. (Ex. 68.) The ANC’s resolution included a letter from the Southwest Neighborhood Assembly (“SWNA”) indicating its support for the Project’s proposed community center use.
17. On April 5, 2018, the Applicant submitted a letter responding to the outstanding issues set forth in the OP and DDOT reports. (Ex. 76-76B2.)
18. After proper notice described above, the Commission held a public hearing on the Application on April 5, 2018. The hearing did not conclude at the end of the evening, so a second public hearing was scheduled and held on May 10, 2018.
19. The parties to the case were the Applicant, ANC 6D, and Waterfront Tower. Tiber Island Cooperative Homes, Inc. (“Tiber Island”) and Carrollsburg Square Condominium Association (“Carrollsburg Square”) were parties to the underlying first-stage PUD and were copied on all filings to the case record.
20. Two organizations (SWNA and the Near Southeast/Southwest Community Benefits Coordinating Council) submitted letters in support of the Application. These letters supported the conversion of the M Street Buildings to residential use and highlighted the major benefits of incorporating a community center use at Waterfront Station.
21. Three organizations (Harbour Square Owners, Inc., Carrollsburg Square, and DC for Reasonable Development: Ward 6 Study Group (“DC4RD”)) and multiple individuals submitted letters in opposition to the Application. A petition in opposition to the Application was also submitted to the record. The primary concerns raised were related to the removal of the existing open spaces at the M Street Sites and the associated public events that take place on those sites; opposition to additional residential units in the neighborhood due to negative impacts on property values and the lack of sufficient public services; increased traffic, congestion, and safety concerns; impacts on views and light; insufficient affordable housing; and the Project’s inconsistency with the SW Plan and policies within the Comprehensive Plan.
22. The Applicant presented three witnesses at the public hearing in its direct testimony: David Smith on behalf of the Applicant; Brett Swiatocha of Perkins Eastman DC; and Dan VanPelt of Gorove/Slade Associates. The following witnesses also testified on behalf of the Applicant in response to questions raised and in rebuttal testimony at the public hearing: Trini Rodriguez of Parker Rodriguez Landscape Architects; Mike Smith of Streetsense; Ryan Brannan of Bowman Consulting DC; and Shane Dettman of Holland

& Knight LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, Brett Swiatocha was qualified as an expert in architecture and Mike Smith was qualified as an expert in retail marketing and leasing. The Commission acknowledged that Dan VanPelt, Trini Rodriguez, Ryan Brannan, and Shane Dettman were previously qualified as experts in the fields of transportation planning, landscape architecture, civil engineering, and land use planning, respectively. The Commission also qualified Anita Morrison as an expert in real estate economics, but she did not testify.

23. At the public hearing, OP testified in support of the Application subject to the Applicant addressing the following outstanding items also discussed in the OP hearing report: (i) increasing the IZ proffer; (ii) providing more information on the depths of the window reveals and mullions to ensure adequate texture and visible interest on the buildings' façades; and (iii) potentially further increasing the number of units with balconies.
24. At the public hearing DDOT testified that it had no objection to approval of the Application, given that the Applicant had agreed to all of DDOT's requests listed in the DDOT report, including implementing a revised TDM plan and conducting a pedestrian safety study to evaluate the potential of adding a south-bound left turn lane at the intersection of 4th and M Streets, S.W. As described below, at the request of the ANC, the Applicant revised its proffer to conduct the safety study such that it will now fund the study only, with the selection of the firm to conduct the study left to DDOT.
25. Commissioner Andy Litsky testified on behalf of ANC 6D at the public hearing regarding the ANC's conditional support for the Application. Commissioner Litsky stated that the ANC wanted to resolve the following open questions and issues with the Applicant prior to approval of the Project:
 - a. Authority for the ANC to select the operator of the community center and that rent and all utilities and operating costs for the community center would be free for 30 years;
 - b. Additional details on the public space improvement element in the Metro plaza (the "Public Space Element" as further defined in FF No. 58(i));
 - c. Plans showing the configuration of the 4th and M Street intersection if a separated south-bound left-turn lane is added;
 - d. Evidence that construction of the East M Building would not preclude the replacement of the Metrobus stop and shelter for Route 74 in front of East M; and commitment that the Applicant would work with DDOT to arrive at a solution for the placement of a new Circulator bus stop in front of East M or West M;
 - e. Written commitment to develop and enforce a construction management plan(s) for the M Street Sites;

- f. Written assurances that residents of the M Street Buildings will not be eligible to apply for DDOT’s Residential Parking Permit (“RPP”) program;
 - g. Commitment that all deliveries, including trash, FedEx, UPS, and retailer deliveries will occur within the loading facilities within the M Street Buildings; and
 - h. More details on how the public realm plaza areas will be programmed and maintained following construction.
26. On May 10, 2018, the Commission held a second night of public hearing on the case. At that hearing, one individual and one organization (the Near SE/SW Community Benefits Coordinating Council) testified in support of the Application. Six individuals testified in opposition to the Application and one individual was undeclared as to being in support of or in opposition to the Application.
 27. On May 10, 2018, Leigha Gooding and Hara Bouganim testified as the representatives of Waterfront Tower as the party in opposition to the Application. Daniel Marriott testified as a witness on behalf of Waterfront Tower in opposition to the Application. At the public hearing, the Commission qualified Mr. Marriott as an expert in urban planning, landscape architecture, and historic preservation.
 28. Waterfront Tower’s presentation set forth its concerns regarding: (i) congestion in the north-south private drive between the East M Building and Waterfront Tower (the “North-South Private Drive”) resulting from the proposed loading at the East M Building; (ii) the East M Building’s failure to adequately treat the North-South Private Drive as the “main entrance” to Waterfront Tower due to the East M Building’s setbacks and insufficient streetscape improvements and façade treatment; and (iii) the spatial relationship between the East M Building and Waterfront Tower resulting in additional shadows on Waterfront Tower and the blocking of views of Waterfront Tower.
 29. At the conclusion of the May 10, 2018 public hearing, the Commission closed the record except for the parties to submit the additional information requested at the hearing, including draft Findings of Fact and Conclusions of Law, and to respond to the other parties’ filings.
 30. On July 2, 2018, the Applicant submitted a post-hearing submission in response to the requests for information at the public hearing. (Ex. 131-131I.) The post-hearing submission included the following information:
 - a. Updates on the Applicant’s continued community engagement, including (i) a summary of the Applicant’s commitments to the ANC and two memorandums describing those commitments; (ii) a signed Memorandum of Agreement (“MOA”) with Waterfront Tower describing the Applicant’s final commitments to Waterfront Tower and their mutual agreement and consent; (iii) a summary of the Applicant’s continued discussions with Coy McKinney who testified in

- opposition to the Project at the public hearing; and (iv) a response to filings and testimony submitted by DC4RD; (Ex. 131A-131D.)
- b. An update on the Applicant’s public benefits and amenities, including its increased affordable housing commitment and an updated IZ location plan; (Ex. 131E-F.)
 - c. Updated architectural drawings responding to comments from the Commission, OP, ANC 6D, and Waterfront Tower. (Ex. 131G1-131G13.) The drawings submitted at Exhibit 131G1-131G13 are the final drawings approved by this Order and are referred to herein as the “Approved Second-Stage PUD Plans”;
 - d. A copy of the Construction Easement Agreement entered into by the Applicant and the owners of adjacent property located at 1101 and 1001 3rd Street, S.W., which created a light and air easement with which the M Street Buildings are fully compliant; (Ex. 131H.)
 - e. The resume of Mike Smith of Streetsense, the Applicant’s expert in retail marketing and leasing; and
 - f. The Applicant’s final proposed language regarding design flexibility for the M Street Buildings.
31. On July 9, 2018, Waterfront Tower submitted a response to the Applicant’s post-hearing submission noting a discrepancy between the signed MOA, which required vertical plantings along the east and north façades at the northeast corner of the East M Building, and the Approved Second-Stage PUD Plans, which showed the vertical plantings on the east façade but not the north façade of the northeast corner. (Ex. 133.)
32. On July 16, 2018, the Applicant submitted a response to Waterfront Tower’s July 9, 2018 submission, stating that it did not intend to violate the MOA’s terms regarding the vertical plantings. The Applicant’s response included a revised landscape plan (Sheet L4-r1) and building elevation (Sheet 88-r1) showing the location and extent of the vertical plantings as agreed to in the MOA. (Ex. 135.)
33. Also on July 9, 2018, the ANC submitted a response to the Applicant’s post-hearing submission (Ex. 134), which acknowledged that “[s]ince the last Zoning hearing. . . ANC-6D has met several times with the Applicant and their agents in attempts to further clarify terms and seek consensus.” (Ex. 134, p. 1.) However, the ANC raised new concerns and made the following requests to address unresolved issues: (i) imposing a prohibition to prevent short-term residential leases at the M Street Buildings; (ii) agreement by the Applicant to pay 100% of the community center’s utility fees for 30 years; (iii) commitment from the Applicant to devote 25% of total retail space in each building to retailers of 1000 square feet or less to ensure a greater mix of offerings, goods and services; (iv) completion of a DDOT supervised safety study of the intersection at Fourth and M Streets, S.W. prior to approval of this second-stage PUD; (v) requirement

of LEED-Silver certification for both M Street buildings as a condition of this PUD approval; (vi) assurance from the Applicant that the M Street Buildings will not prohibit construction of an ADA-complaint bus shelter in public space and agreement by the Applicant to pay for the replacement and construction of an ADA-compliant bus shelter along M Street; and (vii) agreement by the Applicant to include a rider in all residential leases restricting residential tenants of both M Street buildings from obtaining RPPs.

34. On July 30, 2018, the Commission reviewed the Applicant's post-hearing submission and the responses thereto from Waterfront Tower and the ANC. The Commission noted that an agreement was reached between the Applicant and Waterfront Tower but requested that the Applicant continue to work with the ANC on the remaining outstanding issues. The Commission also asked the Applicant to confirm that the development flexibility requested in the draft findings of fact and conclusions of law is only for the colors of the approved materials and not the material types themselves. The Commission requested that the Applicant submit an update on its further negotiations with the ANC, allowed time for the ANC to respond, and scheduled deliberation on the case for September 17, 2018.
35. On September 4, 2018, the Applicant submitted a letter describing its further negotiations and agreement with the ANC, providing responses to each of the requests noted in the ANC's July 9, 2018 memo and addressing each of the items listed in FF No. 33. (Ex. 137.) The Applicant's responses to the ANC's requests listed in its July 9, 2018 memo and the Commission's findings and conclusions on each request are set forth in FF No. 93 of this Order.
36. On September 17, 2018, the Commission took final action to approve the Application.

The PUD Site and Prior Zoning Approvals

37. The M Street Sites are comprised of Lots 825 and 826 in Square 542, which are part of Record Lot 89 in Square 542 (the "PUD Site").¹ The PUD Site consists of approximately 584,655 square feet of land in the "superblock" generally bounded by M, I, 3rd and 6th Streets, S.W. The M Street Sites are located on the southern-most portion of the PUD Site, on the north side of M Street, S.W. The M Street Sites are separated by 4th Street, S.W., which runs north-south through the middle of the PUD Site and which was constructed as part of the initial phase of the PUD. West M contains approximately 46,768 square feet of land area and East M contains approximately 61,065 square feet of land area.
38. Pursuant to Z.C. Order No. 02-38A, the Commission approved a modification to the first-stage PUD, a second-stage PUD, and a zoning map amendment to the C-3-C Zone

¹ Record Lot 89 in Square 542 has been divided into Lots 822, 825 through 834, and 872 for assessment and taxation purposes. The West M building will be developed on Lot 826 in Square 542, and the East M building will be developed on Lot 825 in Square 542.

District for the PUD Site.² The first-stage PUD authorized the development of eight buildings on the PUD Site with residential, office, and retail uses, significant open spaces and public space improvements, and the re-opening of 4th Street, S.W. The buildings and improvements approved in the first-stage PUD are hereinafter referred to as the “Overall Project.”

39. As part of Z.C. Order No. 02-38A, the Commission approved a second-stage PUD for the four buildings in the center of the PUD Site and their adjacent open spaces. The four buildings approved in Z.C. Order No. 02-38A included: (i) the “East and West 4th Street Office Buildings,” which flank the east and west sides of 4th Street and contain ground-floor retail, and (ii) the “East and West Residential Buildings,” located on the eastern and western boundaries of the PUD Site, with continuous open space connecting them to 4th Street. Construction of the East and West 4th Street Office buildings was completed in March, 2010, and construction of the East and West Residential Buildings was completed in 2013.
40. Pursuant to Z.C. Order No 02-38A, the northern portion of the PUD Site was approved as a first-stage PUD to be constructed with two residential buildings known as the “Northwest Building” and the “Northeast Building.” The Northwest Building was approved as a second-stage PUD in 2013, pursuant to Z.C. Order No. 02-38D, and delivered in 2017. The Northeast Building is owned by the District and will be developed pursuant to a second-stage PUD (Z.C. Case No. 02-38J) by DMPED and an entity of PN Hoffman.
41. The Overall Project was approved to be developed with approximately 2,526,500 square feet of gross floor area, with an aggregate density of 4.33 floor area ratio (“FAR”). Of that, approximately 1,296,895 square feet of gross floor area (2.22 FAR) was approved for office and retail use and approximately 1,229,605 square feet of gross floor area (2.11 FAR) was approved for residential use. (See Z.C. Order No. 02-38A, Decision No. 3.) The West M Building was approved to contain a total of approximately 322,700 square feet of gross floor area devoted to office and retail use, and the East M Building was approved to contain a total of approximately 339,000 square feet of gross floor area devoted to office and retail use. (See Z.C. Order No. 02-38A, Decision No. 8 and FF No. 44.) The first-stage PUD approved a minimum of 1,087 parking spaces for the Overall Project. (See Z.C. Order No. 02-38A, Decision No. 9.)

Modifications to the First-Stage PUD and Proposed Second-Stage PUD for the M Street Sites

42. In the Application, the Applicant initially proposed to modify the approved first-stage PUD for the M Street Buildings by converting the primary use of both buildings from

² The C-3-C Zone District was converted to the MU-9 zone under the 2016 Zoning Regulations. A detailed description of the zoning history of the PUD Site can be found in the record for Z.C. Order No. 02-38A. No change is proposed to the approved zoning for the M Street Sites.

office use to residential use, with street-activating retail and neighborhood-serving office uses. The proposed change in use was due to: (i) the perpetually high office vacancy rates over the past several years in the District, which prevented the Applicant from preleasing the M Street Buildings with an office tenant(s) and obtaining financing; and (ii) the high demand for housing and affordable housing in the District and within the Southwest submarket specifically. Following extensive community engagement since filing the initial Application in April, 2017, the Applicant also incorporated a 6,000-square-foot community center into the proposed uses for the M Street Buildings.

43. The Project includes development of approximately 598 new residential units in the M Street Buildings combined (plus or minus five percent), which will advance the Mayor's housing policy and coincide with recommendations set forth in the Comprehensive Plan and the SW Plan. The Applicant will dedicate a minimum of eight percent of the residential gross floor area in the East M Building to households earning up to 60% of the MFI. Two of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. In addition to the eight percent of the residential gross floor area in the East M Building, the Applicant will dedicate an additional three-bedroom unit to households earning up to 60% of the MFI, thus providing more affordable housing than required by the Zoning Regulations. In the West M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI. Three of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. Together with the three-bedroom units in the East M Building, these larger-sized units will create new affordable housing options for families, which is an important District priority, and is specifically identified as a public benefit in 11-X DCMR § 305.5(f)(3). Under the approved first-stage PUD for the M Street Buildings, no affordable housing would have been provided at all. Moreover, the Applicant has already satisfied the amount of affordable housing required for the Overall Project, as set forth in Decision No. 18 of Z.C. Order No. 02-38A. Accordingly, the proposed affordable housing at the M Street Sites increases the amount of affordable housing for the overall PUD and for the District as a whole.
44. The Project also modifies the architectural design for the M Street Buildings to accommodate residential use, incorporate effective urban design strategies, engage the surrounding public spaces, and support the unique town-center environment created by the Overall Project. The M Street Buildings include new internal courtyards and outdoor terraces, and reorient the parking and loading entrances from M Street (as approved in the first-stage PUD) to the North-South Private Drives on the far sides of the M Street Buildings to reduce potential vehicular/pedestrian conflict. Other than the new courtyards, the modified Project maintains the approved density, height, and general setbacks and street wall of the M Street Buildings that were approved in the first-stage PUD. The proposed mix of uses and architectural design for the M Street Buildings will benefit the community, enliven the streetscape, and provide additional services for residents, employees, and visitors who live and work in the neighborhood.

45. The East M Building will be developed with a total of approximately 339,733 square feet of gross floor area, which will include approximately 282,208 square feet of gross floor area devoted to residential use (289 units plus or minus five percent); approximately 19,069 square feet of gross floor area devoted to retail use; approximately 32,456 square feet of gross floor area devoted to office use; and approximately 6,000 square feet of gross floor area devoted to a community center. The East M Building's maximum height is 127 feet, with an approximately 45-foot setback above the second floor on the east side of the building as approved in the first-stage PUD.
46. The West M Building will be developed with a total of approximately 322,773 square feet of gross floor area, which will include approximately 301,670 square feet of gross floor area devoted to residential use (309 units plus or minus five percent) and approximately 21,103 square feet of gross floor area devoted to retail use. The West M Building's maximum height is 127 feet, with an approximately 45-foot setback above the second floor on the west side of the building as approved in the first-stage PUD.
47. The ground floors of the M Street Buildings are devoted to retail use fronting M and 4th Streets, and residential amenities and service uses (e.g. resident lounge, mail room, leasing and management offices) fronting the east-west plazas to the north of the M Street Buildings (the "East-West Plazas"). Along the Metro plaza on 4th Street, the East M Building's base is setback to extend the open space of the Metro plaza and create vibrant outdoor space for retail to engage with and activate the plaza. The far sides of the M Street Buildings along the East and West Private Drives are devoted primarily to parking and loading access.
48. The East M Building's primary residential entrance is located at the building's northwest corner facing the Metro plaza, with a secondary residential entrance located off of the East-West Plaza to the north. The primary residential entrance takes the form of a two-story glass structure that anchors the plaza's northern end and helps to activate the adjacent open space. The West M Building's primary residential entrance is located at the building's northwest corner facing 4th Street, directly across from the Metro plaza. A secondary residential entrance is located off of the East-West Plaza to the north. Retail entries for the M Street Buildings are located along both the M and 4th Street façades, with the retail facades maximizing glazing heights and widths to allow for deep interior views. In the East M Building, the entrances to the office space and community center are located on M Street, S.W.
49. A variety of outdoor and indoor amenity spaces are provided in the M Street Buildings, including an interior courtyard on the second floors and an outdoor dog run is on the third floors. Above the third floor, the M Street Buildings open as C-shaped towers facing M Street. A south-facing courtyard is located at the fourth level of each M Street Building, with access provided to individual terraces for units facing the courtyard and to a communal outdoor recreation space for building residents. The penthouses for the M Street Buildings will contain habitable space devoted to communal recreation and outdoor rooftop recreation including a pool.

50. The design of the M Street Buildings is contemporary in style and relates to the evolving architectural character of the Southwest neighborhood. Building façades are designed to be compatible with, but distinctive from, the façades of each other as well as from the other buildings in Waterfront Station, with each façade responding to its adjacent context, solar orientation, and potential view corridors. The building designs maximize daylight into the units, enhance views, and control against heat gain. The M Street Buildings' primary exterior materials are stone and brick masonry, with infill metal panels in some locations.
51. The M Street Buildings will each contain two levels of below-grade parking, with approximately 399 total parking spaces (approximately 220 parking spaces in the East M Building and approximately 179 parking spaces in the West M Building). Access to the parking garages has been relocated from M Street (as approved in the first-stage PUD) to the North-South Private Drives on the far sides of the M Street Buildings. Relocating the parking entrances results in the removal of two proposed curb cuts on M Street, which reduces the potential for pedestrian/vehicle conflict and enhances the pedestrian experience along M Street.
52. Each M Street Building includes two 30-foot loading berths and one 20-foot service/delivery space. Access to the loading facilities is also provided from the North-South Private Drives, with the loading facilities located to the north of the parking garage entrances to avoid vehicular conflict with loading trucks. All loading and deliveries are interior to the M Street Buildings, and all maneuvering for the trucks the facility is designed to serve will be done internally.
53. The 4th Street streetscape design for the M Street Buildings was designed, approved, and constructed as part of the dedication and construction of the 4th Street right-of-way. The proposed additional landscaping surrounding the M Street Buildings integrates with the existing surrounding public spaces and improves the current condition. For both M Street Buildings, special paving will be added to the residential entrances to highlight their presence against the adjacent public space. New sidewalks and streetscape improvements will be provided, including new street trees, landscape beds, bicycle racks, scored concrete paving, and special paving at the M Street Buildings' edges.
54. The M Street Buildings include storm water management techniques, green roofs, permeable surfaces, erosion and sediment control techniques, and solar panels. The M Street Buildings will be designed to achieve LEED Silver under LEED v4 for Building Design and Construction, which is equivalent to the sustainability level required for LEED-2009 Gold rating for New Construction. Each M Street Building will also comply with the Green Area Ratio requirements of the Zoning Regulations.

Development Flexibility

55. The Applicant requested flexibility in the following areas:

- a. To provide a range in the number of residential units of plus or minus five percent;
- b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings, and specifically to modify the locations of demising walls and exact number of retailers within each M Street Building to provide the greatest amount of flexibility in use;
- c. To make refinements to the garage configuration, including layout, parking spaces and other elements, so long as the total minimum number of parking spaces is provided as set forth in Z.C. Order No. 02-38A;
- d. To vary the final color of the exterior materials within the color ranges shown on the Approved Second-Stage PUD Plans, based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the buildings;
- e. To make minor variations to the location, attributes, and general design of the streetscape within the overall PUD Site, including the location of short term exterior bicycle parking spaces and the proposed landscape plans included in the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, to comply with the requirements of and approval by the DDOT Public Space Division and the other Waterfront Station property owners, without changing the overall design intent, the general location and dimensions of landscaping and hardscaping, or the quality of materials;
- f. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades as necessary;
- g. To make minor refinements to the buildings' details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other applicable approvals. Any refinements may not substantially change the buildings' external configurations, appearance, proportions, or general design intent;
- h. To vary the types of uses designated as "retail" use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (Arts, Design, and Creation (11-B DCMR § 200.2(e));

- i. To vary the types of uses designated as “office” use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Office (11-B DCMR § 200.2(x)); (ii) Institutional, General (11-B DCMR § 200.2(q)); (iii) Medical Care (11-B DCMR § 200.2(p)); (iv) Daytime Care (11-B DCMR § 200.2(i)); and (v) Services, Financial (11-B DCMR § 200.2(ee));
- j. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- k. To vary the configuration and layout of the exterior courtyards, so long as the courtyards continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
- l. In the retail and service areas, to vary the location and design of the ground-floor components in order to accommodate specific tenant requirements and/or to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use, and to modify the number of retailers within each M Street Building.

Public Benefits and Amenities

56. Pursuant to 11-X DCMR § 304.4(c), the Commission shall find that proposed developments include specific public benefits and project amenities that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site. The first-stage PUD included a number of significant public benefits and project amenities, which are described in detail in Z.C. Order No. 02-38A, FF No. 89(a)-(f) and FF Nos. 90(a)-(h). The Commission found that the amount of benefits and amenities provided in the first-stage PUD were sufficient given the amount of flexibility sought. The significant majority of these benefits and amenities have already been delivered, including the following:
- a. Re-opening of 4th Street, S.W., as a dedicated public right-of-way to break down the super block previously in place, to restore the street grid, improve traffic flow, and serve as a neighborhood town center;
 - b. Constructing 895 residential units, with approximately 11.8% being affordable;
 - c. Constructing more than 90,000 square feet of retail space (of the 110,000 square feet required overall project), with more than 10,000 square feet provided for small and local retail users (of the 12,500 square feet required for the overall project);

- d. Delivering the significantly expanded and upgraded 55,000 square foot Safeway grocery store;
 - e. Maintaining the Safeway, CVS Pharmacy, and Bank of America on-site throughout the initial construction;
 - f. Delivering over 50,000 square feet of public open space; and
 - g. Constructing and maintaining the public park property to the north of Waterfront Station.
57. As part of this Application, the Applicant will also implement the following previously-approved public benefits and amenities applicable to the M Street Buildings:
- a. Accomplish major urban design benefits and improvements; (FF No. 89(c).)
 - b. Create and improve the town center; (FF No. 89(d).)
 - c. Add more retail and service uses in Waterfront Station, including for small and local retail users; (FF Nos. 89(f) and 90(c).)
 - d. Incorporate sustainable design features; (FF No. 90(d).)
 - e. Introduce elements of the Transportation Management Plan; (FF No. 90(g).)
 - f. Provide employment and training opportunities; and (FF No. 90(h).)
 - g. Enter into a Security and Construction Mitigation Plan for the M Street Buildings. (FF No. 90(f).)
58. In addition to the extensive public benefits and amenities approved through the first-stage PUD, the Applicant proposed the following additional and continuing benefits and amenities as part of the Application for the M Street Buildings:
- a. Urban Design (Subtitle X § 305.5(a)). The M Street Buildings will accomplish major design objectives, such as superior streetscape design and pedestrian amenities, including wide sidewalks and public plazas and the introduction of distinctive, vertical buildings that provide interest and variety along street frontages, are constructed to define public spaces, and create better connections for the neighborhood;
 - b. Retail, Service, and Office Establishments (Subtitle X § 305.5(q)). The amount of retail space proposed for the M Street Buildings will exceed the minimum amount of neighborhood-serving retail and service uses required under the first-stage PUD approval for the overall PUD Site. Pursuant to Z.C. Order No. 02-38A,

Condition No. 13, the overall PUD was required to have a minimum of 110,000 square feet of gross floor area devoted to neighborhood-serving retail and service uses. The M Street Buildings will include a total of approximately 40,172 square feet of gross floor area devoted to retail uses, which will result in approximately 130,000 square feet of retail use for the overall PUD, not including retail in the Northeast Building which has not yet been approved. This amount of retail use will advance the major themes and policies of the Comprehensive Plan and the SW Plan for creating a vibrant and walkable town center at Waterfront Station.

In addition, the Applicant will dedicate a minimum of 32,400 square feet of space for office uses within the Project.

With respect to retail leasing, the Applicant will provide retail spaces that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that comprise large spaces (larger than 10,000 square feet each). In addition, the Applicant will: (i) reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (ii) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; and (iii) dedicate a minimum of 1,000 total square feet in the M Street buildings to small and local businesses as part of its compliance with Condition No. 14 from Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers). Finally, the Applicant will prohibit any digital advertising signage on the exterior of the M Street Buildings during both initial lease up and for the life of the M Street Buildings;

- c. Housing and Affordable Housing (Subtitle X § 305.5(f) and (g)). The Project results in the creation of new housing and affordable housing consistent with the goals of the Zoning Regulations, the Comprehensive Plan, and the Future Land Use Map. Overall, the Project will replace two vacant sites with approximately 598 new residential units that would have not been provided if the M Street Sites were developed as office buildings, as approved in Z.C. Order No. 02-38A.

In the East M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI. Two of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. In addition to the eight percent of the residential gross floor area in the East M Building, the Applicant will dedicate a third three-bedroom unit to households earning up to 60% of the MFI, thus providing more affordable housing than required by the Zoning Regulations.

In the West M Building, the Applicant will dedicate a minimum of eight percent of the residential gross floor area to households earning up to 60% of the MFI.

Three of the units generated by the eight percent will be three-bedroom units dedicated to households earning up to 60% of the MFI. Together with the three-bedroom units in the East M Building, these larger-sized units will create new affordable housing options for families, which is an important District priority, and is specifically identified as a public benefit in 11-X DCMR § 305.5(f)(3).

In addition, in order to avoid the provision of short-term residential rentals, the Applicant will only offer leases with 12 to 24 month terms in both of the M Street Buildings, and will not provide any month-to month leases except in the limited scenario of on-site employees and tenants at the expiration of a lease. In addition, no rentals for under one month will be permitted at either of the M Street Buildings by the Applicant or by any agent acting on the Applicant's behalf;

- d. Employment and Training Opportunities (Subtitle X § 305.5(h)). As part of construction of the M Street Buildings the Applicant will: (i) comply with the executed First Source Employment Agreement to promote and encourage the hiring of District residents, as set forth in the agreement included in the case record at Exhibit 2K; and (ii) comply with the executed Certified Business Enterprise Agreement, in order to utilize local, small, and disadvantaged businesses, as set forth in the agreement included in the case record at Exhibit 2L;
- e. Environmental Benefits (Subtitle X § 305.5(k)). The M Street Buildings have been designed to integrate a host of sustainable features. The Applicant will incorporate solar panels on the roofs of the M Street Buildings that will cover approximately 2,400 total square feet on the East and West M Buildings combined in an effort to generate a portion of each Building's energy consumption.

The Applicant will design the M Street Buildings to achieve LEED Silver under LEED v4 for Building Design and Construction and will submit a LEED checklist with each building permit application evidencing that the respective Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction. The Applicant will endeavor to seek certification but proffers a condition relating to design in accordance with Subtitle I § 305.5k(5). The Applicant is not proffering its LEED commitment as a new public benefit for the second-stage PUD, but rather in compliance with the original benefits and amenities approved in Z.C. Order No. 02-38A;

- f. Security and Construction Mitigation Plan (Subtitle X § 305.5(q)). The Applicant will abide by a separate Construction Management Plan for each M Street Building, to be in place throughout the construction of the applicable M Street Building;
- g. Transportation Features (Subtitle X § 305.5(o)) - Safety Study. The Applicant will contribute \$30,000 to DDOT for the purpose of undertaking a safety study related

to the 4th and M Street intersection. If the safety study requires additional adjustments that do not correspond to the approved PUD, then the Applicant will support making those adjustments as recommended;

- h. Building Space for Special Uses (Subtitle X § 305.5(j)). The Applicant will dedicate a minimum of 6,000 square feet of the East M Building as a community center. The Applicant will permit ANC 6D to select the community center operator, but prior to turning over occupancy of the community center to the operator, the ANC will be required to provide information about the selected operator to the Applicant, including but not limited to the operator's business plan, governance structure, financial statements, board of directors (if any), affiliates (new and established) and scope of services (e.g., programming, hours of operation). The ANC will permit the Applicant to provide meaningful input and feedback on the information provided (e.g., comments and concerns relating to substantive issues in the aforementioned documents), with the Applicant's feedback not to be unreasonably withheld or delayed. If the ANC does not agree with the Applicant's feedback, then it must respond in writing to the Applicant explaining its position, and the ANC and the Applicant must resolve all issues regarding the operator prior to the Applicant turning over occupancy of the community center to the operator. Once the Applicant turns over occupancy to the operator, the operator will be required to maintain the community center in good order, repair, and conditions, consistent with the terms of the lease agreement to be executed for the community center.

For the first 30 years of operation of the community center, the Applicant will not charge the community center operator for any of the following: (i) rental fees; (ii) property taxes; (iii) building maintenance; (iv) operating expenses; or (v) utilities. The fees for utilities used by the community center during the 30-year timeframe will be billed directly to the Applicant. The Applicant will also provide low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on south face of the community center to minimize heat gain.

In addition to providing the community center space at no cost, as described above, the Applicant will also contribute a one-time payment of up to (i) \$500,000 for the community center's interior design and fit-out; and (ii) \$50,000 for furniture, fixtures, and equipment.

The Applicant will permit community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building. The courtyard will be operated and maintained by the future office tenant of the East M Street Building. Use of the courtyard by the community center users will be limited to the same hours of operation and types of uses as permitted for the office tenants, unless a special activity or event is specifically reviewed and approved by the office tenant manager;

- i. Commemorative Works or Public Art (Subtitle X § 305.5(d)). Following the Zoning Commission’s approval of the Application, the Applicant will engage with and select a local artist to design and install an element in the Metro Plaza adjacent to the M Street Sites (“Public Space Element”). The Applicant will select an artist who is familiar with the history of Waterfront Station, such that the artist will be able to design a unique and meaningful installation that creates a sense of arrival to Waterfront Station and is successful on its own, independent from the success of surrounding retail or changes in the season. The Applicant will present the proposed artist, general design, and scope of work for the Public Space Element to the ANC up to three times, and will install the Public Space Element prior to the issuance of the first certificate of occupancy for the East M Building; and
- j. Uses of Special Value to the Neighborhood Subtitle X § 305.5(q)) - Continued Engagement. Following the Commission’s approval of the Application, and prior to the start of construction for the East M Building, the Applicant will convene a meeting (physically or electronically) among the Waterfront Station property owners (“PUD Owners”) and ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station. The Applicant will subsequently convene two meetings with the PUD Owners and ANC 6D within the first year following the start of construction of the East M Building, will schedule additional meetings if necessary, and will thereafter convene meetings annually with the PUD Owners and ANC 6D until one year following the issuance of the first certificate of occupancy for the West M Building.

Transportation Demand Management

59. The Applicant will implement the following TDM measures as part of development of the M Street Buildings:
 - a. The Applicant will identify a TDM leader (for planning, construction, and operations). The TDM leader will work with residents and tenants of the M Street Buildings to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package;
 - b. The Applicant will provide TDM leader contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year;
 - c. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - d. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on property websites;

- e. The Applicant will unbundle all parking from the cost of the lease or purchase of residential units. Parking costs will be set at the average market rate within a quarter-mile, at a minimum;
- f. The Applicant will install one Transportation Information Center Display (electronic screen) within each residential lobby of the M Street Buildings, containing information related to local transportation alternatives;
- g. The Applicant will provide at least 20 collapsible shopping carts (10 in each Building) for resident use to run errands and for grocery shopping;
- h. The Applicant will exceed the 2016 Zoning Regulations' requirements for bicycle parking. This includes providing secure interior bicycle parking (minimum of 85 spaces in the West M Building and 93 spaces in the East M Building) and short-term exterior bicycle parking around the perimeter of the M Street Sites (minimum of 47 spaces in total). Long-term bicycle storage will be offered to residents and employees and will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
- i. The Applicant will install a bicycle repair station within each of the long-term bicycle storage rooms;
- j. The Applicant will exceed 2016 Zoning Regulations' by providing a minimum of two showers and eight lockers in the West M Building and a minimum of two showers and 20 lockers in the East M Building. These facilities will be available for use by office and retail employees such that each non-residential long-term bicycle parking space has an accompanying locker;
- k. The Applicant will offer an annual Capital Bikeshare or carshare membership to each residential unit upon initial occupancy, at the choice of the resident;
- l. The Applicant will host a transportation event for residents, employees, and members of the community once per year for a total of three years (examples: resident social, walking tour of local transportation options, lobby event, transportation fair, WABA Everyday Bicycling Seminar, etc.);
- m. The Applicant will not apply for RPP for either of the M Street Buildings and will include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from applying for or obtaining RPPs while under the terms of their lease;
- n. The Applicant will provide four spaces dedicated for carsharing services to use with right of first refusal. If an agreement has been reached with a carsharing service for only three spaces, the Applicant will extend the annual transportation

event for an additional year. If an agreement has been reached with a carsharing service for only two spaces or less, the Applicant will offer an additional year of Capital Bikeshare or carshare membership to each residential unit; and

- o. The Applicant will work with DDOT to determine an appropriate location for the relocation of the Capital Bikeshare station at the intersection of 4th and M Streets, S.W. The station is currently located on the northwest corner of the intersection within private space, in a location that will be retail frontage as part of the proposed development. In conjunction with the relocation, the Applicant will fund the expansion of at least four docks to the existing station. The Applicant commits to providing Capital Bikeshare with a \$3,800 maximum contribution for the relocation and expansion.

Compliance with PUD Standards

60. The Commission finds that the Application complies with the standards for a PUD set forth in 11-X DCMR, Chapter 3.
61. The Commission finds that the M Street Buildings are consistent with the first-stage PUD approval in Z.C. Order No. 02-38A, with the exception of the proposed change of use for which the modification is requested.
62. The Overall Project, including the M Street Buildings, provides important public benefits and project amenities which are described in detail in Z.C. Order No. 02-38A. These public benefits and project amenities have not changed with the Application. Based on those public benefits and project amenities, the Commission found in Z.C. Order No. 02-38A, FF No. 91 that the relative value of the project amenities and public benefits offered is sufficient given the degree of development incentives requested and any potential adverse effects of the Overall Project, including the M Street Buildings. In this Application, the Applicant has proffered additional and substantial public benefits and project amenities. The Commission finds that the Project offers a high level of public benefits and project amenities.
63. The M Street Buildings have been evaluated under the PUD guidelines for the MU-9 Zone District, which is the successor to the C-3-C Zone District that was approved by Z.C. Order No. 02-38A. The density of the M Street Buildings is below the density permitted for a PUD within the MU-9 zone and is less than that approved in Z.C. Order No. 02-38A. The maximum height of the M Street Buildings is within that permitted for a PUD in the MU-9 zone and is consistent with the first-stage PUD approval in Z.C. Order No. 02-38A.
64. In Z.C. Order No. 02-38A, the Commission found that the Overall Project, including development of the M Street Sites, will have a positive impact on the city, especially given the reopening of 4th Street and the creation of a town center. In addition, the Commission found that the Overall Project will provide an economic boost to the Southwest neighborhood and the District of Columbia as a whole. (*See* Z.C. Order No.

02-38A, FF No. 97.) The Commission concluded that there would be no adverse impacts created by the PUD that could not be mitigated by the conditions set forth in Z.C. Order No. 02-38A. (*Id.* at FF No. 96.)

65. The Commission concludes that this second-stage PUD and the modified first-stage PUD for the M Street Sites will continue to advance the priorities approved in Z.C. Order No. 02-38A and will not create any new adverse impacts. The Application has been evaluated by the relevant District agencies, and based on the reports of those agencies and their testimony at the public hearings, the Commission finds that there will be no adverse impacts that cannot be mitigated by the conditions imposed herein. Moreover, based on the public benefits and amenities described above, including (i) those that have already been implemented as part of the first-stage PUD, (ii) those that were approved in the first-stage PUD and will continue to be implemented in this Application, and (iii) those that are new to the Application, the Commission finds that the relative value of the benefits and amenities for the Application balances with the degree of development incentives requested.

Not Inconsistent with the Comprehensive Plan

66. In Z.C. Order No. 02-38A, this Commission found that the Overall Project, including the development of the M Street Buildings, was not inconsistent with the Comprehensive Plan because it advances the purposes of the Comprehensive Plan, is consistent with the Future Land Use and Generalized Policy Maps, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major elements of the Comprehensive Plan. (*See* Z.C. Order No. 02-38A, FF Nos. 98-108 and Decision No. 8.)
67. In the present case, OP stated that development of the M Street Buildings specifically is “not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP also noted that the Commission previously determined that the first-stage PUD was not inconsistent with the Comprehensive Plan. OP further stated that the change in proposed use from office to residential “would not be inconsistent with major policies from the Land Use, Transportation, Housing, Economic Development, Urban Design, and Lower Anacostia Waterfront/Near Southwest elements of the Comprehensive Plan,” and “would not be inconsistent with, and would further housing objectives, including the provision of affordable housing.” (Ex. 64, p. 10.) The Commission concurs with OP’s findings for the following reasons:
- a. The Project is Not Inconsistent with the Purposes of the Comprehensive Plan. The Commission finds that the Project will advance the purposes of the Comprehensive Plan, which are to: (i) to define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development; (ii) to guide executive and legislative decisions on matters affecting the District and its citizens; (iii) to promote economic growth and jobs for District

residents; (iv) to guide private and public development in order to achieve District and community goals; (v) to maintain and enhance the natural and architectural assets of the District and (vi) to assist in conservation, stabilization, and improvement of each neighborhood and community in the District; (D.C. Code §1-245(b).)

- b. The Project will significantly advance these purposes by promoting the social, physical and economic development of the District through the provision of high-quality, mixed-use buildings on the M Street Sites without generating any adverse impacts. The modified M Street Buildings will improve the surrounding neighborhood by provide housing, including affordable housing and family-sized affordable housing in an amount greater than the minimum required in the Zoning Regulations, jobs, locally-serving retail and office opportunities, and a community center for the Southwest neighborhood;
- c. The Project is Not Inconsistent with the Future Land Use Map. The Future Land Use Map of the Comprehensive Plan designates the PUD Site, including the M Street Sites, as mixed-use High-Density Residential and High-Density Commercial. The High-Density Residential land use designation is used to define neighborhoods and corridors where high-rise (eight stories or more) apartment buildings are the predominant use. Pockets of less dense housing may exist within these areas. (10A DCMR § 225.6.) The High-Density Commercial land use category is used to define the central employment area of the city and other major office employment centers on the downtown perimeter. It is characterized by office and mixed office/retail buildings greater than eight stories in height, although many lower-scale buildings (including historic buildings) are interspersed; (10A DCMR § 225.11.)
- d. Pursuant to Z.C. Order No. 02-38A, FF No. 101, the Commission found that the first-stage PUD was not inconsistent with the Future Land Use Map designation of the PUD Site. The Commission finds that development of the M Street Buildings continues to be consistent with the Future Land Use Map. The M Street Buildings will be comprised of high-density apartment buildings with additional office, retail, and community uses. The conversion of the M Street Buildings to primarily residential use, while maintaining a moderate amount of office use that is suitable for neighborhood services and smaller office uses, will directly address the high demand for residential use in this area of the District and further diversify the range of uses within the overall PUD Site. Moreover, notwithstanding the change in the primary use of the M Street Buildings from office to residential, the proposed height and density remain consistent with the Future Land Use Map, which was previously approved by this Commission;
- e. The Project is Not Inconsistent with the Generalized Policy Map. The PUD Site, including the M Street Sites, is located in a Land Use Change Area on the Comprehensive Plan Generalized Policy Map, and is also identified as an Enhanced/New Multi-Neighborhood Center. The guiding philosophy for Land

Use Change Areas is to encourage and facilitate new development and promote the adaptive reuse of existing structures. Many of these areas have the capacity to become mixed-use communities containing housing, retail, services, workplaces, parks and civic facilities. The Comprehensive Plan's Area Elements provide additional policies to guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area; (10A DCMR § 223.11.)

- f. Multi-Neighborhood Centers contain many of the same activities as neighborhood centers but in greater depth and variety, and have a service area ranging from one to three miles. These centers are generally found at major intersections and along key transit routes, and might include supermarkets, general merchandise stores, drug stores, restaurants, specialty shops, apparel stores, and a variety of service-oriented businesses. These centers also may include office space for small businesses, although their primary function remains retail trade; (10A DCMR § 223.17.)
- g. Pursuant to Z.C. Order No. 02-38A, FF No. 102, the Commission previously found the Overall Project to be consistent with the Enhanced/New Multi-Neighborhood Center Generalized Policy Map designation. The Commission finds that development of the M Street Buildings as proposed continues to be consistent with this designation. Specifically, development of the M Street Buildings will help complete the new mixed-use town center community that is envisioned for the Overall Project, which contains housing, retail, services, employment, outdoor public spaces, and a community center. The proposed M Street Buildings are located along the major east-west transportation corridor of M Street, S.W., and also along 4th Street, S.W., which has been converted into a walkable, mixed-use commercial district. The M Street Buildings will contain a variety of retail shops, an active community center, service-oriented businesses, and smaller office uses, which are consistent with the Generalized Policy Map designation;
- h. The Project is Not Inconsistent with the Guiding Principles of the Comprehensive Plan. The Commission finds that the Project is not inconsistent with the guiding principles of the Comprehensive Plan for managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:
- i. Managing Growth and Change. The Commission finds that the Project is consistent with several of the principles contained within the Managing Growth and Change section, which focuses on overcoming physical, social, and economic obstacles to ensure that the benefits and opportunities available to District residents are equitably distributed. Specifically, in order to manage growth and change, the Comprehensive Plan encourages, among other factors, growth in both residential and non-residential sectors, with residential uses comprising a range of housing types to accommodate households of varying sizes and income levels,

and nonresidential uses that include services that support residents. The Comprehensive Plan also states that redevelopment and infill opportunities along corridors and near transit stations are an important part of reinvigorating and enhancing District neighborhoods as well as the surrounding region; (10A DCMR § 217.)

- j. The Commission finds that the Project is fully consistent with these goals. Redeveloping the M Street Sites with mixed-use buildings comprised of approximately 598 residential units, ground-floor retail, neighborhood-serving office use, and a 6,000-square-foot community center will benefit the residents and employees who live and work in the neighborhood and will help contribute to the development of the surrounding area. The retail and office spaces will create new jobs for District residents and provide additional neighborhood-serving amenities to new and existing residents. In addition, the M Street Buildings will grow the District’s tax base, strengthen the M Street, S.W. corridor, and help reinvigorate existing neighborhood fabric. The new residential units will greatly assist in addressing the continuing demand for additional housing in the District. In fact, according to a recent study conducted by the Capitol Riverfront BID entitled “GreenPrint of Growth 2.0,” the Metrorail green line, which runs through the Waterfront Metrorail station, is the District’s strongest growth corridor in both residential and retail growth. Thus, in addition to adding a substantial amount of new retail space, given the close proximity of the Waterfront Metrorail station to the M Street Sites, the Commission finds that converting the majority of the M Street Buildings to residential use will greatly assist in meeting the continued demand for housing along the green line corridor;
- k. Creating Successful Neighborhoods. One of the guiding principles for creating successful neighborhoods is to protect and stabilize neighborhood businesses, retail districts, parks, and other facilities, and to reinforce neighborhood identity and provide destinations and services for residents. In addition, noting the crisis of affordability that has resulted from the continued housing boom in the District, the guiding principles recognize the importance of preserving existing affordable housing and producing new affordable housing to avoid a deepening of racial and economic divides in the city. Citizen participation and responsive neighborhood services are also recognized as keys ingredients to creating successful neighborhoods. Such participation includes garnering public input in decisions about land use and development, from development of the Comprehensive Plan to implementation of the plan's elements; (10A DCMR § 218.)
- l. The Commission finds that the Project is consistent with each of these principles. The Applicant worked closely with ANC 6D, Waterfront Tower, and other neighborhood stakeholders and community groups to ensure that the M Street Buildings will provide uses that respond to the neighborhood’s current and anticipated demands. Moreover, the SW Plan indicates that the primary neighborhood demands call for increased residential use, including additional

affordable housing, and greater neighborhood-serving retail and service uses. The Project will respond to these demands by providing a significant number of new residential units within a walkable and mixed-use town center environment that is within close proximity to several modes of public transportation;

- m. Increasing Access to Education and Employment. The guiding principles pertaining to increasing access to education and employment focus on growing economic activity in the District, as well as improving the lives and economic well-being of District residents. To do this from a policy and transportation perspective, the Comprehensive Plan recognizes the importance of improving access to education and jobs by capitalizing on the city's location at the center of the region's transportation systems. Providing more efficient, convenient, and affordable transportation options for residents increases resident access to jobs within the District and the surrounding region. Moreover, expanding the economy means increasing shopping and services for many District neighborhoods, bringing tourists beyond the National Mall and into the city's business districts, and creating more opportunities for local entrepreneurs and small businesses; (10A DCMR § 219.)
- n. The Commission finds that the Project will advance the District's goals of improving access to jobs and education by redeveloping the two vacant M Street Sites with new mixed-use buildings that will provide a substantial amount of new housing and retail use directly adjacent to a Metrorail station and in close proximity to public transportation. The close proximity to transit will increase residents' ability to access educational opportunities and jobs without owning a vehicle and without the added expenses associated with vehicle ownership. This is especially relevant to those residents living in the affordable dwelling units that will be integrated into the Project and made available to households earning no more than 60% of the MFI. In addition, the proposed retail and neighborhood-serving office uses will expand the District's retail and office economy in the Southwest Waterfront neighborhood, which will create more opportunities for small businesses to thrive and create new employment opportunities for residents;
- o. Connecting the City. The Commission finds that the Project is consistent with the guiding principles that pertain to connecting the city. The Project is located in a walkable, bike-friendly, and transit-rich location, which will allow residents, employees, and visitors to the M Street Buildings to take advantage of multiple transportation modes. The Project will also include streetscape and public space improvements that will enhance mobility and circulation around the PUD Site and throughout the neighborhood. These improvements consist of the reconstruction of the public space surrounding the M Street Buildings, new street trees, and other landscape and lighting improvements, which help create a safe and inviting public realm; (*See* 10A DCMR § 220.)
- p. Building Green and Healthy Communities. The Commission finds that the Project is fully consistent with the Comprehensive Plan's guiding principles related to

building green and healthy communities. A major component to successfully building green and healthy communities is the use of sustainable building construction and renovation techniques that minimize the use of non-renewable resources, promote energy and water conservation, and reduce harmful effects on the natural environment. The M Street Buildings will be designed to meet the standards for LEED Silver under LEED v4 for Building Design and Construction. The M Street Buildings will also incorporate solar panels on their roofs, which will cover approximately 2,400 total square feet in an effort to generate a portion of each M Street Building's energy consumption; (*See* 10A DCMR § 221.)

- q. The Project is Not Inconsistent with the Major Elements of the Comprehensive Plan. The Comprehensive Plan includes Citywide Elements that each address a topic that is citywide in scope, and Area Elements that focus on issues that are unique to particular parts of the District. (10A DCMR §§ 104.4-104.5.) The Commission previously found in Z.C. Order No. 02-38A that the Overall Project was not inconsistent with the Citywide and Area Elements of the Comprehensive Plan. (*See* Z.C. Order No. 02-38A, FF Nos. 104-108.) The Commission continues to find that the M Street Buildings as proposed will advance the objectives and policies from many elements of the Comprehensive Plan, based on the evidence provided in the Applicant's Statement in Support (Ex. 2); the Applicant's Comprehensive Plan Analysis (Ex. 2H); the OP reports (Ex. 11, 64), and testimony at the public hearing (Ex. 88). Based on these documents, the Commission finds that the Project is consistent with policies ranging from:
- i. Land use policies that promote infill development on large sites with a mix of uses, transit oriented development, particularly housing, around Metrorail stations, creating neighborhood commercial districts, and neighborhood beautification; (*See* OP Report (Ex. 64, p. 17) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 8-13).)
 - ii. Transportation policies that also promote transit oriented development, improvements to pedestrian and bicycle facilities and safety, and the establishment of transportation demand management measures; (*See* OP Report (Ex. 64, p. 18) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 13-15).)
 - iii. Housing policies that promote private sector support in addressing the critical need for more affordable housing, mixed use and mixed income development, and high quality housing devoted to IZ units that can support families; (*See* OP Report (Ex. 64, p. 18) and the Applicant's Comprehensive Plan Analysis (Ex. 2H, pp. 15-17).)
 - iv. Economic development policies that encourage development on large sites, providing diversified and locally-serving office options, neighborhood shopping opportunities to provide goods and service for the

immediate community, and improving neighborhood commercial vitality; (*See Applicant’s Comprehensive Plan Analysis*; (Ex. 2H, pp. 17-19).)

- v. Environmental policies that promote street tree planting, landscaping, green roofs, energy efficiency, and green building technologies; (*See OP Report* (Ex. 64, p. 17) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 19-20).)
 - vi. Urban design policies that encourage establishing neighborhood character and identity, creating attractive building façades, and reintegrating large sites to improve the street environment; and (*See OP Report* (Ex. 64, p. 19) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 20-22).) and
 - vii. The Lower Anacostia Waterfront/Near Southwest Area Element, which encourages the revitalization of existing neighborhoods, providing diverse housing choices for a mix of household types and incomes, reinforcing commercial centers, and mitigating local traffic concerns. (*See OP Report* (Ex. 64, p. 19) and the Applicant’s Comprehensive Plan Analysis (Ex. 2H, pp. 23-24).)
68. Therefore, taken together, and based on all of the evidence in the record, including the Applicant’s prior filings, the OP Reports, and testimony of expert witnesses at the public hearings, and consistent with the Findings of Fact above, the Commission concludes that the Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the Future Land Use Map and the Generalized Policy Map, complies with the guiding principles in the Comprehensive Plan, and furthers a number of the major Citywide and Area Elements of the Comprehensive Plan.

Compliance with the SW Plan

69. The Comprehensive Plan requires zoning to be “interpreted in conjunction with... approved Small Area Plans” (*see* 10A DCMR § 266.1(d)), and the Zoning Regulations further require consistency with “other adopted public policies and active programs related to the subject site”. (*See* 11-X DCMR § 304.4.) Small area policies appear in “separately bound Small Area Plans for particular neighborhoods and business districts. As specified in the city’s municipal code, Small Area Plans provide supplemental guidance to the Comprehensive Plan and are not part of the legislatively adopted document.” (10A DCMR § 104.2.)
70. For the reasons set forth below, the Commission finds that the Project is consistent with the District’s visions and recommendations for the Southwest neighborhood and the M Street Sites in particular as set forth in the SW Plan, which is the Small Area Plan applicable to the PUD Site. In making this conclusion, the Commission also credits OP’s finding that the Project is not inconsistent with the policies in the SW Plan. (Ex. 64, pp. 12-13.)

71. Published in July, 2015, the SW Plan was designed to shape the future of its planning area, which encompasses the PUD Site. The SW Plan reflects community aspirations, District-wide goals, and market opportunities, and is intended to enhance parks and public spaces, improve pedestrian and street connections, bolster retail, integrate community amenities, enhance transportation choices, and accommodate and guide the direction of future growth in the Southwest neighborhood. (SW Plan, p. 2.)
72. The SW Plan was developed to provide “detailed direction for the development of city blocks, corridors, parks and neighborhoods, providing supplemental guidance to the Comprehensive Plan.” While the Comprehensive Plan establishes “broad policy goals for the entire city, Small Area Plans (“SAP”) address planning needs and goals at the neighborhood level to supplement the Comprehensive Plan.” The SW Plan acknowledges that a “significant amount of change has happened to the areas surrounding the core of the Southwest neighborhood since the adoption of the Comprehensive Plan in 2006,” such that the SW Plan is a “timely and necessary supplement to the Comprehensive Plan.” (SW Plan, pp. 13, 17.)
73. Importantly, the SW Plan’s vision for Waterfront Station is with 4th Street, S.W. becoming a “thriving town center and commercial heart of the community, with a range of neighborhood-serving retail options, an active street atmosphere, a high quality public realm, quality new development, and easily accessible transit.” (SW Plan, p. 7.) The stated goals to achieve the town center vision include “(i) establish a strategic marketing approach to attract a unique and tailored retail mix to promote 4th Street as Southwest’s neighborhood main street; (ii) promote key corner parcels to serve as anchors and create a vibrant mix of neighborhood town center uses along 4th Street, SW; and (iii) celebrate 4th Street’s envisioned vibrancy as a neighborhood main street through temporary urbanism practices and through the burgeoning local arts movement and the city’s creative economy.” (SW Plan, p. 7.)
74. Based on the evidence in the record, including the Applicant’s Statement in Support (Ex. 2), Prehearing Statement (Ex. 13), Supplemental Prehearing Statement (Ex. 62), OP Reports (Ex. 11 and 64), and Mr. Dettman’s rebuttal testimony (Ex. 88), the Commission finds that the Project incorporates a variety of strategies and design improvements that achieve the SW Plan’s vision for creating a town center at Waterfront Station. With respect to attracting a unique retail mix, the Applicant has worked extensively with ANC 6D to understand the types and sizes of retailers that the community wants and that will successfully promote 4th Street as the Southwest’s neighborhood main street. At the request of the ANC, the Applicant has committed to providing retail spaces in the M Street Buildings that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that are larger than 10,000 square feet in size. In addition, the Applicant will reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet, and the Applicant will ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet. Also

at the request of the ANC, the Applicant agreed to dedicate a minimum of 1,000 total square feet in the M Street Buildings to small and local businesses to fulfill Decision No. 14 in Z.C. Order No. 02-38A. These are the types of retailers that are favored by the community and will establish the vibrant mix of uses prioritized in the SW Plan.

75. The Commission finds that the Project will also promote key corner parcels. Development of the M Street Buildings at the intersection of 4th and M Streets will enable the M Street Sites to serve as anchors for the PUD Site with a vibrant mix of uses for the neighborhood. In addition to providing ground-floor retail that wraps both buildings at the 4th and M Street intersection, the M Street Buildings have been designed to anchor the town center. The ground floor at the corner of the East M Building encourages street activation of the Metro plaza by incorporating matching hardscape materials and patterns, landscaped beds, possible café seating, and a relocated Capital Bikeshare station directly adjacent to the Metro entrance. Consistent with the first-stage PUD, the ground floors of the M Street Buildings include setbacks to create wide sidewalks with street trees and provide clear and safe circulation and retail activation while still maintaining a strong urban street wall.
76. In addition, the Commission finds that the Project helps to establish 4th Street's envisioned vibrancy as a neighborhood main street through creative urbanism practices and by celebrating the local economy. The proposed public spaces, landscaping, street furniture, and gathering spaces for the M Street Sites will enhance the retail energy, sidewalk activation, and overall neighborhood main street environment within and around the PUD Site. Moreover, the Applicant will market to small and local businesses to ensure that the neighborhood continues to be served by local retailers and service providers.
77. In addition to the stated goals to achieve the town center vision, the SW Plan also encourages “[r]etail energy, sidewalk activation, and new trees... landscaping, street furniture, and gathering places.” (SW Plan, p. 103.) The SW Plan supports the development of publically visible landscaped perimeters, internal green or amenity spaces, and landscaped setbacks appropriate to the streetscape, particularly for high-rise structures, and promotes the use of innovative sustainable design strategies and building standards to create a high performing environment that encourages healthy living, energy efficiency, and storm water management. (SW Plan, p. 82.) The Commission finds that the Project is fully consistent with these goals. The M Street buildings are setback to create beautiful and pedestrian-friendly outdoor public spaces, sidewalks, and plazas. They include extensive landscaping, street trees, and a variety of internal green amenity spaces, and they utilize innovative sustainable practices, including the generation of solar energy through approximately 2,400 square feet of solar panels on the roofs of the M Street Buildings.
78. Based on the foregoing, the Commission finds that the design of the M Street Buildings, with retail concentrated on 4th and M Streets, neighborhood-serving office use and a community center above, coherent storefront designs, and pedestrian-oriented streetscapes, will create a vibrant street atmosphere in a high-quality public realm. Public

spaces surrounding the M Street Sites will include active landscaping, street furniture, and gathering spaces, thus further activating the sidewalk and drawing people to the M Street Sites from the adjacent Metro station. The Commission finds that these elements collectively embody the town center environment envisioned by the District in the SW Plan.

79. With respect to the proposed change in use of the M Street Buildings from primarily office to primarily residential, the Commission continues to find that the Project is consistent with the SW Plan. In establishing the town center vision, the SW Plan specifically addresses the viability of the approved office use at the M Street Sites. In doing so, the SW Plan acknowledges that office space “may be difficult to lease,” “could prove less viable in the near term than residential development with ground floor retail,” and that “the developer should have the flexibility to request a modification to the approved Planned Unit Development to incorporate residential uses within the buildings.” (SW Plan, p. 52.)
80. The findings noted above were based on a market study prepared for the District regarding the demand for future housing, office, and retail uses in the Southwest neighborhood. (SW Plan, pp. 11, 22.) The market analysis was conducted to assess neighborhood demographics, real estate conditions and trends, infrastructure and planned development projects to better understand potential opportunities and limitations for real estate development in the Southwest Planning Area. The SW Plan’s market analysis offers findings to inform policy, design and development recommendations for the Southwest neighborhood. (SW Plan, p. 47.) The market study found a “strong market for residential development, a small market for increased retail, and little to no market for office space” (SW Plan, p. 60) and that the “[o]ne incongruity between projected future land use needs and proposed supply is office space.” (SW Plan, p. 52.) The SW Plan also specifically supports residential use at the PUD Site to establish the town center, stating that “[a]dditional residential density to be built along these blocks will improve the customer base and foot traffic in the area.” (SW Plan, p. 114.)
81. Based on the findings in the SW Plan, the Applicant also commissioned a market study as part of the subject Application, which found that: (i) residential use, and not office use, is viable at the M Street Sites in the near-term; and (ii) additional residential use will better support existing and proposed retail establishments at the PUD Site, thereby activating the street in the evenings and weekends (which office use would not do), thus improving the customer base, and increasing foot traffic in the area. (*See* Ex. 13F.)
82. Based on the foregoing, the Commission finds that the Project as proposed appropriately addresses the realistic market demand for new development in the Southwest neighborhood, and that the proposed uses will enable the establishment of a highly successful town center. The Commission credits the Applicant for taking into careful consideration the visions and goals of the SW Plan in developing modifications to the first-stage PUD and in proposing residential use for the M Street Buildings, and concludes that the Project will fully implement the goal of creating a thriving town center at Waterfront Station. Thus, based on all of the evidence in the record, including the

Applicant's previous filings, the market analysis, the OP Reports, and testimony presented at the public hearing the Commission concludes that the Project is fully consistent with the SW Plan.

Office of Planning Reports and Testimony

83. By report dated March 26, 2018, OP recommended approval of the Application, stating that the “proposal is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP's approval was based on the Applicant addressing the items set forth in its report and subject to the following condition: “[f]or the life of the project, the buildings shall reserve no less than 32,400 square feet of space for office uses, as “office” is defined at Exhibit 13, p. 27, paragraph 9.” The Applicant agreed to this condition at the public hearing and it has been incorporated into this Order. The Applicant also responded to the issues set forth in the OP report at the public hearing and in Exhibit 76. OP's issues and the Applicant's responses are as follows:
- a. OP requested that the Applicant increase its affordable housing proffer. At the time that OP submitted its report, the Applicant's IZ proffer was to dedicate eight percent of the residential gross floor area in both M Street Buildings to households earning up to 60% of the MFI, and of those units, five total IZ units would be three-bedroom units. In response to OP's request, the Applicant offered to add a sixth three-bedroom IZ unit in addition to the 8% IZ already proffered, thus increasing the total IZ square footage and the total number of three-bedroom units in the M Street Buildings. The Commission finds the Applicant's additional IZ proffer to be satisfactory and commends the Applicant for providing additional housing that will be affordable to District residents;
 - b. OP requested that the Applicant consider ways to achieve a higher LEED rating and commit to LEED certification for the M Street Buildings. The Applicant proposes to meet the USGBC LEED v4 for Building Design and Construction Silver rating level, which is equivalent to the sustainability level required for USGBC LEED-2009 Gold rating for New Construction. Following OP's input, the Applicant also incorporated approximately 2,400 total square feet of solar panels on the roofs of the M Street buildings to increase the Buildings' sustainability levels, even though doing so did not push the project beyond LEED v4 Silver. The Commission notes that the Applicant did not proffer LEED as a new public benefit pursuant to the standards of 11-X DCMR § 305.5, and instead simply provided evidence of the Project's sustainable features to ensure compliance with the commitments set forth in the first-stage PUD. As noted in FF No. 93(e), the Commission finds that the public benefits and amenities for the Overall PUD and the M Street Sites specifically balance when compared to the development incentives and flexibility requested, and is therefore satisfied with the LEED level proposed. In addition, the Applicant is committed to achieving

LEED certification and will use its best efforts in good faith to achieve actual certification;

- c. OP requested that the Applicant further examine the use of solar panels on the M Street Buildings. As noted above, the Applicant agreed to incorporate solar panels on the roofs of the M Street Buildings that will cover approximately 2,400 total square feet on the M Street Buildings combined in an effort to generate a portion of each Building’s energy consumption;
- d. OP requested that the Applicant commit to using an interim retail strategy to avoid dead retail space should long term tenants not be signed immediately, and to incorporate arts, artisan, and maker uses into the retail space. In response, the Applicant agreed to: (i) establish a vacant retail storefront campaign such that during initial lease-up some vacant storefronts will receive artistic treatments intended to animate sidewalks, engage the pedestrian and bolster connectedness with the community; and (ii) for space that has been vacant for longer than one year, offer a combination of the artistic treatments with pop-up tenancies in some storefronts for small and local businesses that do not require food preparation. The Applicant submitted that these interim retail strategies will generate “Instagrammable” moments and will bring unique engagement opportunities to the M Street Buildings during the initial period when the ground floor retail spaces may not be leased. Based on this proposal, the Commission finds that the interim retail strategy will create an engaging and appealing streetscape along the M Street Sites while the retail spaces are being leased;
- e. OP requested that the Applicant increase the number of balconies on the M Street Buildings, particularly on the north façade. At the public hearing, the Applicant explained that it had already increased the percentage of units with balconies from 19% proffered in the initial Application to 35-36% at the public hearing, which the Commission finds is appropriate in this case. The proposed percentage of units with a balcony is comparable to other new residential projects recently completed in the District and is more than sufficient for the M Street Buildings because there will be extensive outdoor public spaces provided in a variety of terrace and roof levels on both M Street buildings. These outdoor areas, which manifest as courtyards, terraces, and penthouse amenity spaces, will provide exterior activation and eyes on the street that is traditionally provided by balconies. Moreover, the Commission recognizes that the Applicant consciously limited the balconies on the north elevations of the M Street Buildings based on experience that overhangs created by balcony slabs negatively impact the quality of natural daylight in the units below. The Commission agrees that additional balconies in these locations would negatively impact the livability of those units and finds the number of balconies proposed to be adequate. Finally, the Commission credits the Applicant for providing an approximately equal proportion of balconies on the IZ units as on the market-rate units; and

- f. OP requested that the Applicant submit the following additional materials to clarify the record: (i) an explanation as to whether the TDM plan was considered a public benefit; (ii) a summary of the parking totals for the overall PUD Site; (iii) façade details showing the depth of mullions and window reveals; and (iv) an updated ground floor plan of the East M Building showing how the bicycle storage room would be connected to the residential lobby. The Applicant provided responses to OP's requests at the public hearing, in its direct filing in response to the OP Report and through written materials in its Post-Hearing Submission. (Ex. 76, 131.) Based on its review of these materials the Commission concludes that the Applicant fully responded to all of OP's concerns and requests for information.
84. Based on the analysis provided in the OP Report and the Applicant's responses thereto, the Commission finds that the Applicant has addressed all of OP's concerns, that the Application is consistent with the Commission's intent in approving the first-stage PUD, and that the second-stage PUD is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.

DDOT Report and Testimony

85. By report dated March 26, 2018, DDOT asserted no objection to the Application with the conditions that the Applicant: (i) fund and conduct a safety study at the intersection of 4th and M Street, S.W.; and (ii) implement the TDM plan proposed by the Applicant in the CTR dated October 17, 2017 (Ex. 32), with additional revisions listed at page 4 of the DDOT report. (Ex. 63.) At the public hearing and in its written response to the DDOT Report (Ex. 76A), the Applicant agreed to fund the safety study requested by DDOT (a scope for the safety study is included within Exhibit 76A, but at the request of the ANC the Applicant has committed to making a contribution for the safety study instead of performing the safety study) and to implement the requested TDM plan (the revised, mutually-agreeable TDM plan is set forth in the Decision section of this Order). The Applicant also committed to the following items in response to questions raised in the DDOT report:
- a. The Applicant will provide showers and lockers in both M Street Buildings that will exceed the requirements of the Zoning Regulations;
 - b. The Applicant will provide at least the minimum number of required short-term bicycle parking spaces, with the exact number and location of such spaces to be consistent with the requirements of 11-C DCMR §§ 802 and 804, and as determined based on any approvals required by DDOT and/or adjacent property owners;
 - c. The Applicant will provide four total carsharing parking spaces across the two M Street Buildings, subject to the conditions listed in the TDM plan;

- d. The Applicant will construct sidewalks along the North-South Private Drives that connect the entire length from the East-West Plazas south to M Street, S.W.;
 - e. The Applicant will continue to coordinate with DDOT and Capital Bikeshare on the appropriate relocation of the existing Capital Bikeshare station that is currently located on West M. The Applicant will also provide a contribution of up to \$3,800 to Capital Bikeshare for the relocation and expansion of the station, as detailed in the TDM plan;
 - f. The Applicant will implement the signage, striping, and traffic calming improvements on the North-South Private Drives and in the East-West Plazas consistent with the plan shown at Exhibit 62E, and subject to further coordination with ANC 6D and adjacent property owners; and
 - g. The Applicant will continue to coordinate with DDOT through the public space permitting process, with all final improvements in public space to be as approved by DDOT.
86. At the public hearing DDOT acknowledged the Applicant’s submission of the safety study, revised TDM plan, and response to the other outstanding items, and confirmed that these documents are consistent with the discussions and agreements established with the Applicant, and reiterated no objection to the Application.
87. Based on the analysis included in the DDOT report, including implementation of DDOT’s stated conditions and the revised TDM plan, the Commission concludes that any potential adverse transportation impacts that may arise out of the second-stage PUD will be adequately mitigated and will not create any adverse impacts to the surrounding roadway network or neighborhood.

ANC Report

88. On April 4, 2018, ANC 6D submitted a resolution (“ANC Resolution”) stating that at its regularly scheduled and properly noticed public meeting on March 19, 2018, ANC 6D voted 5-0-0 for a motion of conditional support of the Application. (Ex. 68.) The ANC Resolution also included a letter from SWNA indicating its support for the proposed community center use.
89. The ANC Resolution acknowledged that the Applicant’s retail strategy and implementation plan would advance the development of a thriving town center on 4th Street, SW. The ANC Resolution commended the Applicant’s commitment to create a community center, which it stated would be “indispensable” to the neighborhood and was a critical component that lead to the ANC’s support of the Project. The ANC noted that the community center and the neighborhood-serving commercial uses would be “contributions that will address essential needs of residents in every economic stratum, including residents of low income households.” The ANC also supported the Applicant’s commitment to implement a “substantially improved traffic plan;” to actively manage the

PUD Site to enhance pedestrian safety, prevent inappropriate vehicular traffic, and improve the area overall; and to enhance the Metro plaza by adding an element that will create a sense of arrival to a vibrant, thriving waterfront neighborhood. Finally, the ANC asserted that the revised building massings are “much more appealing than the massing that would have been used for commercial buildings” and that the “newest design will have a significant positive visual impact.”

90. The ANC Resolution also raised several issues as conditions to the ANC’s full support of the Application, as were further explained by Commissioner Andy Litsky at the public hearing. (See Public Hearing Transcript [“Tr.”], 4/5/2018, pp. 123-146 and Commissioner Litsky’s Testimony at Ex. 89.) Following the public hearing, the Applicant continued to work with ANC 6D to address its outstanding issues, and in those meetings the ANC raised several additional concerns that were not included in the ANC Resolution or discussed at the public hearing. The complete list of the ANC’s concerns raised in the ANC Resolution and in subsequent meetings, as evidenced in filings in the record, is as follows:
- a. Community Center Selection and Operations: (i) Authority for the ANC to select the operator of the community center; (ii) confirmation that rent and all utilities and operating costs for the community center would be free for 30 years; and (iii) commitment to permit community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building;
 - b. Public Space Element: Additional details on the proposed Public Space Element in the Metro plaza;
 - c. Enhanced Traffic and Site Plan for 4th and M Street: The need for a safety study of the 4th and M Street intersection, to be completed prior to approval of the Application, and confirmation that the Project does not preclude the addition of a new south-bound left turn lane at the intersection;
 - d. Plans showing the configuration of the 4th and M Street intersection if a separated south-bound left-turn lane is added;
 - e. Metrobus and Circulator Stops: Commitment that construction of the East M Building will not preclude the replacement of the Metrobus stop and shelter for Route 74 in front of East M; and commitment that the Applicant will work with DDOT to arrive at a solution for the placement of a new Circulator bus stop in front of East M or West M;
 - f. Construction Management Plans (“CMPs”): Written commitment to develop and enforce a construction management plan(s) for the M Street Sites;
 - g. RPP: Written assurances that residents of the M Street Buildings will not be eligible to apply for DDOT’s RPP program;

- h. Loading Operations: Commitment that all deliveries, including trash, FedEx, UPS, and retailer deliveries will occur within the loading facilities within the M Street Buildings;
 - i. Public Realm Programming: More details on how the public realm plaza areas will be programmed and maintained following construction;
 - j. Retail Leasing: Commitment to market the retail spaces to small and local retailers that will serve neighborhood residents, and to activate vacant storefronts during initial lease-up; and
 - k. Digital Signage: Commitment to prohibit any digital advertising signage on the exterior of the M Street Buildings.
91. The Applicant's post-hearing submission, which included two subsequent memoranda from the Applicant to ANC 6D addressed all of the ANC's concerns raised up to that point. (Ex. 131-131B.) A summary of the Applicant's commitments in response to the ANC's concerns is set forth below:
- a. Community Center Selection and Operations:
 - (i) The Applicant will permit ANC 6D to select the community center operator. However, prior to turning over occupancy of the community center to the operator, the ANC will be required to provide information about the selected operator to the Applicant, including, but not limited to, the operator's business plan, governance structure, financial statements, board of directors, affiliates, and scope of services. The ANC will permit the Applicant to comment on the information provided and if the ANC does not agree with the Applicant's feedback, then it must respond in writing to the Applicant explaining its position. The ANC and the Applicant must resolve all issues regarding the operator prior to the Applicant turning over occupancy of the community center to the operator;
 - (ii) Applicant agreed not to charge the community center operator for any of the following: (a) rental fees; (b) property taxes; (c) building maintenance fees; or (d) operating expenses. With respect to the payment of utilities, the Applicant proposed to pay 100% of all utility fees with the exception of electricity, for which the Applicant proposed a contribution limit of \$2.00 per square foot per year (a total payment of approximately \$12,000 per year) with an annual escalation of three percent. However, following further post-hearing meetings with the ANC as described in FF No. 93(b), the Applicant agreed to eliminate the contribution limit and pay for 100% of the community center's electricity fees for the first 30 years of its operation, with the utility to be billed directly to the Applicant.

In addition to paying the above-referenced costs for the community center's operations for 30 years, the Applicant also agreed to install low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on the south face of the community center to minimize heat gain. The Applicant will also contribute to the community center operator a one-time payment of up to \$500,000 for the community center's interior design and fit-out, plus \$50,000 for furniture, fixtures, and equipment; and

- (iii) With respect to the community center operations, the Applicant will allow community center visitors and employees to use the shared outdoor courtyard at the second level of the East M Building. The courtyard will be operated and maintained by the future office tenant of the East M Building, such that use of the courtyard by the community center users will be limited to the same hours of operation and types of uses as permitted for the office tenants, unless a special activity or event is specifically reviewed and approved by the office tenant manager;
- b. Public Space Element: The Applicant will undertake the following process regarding the selection of an artist and design for the Public Space Element in the Metro plaza: Following approval of the Application, the Applicant will engage with and select a local artist to design and install an element in the Metro plaza adjacent to the M Street Sites. The Applicant will select an artist who is familiar with the history of Waterfront Station, such that the artist will be able to design a unique and meaningful installation that creates a sense of arrival to Waterfront Station and is successful on its own, independent from the success of surrounding retail or changes in the season. The Applicant will present the proposed artist, general design, and scope of work for the Public Space Element to the ANC up to three times. The Public Space Element will be installed prior to the issuance of the first certificate of occupancy for the East M building;
- c. Enhanced Traffic and Site Plan for 4th and M Street: As testified at the hearing, the Applicant does not propose any modifications to the existing configuration of the 4th and M Street intersection. The Applicant evaluated the Project assuming the existing intersection conditions would remain and found that very few site-generated trips would be expected to use a southbound left turn, given the locations of site access points and the one-way traffic flow in the private drives. Thus, DDOT found that any changes to the intersection would not be needed to mitigate project impacts.

Despite the foregoing, following discussions with DDOT and the ANC, the Applicant agreed to fund a safety study, up to a maximum amount of \$30,000, to evaluate whether any physical or operational improvements should be implemented at the intersection. Although Applicant's traffic consultant created a proposed scope of work for the safety study, the Applicant agreed to contribute the \$30,000 directly to DDOT, and permit DDOT to select the firm to perform the

safety study and coordinate and direct any follow-up actions that result from the study.

Although the ANC requested that the safety study be completed prior to approval of this Application, DDOT testified that the safety study was not required as a result of the Project or as a required mitigation measure and that it was being provided as a public benefit as part of the PUD. (See Public Hearing Transcript, 4/5/2018, pp. 114-115, where Commissioner Litsky states: “My question to you is do you not feel that doing a safety report prior to allowing this PUD to move forward would be putting, literally, the cart before the horse?” and Mr. Aaron Zimmerman from DDOT responds: “No, I don’t believe so. They’ve studied the impacts of the traffic and the impacts of the pedestrian network based on this development. Any changes that need to happen to the signal or to the roadway is all within the public right of way and that’s stuff that DDOT can handle outside of this process. I don’t see anything that’s specifically related to this project that would potentially impact safety at the intersections, if that’s what you’re referring to... We’re requesting, and the Applicant has generously agreed to provide, in their public amenities package, a study that will help DDOT in aiding our decision on what to do with that intersection in the future.”) Therefore, based on the testimony of DDOT and the Applicant’s expert in transportation planning, and in reviewing the CTR submitted to the record, the Commission finds no value in postponing approval of the Application until after completion of the safety study and that the ANC’s requested timing is not required for this Application. (Ex. 32A.)

However, at the request of the ANC, the Applicant also completed initial evaluations of the intersection and determined that the Approved Second-Stage PUD Plans for the M Street Buildings would not need to be modified to accommodate a potential new south-bound left turn lane, since the new lane would impact public space only. Nevertheless, as noted in FF No. 93(d), the Applicant agreed that should the safety study require additional adjustments that do not correspond to the Approved Second-Stage PUD plans, it would support making those adjustments as needed;

- d. Metrobus and Circulator Stops. The 74 Metrobus stop and the future Circulator bus stop will both be located in public space adjacent to the M Street Sites. The Applicant committed to working with DDOT on the location of both bus stops and confirmed that (i) the public space shown on the Approved Second-Stage PUD Plans can accommodate free standing bus shelters for both bus routes; and (ii) the bus shelters will be fully accessible and ADA-compliant. The Applicant made further commitments to the ANC regarding the space available for an ADA-compliant bus shelter, as described in FF No. 93(f);
- e. Construction Management Plans: The Applicant submitted two CMPs (one for the East M building and one for the West M building) to the record (part of Ex.

131A) that were drafted and negotiated with the ANC. Among other things, the CMPs include specific requirements for construction parking, site cleanliness, and coordination with WMATA to address the ANC's concerns regarding the existing WMATA generator in public space. The CMPs also include pre- and post-construction surveys and associated monitoring for impacted properties;

- f. RPP: The Applicant agreed to include a rider in all residential leases for the M Street buildings, to be initialed by the residential tenants, that restricts those tenants from obtaining RPPs;
- g. Loading Operations: The Applicant will work with its property manager to instruct all deliveries to the M Street Buildings to be made within the associated loading areas and to coordinate with the property managers of the adjacent buildings along the North-South Private Drives to instruct all deliveries to those buildings to be made within their associated loading areas;
- h. Public Realm Management: Following the public hearing, the Applicant, the ANC, and adjacent property owners met to review how the public realm and plazas can be programmed and maintained for the life of the M Street Buildings. The Applicant also expressed its commitment to continuing to work with these groups to establish an appropriate and mutually-agreeable site management program. Thus, the Applicant proffered that following the Commission's approval of the Application, the Applicant will convene a meeting (physically or electronically) among the Waterfront Station property owners and ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station. The Applicant will subsequently convene two meetings with the Waterfront Station property owners and ANC 6D within the first year following the start of construction of the East M Building, will schedule additional meetings if necessary, and will thereafter convene meetings annually with the Waterfront Station property owners and ANC 6D until one year following the issuance of the first certificate of occupancy for the West M Building;
- i. Retail Leasing. The Applicant proposed a leasing strategy to attract a variety of neighborhood-serving retail tenants for the M Street buildings and minimize vacancies. As part of the leasing strategy, the Applicant will focus marketing efforts towards attracting local retailers that will serve neighborhood residents and provide retail spaces that can accommodate smaller-scale retailers.

As described above, as part of the initial leasing strategy, the Applicant will employ a vacant storefront campaign to install artistic treatments in vacant windows that will animate sidewalks, engage the pedestrian, and bolster connectedness with the community. During initial lease up for retail space that has been vacant for longer than one year, the Applicant will also provide a

combination of artistic treatments and pop-up tenancies for local businesses that do not require any food preparation.

In addition, the Applicant will provide retail spaces that can accommodate smaller-scale retailers and will avoid marketing to retail tenants that comprise large spaces (larger than 10,000 square feet each). The Applicant will work with the community throughout the development and construction process to identify the types of retail uses that meet the community's needs and market demand. The Applicant will begin this process early in order to avoid any vacant retail space upon delivery of the buildings. The Applicant will also dedicate a minimum of 1,000 total square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 from Z.C. Order No. 02-38A, which requires a total of 12,500 square feet to be devoted to small and local businesses within the Overall Project. The Overall Project already includes approximately 8,000 square feet of retail space dedicated to small and local businesses, and the Applicant is committed to fulfilling the requirements of this condition. Based on further discussions with the ANC following the post-hearing submissions, the Applicant made additional commitments regarding the individual retail spaces, as set forth in FF No. 93(c); and

- j. Digital Signage: Finally, the Applicant committed to prohibiting any digital advertising signage on the exterior of the M Street Buildings during both initial lease up and for the life of the M Street Buildings.
92. After the Applicant filed its post-hearing submission responding to the ANC's concerns, ANC 6D filed a response dated July 9, 2018, which raised several new and additional concerns, some of which were not previously raised by the ANC or addressed directly by the Applicant, as follows: (Ex. 131, 134.)
- a. Residential Use: The ANC alleged that the Applicant intended to use some of the proposed residential units in the M Street Buildings for "short-term, hotel-like rentals," which would have a detrimental impact to the community;
 - b. Community Center Electricity Fees: The ANC requested the Applicant to commit to paying for 100% of the community center's electricity fee usage, with no maximum cap, for a period of 30 years;
 - c. Community Serving Retail: The ANC requested that the Applicant dedicate 25% of the total retail space in each M Street Building to individual retail spaces that are 1,000 square feet in size or less;
 - d. Safety Study: The ANC requested that the Application not move forward until after the completion of the DDOT safety study of the 4th and M Street intersection;

- e. Environmental Benefits. The ANC requested that the Commission require LEED-Silver certification;
 - f. Bus Shelter: The ANC requested that the Applicant: (i) commit to ensuring that the Project does not prohibit the construction of an ADA-compliant bus shelter in public space adjacent to the M Street buildings; and (ii) pay for the replacement and construction of an ADA-compliant bus shelter; and
 - g. RPP: The ANC requested that the Applicant include a rider in all residential leases that restricts residential tenants of the M Street Buildings from obtaining RPPs.
93. On September 4, 2018, the Applicant submitted a response to the ANC’s July 9, 2018 memo. (Ex. 137) The Commission finds that the Applicant’s response addressed each of the above-referenced items and makes the following findings and conclusions as to each:
- a. Residential Use: The M Street Buildings are approved to include residential, retail, office, and community center uses only, and do not include any type of lodging use(s). The Applicant’s business model provides for leasing protocols of leases for 12 to 24-month terms. The Applicant only provides month-to-month leases for on-site employees and for tenants at the expiration of a lease, in accordance with DC Code § 42-3505.01(a) (“[e]xcept as provided in this section, no tenant shall be evicted from a rental unit, notwithstanding the expiration of the tenant’s lease or rental agreement, so long as the tenant continues to pay the rent to which the housing provider is entitled for the rental unit”). The Applicant agreed to follow the same leasing protocol for the M Street Buildings by providing leases with 12-to 24-months terms only, except in the limited scenario of on-site employees and tenants at the expiration of a lease. The Applicant also agreed that no rentals under one month will be permitted at either of the M Street Buildings by the Applicant or any agent acting on the Applicant’s behalf. Therefore, by virtue of the Applicant’s leasing protocols and the conditions of this Order, the Commission finds that the Applicant’s commitment addresses the ANC’s concerns with short-term rentals;
 - b. Community Center Electricity Fees: The Applicant agreed to pay for 100% of the community center’s electricity fee usage with no maximum contribution limit for a period of 30 years. The Applicant also agreed that the fees for utilities used by the community center during the 30-year timeframe would be billed directly to the Applicant. Therefore, the Commission finds that the Applicant has satisfied the ANC’s request;
 - c. Community-Serving Retail: As described herein, the Applicant proposes to lease the retail space in the M Street Buildings to a variety of neighborhood-serving retail tenants. In response to the ANC’s concern, the Applicant further committed to: (i) reserve a minimum of 6,000 square feet in the M Street Buildings combined

for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (ii) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; and (iii) dedicate a minimum of 1,000 square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 of Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers). The Applicant also committed to working with the community throughout the development and construction process to identify the types of retail uses that meet the community's needs. The Applicant also submitted a retail report prepared by Streetsense, which sets forth a varied retail merchandising plan that includes an ideal mix of uses and sizes that promote foot traffic and create a complete customer offering that is consistent with a successful neighborhood town center. (Ex. 62C.) The Commission therefore finds that the Applicant's approach to retail leasing and the commitments related to maximum and minimum square footages for individual retailers will fully address the ANC's concerns and create an ideal opportunity to establish a vibrant town center based on neighborhood-serving retail;

- d. Safety Study: The Applicant has agreed to contribute \$30,000 to DDOT to complete a safety study for the 4th and M Street intersection, and already completed initial evaluations of the intersection and determined that the proposed plans for the M Street Buildings would not need to be modified to accommodate a potential new south-bound left turn lane since the new lane would impact public space only. As described in FF No. 91(c), the Commission finds that the safety study is not required as a result of the Project or as a required mitigation measure, and that it is being proffered as a public benefit. Therefore, the Commission concludes that approval of the Application need not be postponed until after completion of the safety study and that the ANC's requested timing is not required. However, the Applicant agreed that if the safety study requires additional adjustments that do not correspond to the approved PUD, then the Applicant will support making those adjustments as recommended;
- e. Environmental Benefits. The Applicant has committed to designing the M Street Buildings to achieve LEED Silver under LEED v4 for Building Design and Construction. (See Applicant's LEED Scorecards at Ex. 131G, pp. C17-18.) The Applicant will endeavor to seek certification but proffers a condition relating to design in accordance with 11-I DCMR § 305.5k(5) only. The Applicant is not proffering its LEED commitment as a new public benefit for the second-stage PUD, but rather in compliance with the original benefits and amenities approved in Z.C. Order No. 02-38A, and will submit with its building permit applications a checklist evidencing that each respective M Street Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction. The Applicant and the ANC discussed the timing considerations relating to certification and agreed that providing evidence that each Building has been

designed to the LEED-Silver standard addresses the ANC's concern. Moreover, the Commission finds that requiring certification as a condition to approval is not possible because LEED certification cannot be confirmed by the USGBC until several months after issuance of a building's certificate of occupancy. Therefore, the Commission finds that the Applicant's proposed LEED commitment is appropriate in this case;

- f. Bus Shelter: The Applicant committed to working with DDOT on the location of the bus shelters and confirmed that (i) the public space adjacent to the M Street Sites can accommodate free standing bus shelters; and (ii) the bus shelters will be fully accessible and ADA-compliant. (*See* Ex. 131, p. 3.) Following receipt of the ANC's July 9, 2018 memo, the Applicant prepared and sent to the ANC an updated landscape plan confirming that a fully accessible ADA-compliant bus shelter could be accommodated within the public space adjacent to the West M Building. The Applicant shared this plan with the DDOT reviewer for this case, who confirmed that the bus shelter is an acceptable design that allows for both pedestrian circulation and accessibility for wheelchairs and would not require altering the design of the West M Building or pushing the bus shelter into private property. Thus, the Commission finds that the Applicant has fully addressed the ANC's request to ensure that an ADA-accessible bus shelter can be located in the public space adjacent to the West M Building without modifying the PUD plans. Moreover, with respect to the ANC's initial request that the Applicant pay for a new bus shelter on M Street, the Commission finds that the approval and installation of new bus shelters is within DDOT's purview and is subject to separate agreements and requirements that DDOT has with Clear Channel. Thus, the Commission finds that the Applicant is not required to pay for the bus shelter as a part of this Application. The Applicant, however, indicated its intent to work with the ANC and DDOT to install a temporary bus shelter adjacent to the West M Building prior to the start of construction of the East M Building. The installation of a temporary bus shelter will be subject to review and approval by DDOT; and
- g. RPP: The Applicant will not apply for RPP for either of the M Street Buildings and will include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from applying for or obtaining RPPs while under the terms of their lease.
94. In addition to the testimony provided on behalf of ANC 6D at the public hearing by Commissioner Litsky and in the written materials submitted to the record, Commissioner Roger Moffatt also testified at the public hearing in his capacity as the Single Member District representative for East M. (Ex. 87.) Commissioner Moffatt's concerns related to the need for additional three-bedroom affordable units; the need for small-sized, community-serving, and street-activating retail uses; and restrictions on residents from obtaining RPPs. The Commission finds that the Applicant has adequately addressed each

of these concerns, as set forth in this Order, since the concerns were also raised by the full ANC and OP.

95. Based on the foregoing findings of facts and the Applicant’s post-hearing submission, the Commission concludes that the Applicant has fully addressed and reasonably responded to all of the ANC’s stated concerns and that the Commission has given great weight to all of the ANC’s issues. To the extent that the Commission has not incorporated certain of the ANC’s recommended conditions into this Order, it has provided findings and conclusions supported by evidence in the record to support its position.

Party in Opposition

96. Waterfront Tower was granted party status on October 30, 2017, and participated as a party in opposition at the public hearing. Waterfront Tower’s initial concerns related to access and security, environmental impacts, and economic/social impacts of the Project.
97. Hara Bouganim and Leigha Gooding were the designated representatives of Waterfront Tower. At the hearing, Ms. Gooding acknowledged that the Applicant had met with Waterfront Tower representatives on several occasions since party status was granted to share its plans, learn about Waterfront Tower’s concerns, and propose initial solutions to address their concerns. (*See Ex. 124, p. 1.*)
98. At the public hearing, Waterfront Tower presented a draft MOA which expressed all of Waterfront Tower’s concerns that had not yet been addressed. (*Ex. 119.*)
99. Waterfront Tower’s primary concerns included the following: (i) location, timing for, and operations of loading activities at the East M Building; (ii) congestion, safety, use, and design of the North-South Private Drive on the east side of the East M Building; (iii) design issues related to the east façade of the East M Building, including landscaping; (iv) alternative parking solutions for Waterfront Tower’s moving vans, deliveries, contractors, and visitors; (v) naming of the North-South Private Drives and East-West Plazas; and (vi) involvement in the decision-making process through the community advisory committee, among others.
100. The Applicant worked closely with Waterfront Tower following the public hearing on the issues identified above, and eventually came to a mutually-acceptable agreement on each of Waterfront Tower’s concerns, which is set forth in the signed MOA. (*Ex. 131C.*) Although the conditions of the MOA would not typically be considered as public benefits under 11-X DCMR § 305, the Applicant has agreed as part of its agreement with Waterfront Tower to request that the MOA conditions become enforceable under this Order. The Commission consents to that request given the request by Waterfront Tower at the hearing. The testimony of Commissioner Litsky and Ms. Gooding is cited as follows: “MR. LITSKY: And to Ms. Gooding, you’re working on an MOA and I’m glad you are. How would you feel that your condominium and your residents would be best protected once you have those conditions written up and memorialized? Would you think that you would be better protected to have those conditions clearly elucidated in the final

zoning order? MS. GOODING: Yes, in a way that is binding and that sounds like the final zoning order would be good. But in addition to that I would say through regular meetings with us...So through a combination of regular meetings and documentation in the final order that you had mentioned, I think that would best protect our community. MR. LITSKY: Okay but when you have the Applicant sign off on those things that you have stated to make sure that it's not lost in translation and that it is not lost and if they could have documents that's elsewhere, do you feel that this would better be formally stated in a final zoning order, rather than just placed elsewhere? MS. GOODING: Absolutely, that was my intent. So if I wasn't clear, absolutely, yes." (Tr. 5/10/2018, pp. 51-52; see also the Applicant's rebuttal testimony, stating that "I certainly heard they want to see that in writing and we are happy to put that in writing. I understand conditions in an order make people more comfortable than just representations in testimony." (*Id.*, p. 77.)) Based on these discussions, Commissioner Miller stated "it will be helpful to have the MOA so that we can refer to the MOA in any final zoning order, if we get to that point, because there was discussion of that, and they would want to see those conditions memorialized. And you said that you were willing to do that." (*Id.*, p. 92.) Accordingly, the MOA includes a number of conditions that are set forth in the Decision section of this Order.

101. By letter dated July 2, 2018, Waterfront Tower also submitted a copy of the signed MOA and stated its appreciation for the Applicant's attempts to meet Waterfront Tower's concerns and think "out of the box." (Ex. 130.)
102. As noted in FF No. 31, on July 9, 2018, Waterfront Tower submitted a response to the Applicant's post-hearing submission, noting a discrepancy between the signed MOA, which required vertical plantings along the east and north facades at the northeast corner of the East M Building, and the Approved Second-Stage PUD Plans, which showed the vertical plantings on the east façade but not the north façade of the northeast corner. (Ex. 133.) On July 16, 2018, the Applicant submitted a response to Waterfront Tower's July 9, 2018 letter, stating that it did not intend to violate the MOA's terms regarding the vertical plantings. (Ex. 135.) The Applicant's response included a revised landscape plan and building elevation showing the location and extent of the vertical plantings as agreed to in the MOA. (Ex. 135, Sheets L4-rl, 88-rl.)
103. Based on the Applicant's work with Waterfront Tower, the commitments set forth in the MOA, as revised by Exhibit 135, and Waterfront Tower's recognition of the parties' agreement, the Commission finds that the Applicant has fully addressed and reasonably resolved all of Waterfront Tower's stated concerns.

Other Contested Issues

104. In addition to the issues raised by the parties, several non-party individuals and organizations testified at the public hearing and submitted letters to the record in opposition to the Application, related to the issues discussed below.

105. Conversion of Office to Residential Use. Several individuals and organizations testified in opposition to the conversion of the M Street Buildings' primary use from office to residential. These individuals stated that many other residential buildings are coming online in the surrounding neighborhood, that office demand is high and continues to grow, and that office use (as oppose to residential use) will better attract the type of evening and weekend activity that will draw and sustain neighborhood-serving retailers at Waterfront Station.
106. Despite these claims, the Commission finds that conversion of the M Street Buildings from office to residential use is appropriate for the neighborhood, will generate significant retail sales and pedestrian activity, and will not result in negative impacts that cannot be adequately mitigated. In making this finding, the Commission credits the Market Analysis and Economic Impact Analysis, prepared by Partners for Economic Solutions in August, 2017 (the "PES Report"), which summarized the office and residential markets of the Southwest Waterfront neighborhood and the impacts on retail activity of the M Street Buildings if they were developed with office use compared to residential use. (Ex. 13F.) It also credits the Applicant's pedestrian study, which surveyed the number of pedestrians around the M Street Sites on a typical weekday and typical weekend day.
107. As set forth in the PES Report, retail sales at Waterfront Station attributable to office development of the M Street Sites would be significantly less than retail sales at Waterfront Station attributable to residential development of the M Street Sites (approximately \$7.3 million compared to \$9.7 million, respectively). (Ex. 13F, pp. 13-14.) According to the report, residents will spend more on goods and services near home than will employees near work. Residents will also take advantage of the retailers in the evenings and on weekends, whereas office workers would not. Moreover, while most residents of the M Street Buildings will not be at home during the weekday, the growing trend of people working at home will generate entrepreneurs, freelancers, and telecommuters who may venture out during the day to take advantage of the Waterfront Station retail establishments. (Ex. 13F, pp. 13-14.) Thus, the Commission finds that the proposed residential use at the M Street Sites will generate significant activity that will draw and sustain neighborhood-serving retailers at Waterfront Station.
108. In furtherance of this finding, the Commission also credits the Applicant's pedestrian study that studied the times of day and days of the week that have the highest and lowest levels of pedestrian activity at Waterfront Station under current conditions. Results from the study found that pedestrian activity is primarily generated by employees and visitors to the 1100 and 1101 4th Street office buildings, and not by residents living within Waterfront Station or in the surrounding neighborhood. Specifically, the morning weekend peak hour observed 25% fewer pedestrians, the midday weekend peak hour observed 45% fewer pedestrians, and the evening weekend peak hour observed 30% fewer pedestrians, compared to comparable weekday observations, with the one exception which coincided with an 8:00 p.m. event at Arena Stage.

109. Regarding the residential housing market, the Commission credits the PES Report’s finding that although the multi-family housing market is experiencing high levels of new construction, there is strong residential demand that has supported rapid lease-up of properties. (Ex. 13F, p. iii.) The PES Report anticipated an average demand for development of approximately 4,640 residential units annually in the District. (Ex. 13F, p. 8.) The Commission also agrees with the PES Report finding that residential units at the M Street Buildings will compete well for future tenants and be absorbed easily given their advantages of a Metro-oriented location, mixed-use setting, quality design and amenities, adjacency to a grocery store, and proximity to the Southwest Waterfront and Capitol Riverfront entertainment amenities. (Ex. 13F, pp. 10-11.)
110. Further, the Commission also finds that the proposed amount of office space is appropriate for the M Street Buildings. The PES Report found that the current (2017) office vacancy rate is 11.6% for the District overall and 14% for the Southwest and Capitol Riverfront neighborhoods, and that given a variety of factors it was “unlikely that the development of these two major office buildings would be feasible in less than 10 years.” (Ex. 13F, p. iii.) The PES Report also found a “much stronger” market for smaller neighborhood-serving businesses,” which are the types of office uses that the Applicant is proposing for the M Street Buildings.
111. In addition, the Commission notes that the SW Plan specifically acknowledges the weak office market and the potential for office use at the M Street Sites to be “less viable in the near term than residential developments with ground floor retail.” (SW Plan, p. 52.) The Commission also acknowledges that the SW Plan states that the owner of the M Street Sites (i.e., the Applicant) should “have the flexibility to request a modification to the approved Planned Unit Development to incorporate residential uses within the buildings.” (*Id.*) Furthermore, the Commission credits the ANC’s testimony at the public hearing, stating that “even though we had expressed significant concern regarding our desire not to even have a setback on this project... we learned during discussions with the Applicant, and we learned looking at the materials that they had put forward, that it was better to have a residential property there than to have the commercial structure that would otherwise arise.” (Tr., 4/5/2018, p. 124.)
112. Based on the foregoing, including the Commission’s review of the pedestrian study, the PES Report, the ANC’s testimony, and other filings submitted to the record by the Applicant, the Commission finds that the Applicant’s proposal to develop the M Street Buildings with primarily residential use instead of primarily office use will increase the number of residents living at Waterfront Station, attract additional retail consumers and visitors outside of workday hours, and increase pedestrian activity at off-peak times, thus supporting the active town center vision for Waterfront Station. The Commission also finds that there is a high demand and strong market for residential use in the District, particularly at the mixed-use and transit-oriented M Street Sites, and that the market for new office space is weak, such that conversion of the M Street Buildings from primarily office use to primarily residential use is appropriate in this case and will sustain a high demand for neighborhood-serving retailers.

113. Elimination of Open Space. At the public hearing, individuals testified that development of the M Street Sites would remove valuable open space and eliminate the active uses currently occurring on the M Street Sites (e.g., farmer’s markets, festivals, and concerts). Individuals noted that although other public spaces exist in the area, none have the capacity to hold such large events, and thus the elimination of the open space currently on the M Street Sites would negatively impact the community.
114. The Commission finds that development of the M Street Sites was initially approved in 2003 through Z.C. Order No. 02-38, and that the development, height, and massing of the M Street Buildings are fully consistent with this original approval. The Commission also finds that Z.C. Order No. 02-38 required approximately 25,000 square feet of open space on the PUD Site, that Z.C. Order No. 02-38A increased that requirement to 50,000 square feet of open space on the PUD Site, and that the 50,000 square feet of open space has already been constructed. The Applicant continues to propose 50,000 square feet of open space, which is fully consistent with the approved plans in Z.C. Case No. 02-38A. Pursuant to 11-Z DCMR § 704.4, the scope of a hearing for a modification of significance application shall be limited to the impact of the modification on the subject of the original application and shall not permit the Commission to revisit its original decision. Thus, the Commission finds that it has properly evaluated this Application without the need to re-review the amount of open space provided on the PUD Site.
115. The Commission notes that the Applicant activated the M Street Sites during the years that they have been vacant. In fact, the ANC testified to this at the public hearing, stating that they “have appreciated the fact that during the interim period of time, the ANC had made sure, with the assent of the Zoning Commission, that these sites were activated. These were to be activated sites only until such time as building was going to be happening on those sites...” (Tr. 4/5/2018, p. 125.) Thus, although the ANC appreciated the interim uses on the M Street Sites, it understood that these sites were never intended to remain as public open space, and in fact commended the Applicant for activating them over the years.
116. In addition, the Applicant is providing a 6,000-square-foot community center in the East M Building, which will be available for a variety of public uses in lieu of the vacant M Street Sites. The Commission also recognizes that significant open space exists elsewhere in the immediate vicinity (within approximately one-quarter mile) of the M Street Sites, including the Southwest Duck Pond park, the 3rd and I Street park, the two pocket parks located on the southeast and southwest corners of the intersection of 4th and I Streets, and Lansburgh Park. (See Tr. 5/10/2018, p. 84, testimony of Ms. Trini Rodriguez, the Applicant’s expert in landscape architecture, describing the existing public spaces in the immediate neighborhood within an eighth and a quarter mile of the PUD Site.) Thus, significant indoor and outdoor public space will continue to be provided in the immediate neighborhood.

117. Moreover, as testified to by Mr. Dettman at the public hearing, the Applicant’s expert in land use planning, “there is nothing in the Comp Plan or the Small Area Plan that would suggest that the near Southwest area is lacking in available open space. Actually, the Comp Plan notes that almost 30 percent of the planning area consists of parks and open space but that many of the parks and open spaces are hard to find, underutilized, and neglected. The Small Area Plan defines -- says that a defining feature of the Southwest neighborhood is its multitude of strategically-located green spaces and makes similar recommendations to preserve and enhance existing green spaces and improve connections. The overall PUD does exactly what is called for in the Comp Plan and the Small Area Plan by adding variety to the planning area’s existing parks and open spaces, and by creating a network of urban open spaces within the town center that are programed and provide better connectivity.” (Tr. 5/10/2018, pp. 87-88; *see also* 10-A DCMR § 1902.2 and SW Plan, p. 86.)
118. Therefore, based on existence of public spaces in the surrounding neighborhood, the incorporation of the community center use into the East M Building, and the approved and provided public space on the PUD Site, and based on the Commission’s review of the Comprehensive Plan, the SW Plan, and the Applicant’s experts in landscape architecture and land use planning, the Commission concludes that redevelopment of the M Street Sites will be beneficial to the neighborhood overall despite the removal of the vacant lots, that the community will still be able to take advantage of a variety of public open spaces in the immediate neighborhood, and that the Project is fully consistent with the approved first-stage PUD.
119. Affordable and Family-Sized Housing. Testimony was presented that: (i) the Applicant did not propose an adequate amount of affordable housing in the M Street Buildings; (ii) that the proposed affordability level (60% of the MFI) was not affordable for low-income District residents; and (iii) that the majority of the units in the M Street Buildings are studios and one-bedroom units, which will not support families or the socioeconomic or racial diversity of the Southwest which indicates that more families are moving and/or staying in the District.
120. Regarding the amount of affordable housing proposed, the Applicant initially proposed to dedicate a minimum of eight percent of the residential gross floor area in each M Street building to IZ units reserved for households earning up to 60% of the MFI, with three of those units in the West M Building reserved as three-bedroom units and two of those units in the East M Building reserved as three-bedroom units. Following the public hearing, the Applicant agreed to increase the IZ proffer to provide a third three-bedroom unit in the East M Building reserved for households earning up to 60% of the MFI. This additional unit is above the eight percent of residential gross floor area originally proposed, which increases both the amount of affordable housing in the Project and the amount of family-sized housing. Moreover, as testified to by the Applicant and as described in the Applicant’s filings (*see, e.g.* the Applicant’s Prehearing Submission at Ex. 13), the amount of affordable housing proposed for the M Street Buildings will increase the total number of affordable units within the overall PUD Site by

approximately 20%, and will increase the effective proportion of IZ units compared to market rate units across the overall PUD Site (prior to development of the Northeast Building) to approximately 15%. The Commission finds that this proportion is significantly greater than the minimum percentage required by the current IZ regulations and is consistent with other recently approved PUDs.

121. Regarding the subsidy level proposed for the IZ units, the Commission notes that at the time that the Applicant filed the Application, the Zoning Regulations only required a subsidy level of 80% of the Area Medium Income (“AMI”) for all IZ units, yet the Applicant still proposed a deeper subsidy level of 60%.³
122. Regarding the number of family-sized housing, as noted above, the Applicant increased this proffer following comments at the public hearing. Thus, given the significant amount of other benefits and amenities proposed in this Application, the lack of any additional development incentives or flexibility requested, and the benefits and amenities that have already been delivered and will continue to be delivered through this second-stage PUD, the Commission finds that the proposed IZ proffer – including the square footage of IZ units, the subsidy level of IZ units, and the number of affordable three-bedroom units – is appropriate in this case.
123. Moreover, the Commission also credits the Applicant’s testimony at the public hearing that with respect to delivery of additional IZ units, the ANC expressed a preference for a cost-free community center as follows: Commissioner Litsky stated that “[t]he ANC believes that the creation of a Southwest community center is indispensable to the wellbeing of our Southwest community and is a critical component that led to our support of this project. We asked for it. We recognize that this is something that’s absolutely critical.” (Tr. 4/5/2015, p. 125.) In discussing the Applicant’s IZ proffer in the ANC Resolution, the ANC stated that “ANC 6D has been and remains an advocate for affordable housing and for affordable units with more than two bedrooms. The commitment in this Application meets the current requirement for Inclusionary Zoning and also includes five three-bedroom units affordable at 60% of Area Median Income. (Note: The Applicant is providing these larger units at the ANC’s specific request.) The ANC also believes that the inclusion of the Community Center and neighborhood-serving commercial are contributions that will address essential needs of residents in every economic stratum, including residents of low income households.” (Ex. 68, p. 2.) Thus, the Commission concludes that the amount of affordable housing proposed for the Project is sufficient, given the substantial benefits and amenities associated with this second-stage PUD, the total amount of affordable units that will be provided on the Overall PUD Site, and the ANC’s concurrence with the IZ proffer.
124. The Commission’s further conclusions on the issues of affordable housing, gentrification, and overdevelopment are set forth in FF Nos. 126, 130, 131, 132, 133, 134, 135, and 136 below.

³ The terminology of AMI vs. MFI is different but the substantive definitions are the same.

125. Community-Serving Retail: Several individuals testified at the public hearing that the M Street Buildings should provide affordable retail space to attract small and local retailers. The issue of dedicating space in the M Street Buildings to small and local retailers was also raised by the ANC and addressed by the Applicant. The Commission’s findings and conclusions regarding the proposed retail space in the M Street Buildings is provided in FF Nos. 74 and 93(c) of this Order, and as described therein, the Commission concludes that the Applicant has made significant commitments regarding the retail space as requested by the community and the ANC, and that those commitments will provide maximum flexibility for the Applicant to attract and retain a wide variety of neighborhood-serving retailers that meet the community’s needs and the market demand.
126. DC for Reasonable Development (“DC4RD”) – A representative of DC4RD submitted written materials and testified in opposition to the Application at the public hearing. DC4RD claimed that the proposed second-stage PUD and first-stage PUD modification are inconsistent with the Comprehensive Plan, and that the Project will destabilize the area’s existing affordability and cause/contribute to gentrification. (Ex. 86.) The primary basis for DC4RD’s claims is the amount of time that has passed since the Commission’s initial approval of the Overall Project, and changes that have occurred in the surrounding area during that time including, according to DC4RD, “the massive displacement of black families.” Consistent with the manner in which it has participated in other recent proceedings, the Commission finds that DC4RD claims are generalized grievances that are not specific to any portion of a particular proposal, including the Applicant’s proposal. The Commission also finds that DC4RD fails to substantiate any of its claims regarding displacement and gentrification through fact-based evidence or analysis.
127. DC4RD’s Claims Regarding Consistency with the Comprehensive Plan. In its written comments submitted to the record, DC4RD states that the Project shows a huge inconsistency with the fundamentals of the Comprehensive Plan. However, as fully set forth in the Applicant’s Consistency with the Comprehensive Plan analysis, the OP Report, and the hearing testimony of Mr. Shane Dettman, the Applicant’s expert in zoning and land use, and as fully set forth in FF Nos. 67 and 68 of this Order, the Commission finds that the Project is not inconsistent with the guiding principles, policies, and goals of the Comprehensive Plan, including the land use designation on the Future Land Use Map and general policy designation on the Generalized Policy Map. (Ex. 2H, 64, 88.)
128. The Commission notes that the provisions of the Zoning Regulations governing PUD applications state that “[t]he first-stage application involves a *general review* of the site’s suitability as a PUD and any related map amendment,...and the compatibility of the proposed development with the Comprehensive Plan...” (emphasis added) (11-X DCMR § 302.2; *see also* Z.C. Order No. 11-03J(3), FF No. 144.) Further, these same provisions state that “[i]f the Zoning Commission finds the application to be in accordance with the intent and purpose of... the first-stage approval, the Zoning Commission *shall grant* approval to the second-stage application...” (emphasis added) (*Id.*) Thus, as required under the Zoning Regulations, the Commission finds that it has already determined that

the Overall Project is not inconsistent with the Comprehensive Plan as part of its review and approval of the first-stage PUD.

129. The Commission also credits OP’s finding that the Project “is not inconsistent with the Comprehensive Plan, would not result in unacceptable impacts on the area or on city services, and includes public benefits and project amenities that balance the flexibility requested.” (Ex. 64, p. 1.) OP also acknowledged the Commission’s previous determination that the first-stage PUD was not inconsistent to the Comprehensive Plan, and further found that the change in proposed use from office to residential “would not be inconsistent with major policies from the Land Use, Transportation, Housing, Economic Development, Urban Design, and Lower Anacostia Waterfront/Near Southwest elements of the Comprehensive Plan,” and “would not be inconsistent with, and would further housing objectives, including the provision of affordable housing.” (Ex. 64, p. 10.)
130. DC4RD’s Claims Regarding Gentrification, Displacement, Destabilization of Land Values, and Overdevelopment. DC4RD claimed that the Project will destabilize the area’s existing affordability and cause/contribute to displacement and gentrification. However, the Commission finds that DC4RD offered no factual evidence to substantiate these claims. This Commission has previously opined on an applicant’s obligation to respond to these types of unsubstantiated generalized grievances/claims. In so doing, the Commission found that while the burden of proof rests with the applicant, an applicant is not obligated to respond to such assertions. For example, in Z.C. Order No. 11-03J, Finding FF No. 150, the Commission stated that “[f]or a party or witness to raise an issue for which a response is required, the party or witness must have some factual basis for the claim and draw a nexus between the claimed deficiency and the current application.” In this case, the Commission finds that DC4RD has not provided any such factual basis or nexus. In addition, the DC Court of Appeals has also recognized that claims regarding “destabilization of land values,” “environmental impacts,” and broad concerns regarding overdevelopment in the community are generalized, and that under the principles of standing “a plaintiff...may not attempt to litigate generalized grievances.” (See DCCA No. 16-AA-0705, *Union Market Neighbors v. District of Columbia Zoning Commission and 301 Florida Ave Manager, LLC.*)
131. Based on the foregoing, the Commission concludes that DC4RD’s unsupported claims regarding displacement, gentrification, destabilization of land values, and overdevelopment do not warrant a response given their generalized nature that has not been tied to the Project, and the lack of any factual nexus between the personal interests of DC4RD, including its groups and individual members. Nonetheless, the Applicant provided a response to these issues in its Post-Hearing Submission, and the Commission offers the additional conclusions below. (Ex. 131D.)
132. The Commission finds that DC4RD approaches the issue of affordable housing in the District extremely narrowly by applying a one size fits all solution to an issue that requires a range of strategies and programs spanning several District agencies that focus

on, among other things, preserving existing affordable housing and controlling housing costs for existing residents through programs that provide rental assistance and limit assessment value increases. Increasing market rate and affordable housing supply is a strategy proven to be effective at addressing the issue of affordable housing, and the Commission finds that this Project will be greatly beneficial in this regard by adding approximately 598 new units of housing, of which approximately 50 units will be set aside as affordable at 60% of the MFI.

133. Contrary to DC4RD’s claim that the Project will harm the area’s existing affordability, the Commission accepts the analyses conducted by the District that have shown that increases in housing (both market rate and affordable) has not impacted lower income residents. Specifically, according to a report entitled *Bridges to Opportunity, A New Housing Strategy for D.C.* (March 2013), prepared by the 2013 Comprehensive Housing Strategy Task Force, “the recent increase in market rate housing does not appear to have led to significant gentrification, by which we mean the displacement of lower income residents. In fact, over the past two years of the city’s population growth, the number of people filing income taxes has increased across all income levels citywide. Market rate housing starts are essential to improving the city’s continuum of housing as are public-private investments in affordable housing development.” (*See Bridges to Opportunity, A New Housing Strategy for D.C.* (2013), pp. 7, 41.)
134. Contrary to DC4RD’s unsubstantiated claims, the Commission concludes that the Project will have significant positive impacts on affordable housing in the District through the significant number of new residential dwelling units that will be constructed, including the substantial number of affordable dwelling units that would otherwise not be constructed under the current approved office use. DC4RD’s claim that the Project exacerbates the issue of affordable housing shows a lack of knowledge of where the overall Waterfront Station PUD initially started when it was approved for seven commercial buildings and one residential building. Taking into account the proposed M Street Buildings and the current proposal for substantial affordable housing in the Northeast Building, the amount of affordable housing provided within the Overall Project will be significantly more than originally proposed.
135. Further, as noted in the Comprehensive Plan, the development of new housing both market rate and affordable, is important to addressing the issue of affordable housing in the District. Academic studies and articles written from a wide range of political perspectives are increasingly finding that the addition of new housing of all types and price ranges is one of the key steps that can be taken to mitigate rising prices and rents. The Commission recognizes the validity and importance of these and other studies that have found that construction of new housing in all price ranges, and specifically new affordable housing, is one of the best ways to mitigate increasing housing prices and rents as it helps address the imbalance between housing demand and housing supply.
136. To that end, the Commission finds that the Project will not cause or exacerbate gentrification or displacement of existing residents in the surrounding area. Rather, the

Project is an excellent example of the type of development that can help mitigate the negative effects of gentrification and increasing housing costs as it will introduce approximately 598 new dwelling units into the District’s supply of housing, of which approximately 50 units will be devoted to affordable housing at the 60% MFI level, including six three-bedroom units to help meet the demand for family-sized units.

137. DC4RD’s Claims on Impacts on Public Services. In its written comments, DC4RD states that “[t]here’s no study on the infrastructure impacts (transportation, parking, utilities, pipes, etc.), the environmental impacts (noise, refuse, emissions, air/water, construction nuisance, etc.), the gentrification impacts on surrounding vulnerable affordable housing (no surveys of housing-cost burdened residents in the area now), and the impacts on public service capacities/needs that serve our members and community now (schools, libraries, clinics, rec centers, truly affordable housing, police/fire, etc.). Without an impartial and meaningful impact assessment, the Commission cannot reconcile the benefits in determining approval.”
138. Regarding transportation, as testified by Mr. Dettman, as part of its review in 2003, and again in 2007, the Commission evaluated the impacts of the Overall Project, specifically finding in Z.C. Order No. 02-38A that the Overall Project “has been evaluated by the relevant District agencies, including being supported by both OP and DDOT. Based on those reports, there will be no adverse impacts that cannot be mitigated by the conditions imposed herein.” The Applicant also prepared a CTR as part of the subject second-stage PUD Application, which DDOT evaluated thoroughly and in doing so found that the Project would not have any negative transportation impacts that could not be adequately mitigated. Moreover, as presented at the public hearing by Mr. VanPelt, the Applicant’s expert in transportation, the potential transportation impacts of the proposed change in use of the M Street Buildings has been thoroughly analyzed and determined to be less than the currently approved office use. Any potential impacts of the residential use will be mitigated through implementation of the Applicant’s TDM plan and other commitments made with Waterfront Tower. Thus, the Commission finds that the Applicant fully evaluated the Project’s transportation impacts and concludes that no mitigation measures outside of those proposed and enforced by this Order are needed.
139. Regarding impact to public services, the Commission finds that the impacts of the Project on public services will not be unacceptable, but instead will be favorable, capable of being mitigated, or acceptable given the quality of public benefits in the Project. Other than the proposed change in use from office to residential for the M Street Buildings, the Project remains fully consistent with the approved first-stage PUD. As such, the potential impacts of the Project relative to height, mass, scale, and density remain the same as what has already been evaluated and deemed acceptable by the Commission.
140. DC4RD also raised a question as to whether the capacity of local schools would be burdened by the Project. According to a D.C. Public Schools report entitled “Public Education Supply and Demand for the District of Columbia Citywide Fact Sheet, SY2016-17 (“Fact Sheet”),” which was released by DCPS on October 6, 2017, the

Commission finds that there is sufficient capacity within the DCPS and D.C. Public Charter School systems to accommodate expected growth through 2025. Specifically, as stated on page 12 of the Fact Sheet, "...there may be between 93,687 and 95,502 3-17 year old public school students in 2025. If the District grows by this amount, and if the city keeps the same supply of schools with the same grade spans and facilities as they have in SY2016-17, then there may be a surplus of 6,182 to 7,996 seats in our current facility inventory." (*See Ex. 131F.*)

141. Moreover, the Commission credits data published by DCPS that the local schools that would serve the M Street Buildings all have additional capacity to accommodate demand, and all have either recently been fully modernized or are in the process of being modernized. According to the DCPS website, the three public schools that would serve the M Street Sites include Amidon-Bowen Elementary School, Jefferson Middle School Academy, and Eastern High School. According to the DCPS online profiles for Amidon, Jefferson, and Eastern, all three schools are far below 100% utilization and have had recent facility upgrades, such that the Commission is able to conclude that the Project will not burden local schools. (*Ex. 131F.*)
142. Regarding impacts to public libraries, the Commission acknowledges that D.C. Public Libraries ("DCPL") continues to advance its efforts to transform the District's library system through major renovation or reconstruction of public libraries throughout the city. With regard to capacity, according to a December 2010 analysis conducted by OP, the Southwest Library was one of the least active libraries in terms of computer usage, circulation, and patronage. Thus, although this study is several years old, the Commission finds it reasonable to believe that the Southwest Library has enough capacity to accommodate any additional demand that may be generated by the Project, especially given DCPL's ongoing efforts to modernize the District's library system, including the Southwest Library which is currently undergoing a \$18 million modernization project to increase the net square footage of the library devoted to public areas.
143. The Commission also finds that the Project will also not adversely impact recreation centers and facilities. The surrounding area has more than sufficient recreational facilities in the immediate area, including: (i) the King Green Leaf Recreation Center, which is a 16,500 square foot facility that was substantially renovated in 2005 and includes a computer lab, fitness center, gymnasium, multi-purpose room, playground, spray park, ballfields, tennis courts, pavilion, and a large multi-purpose field; and (ii) the Randall Recreation Center, which provides an indoor multi-purpose room and several outdoor facilities including a pool, basketball courts, soccer field, and tennis courts. Other significant parks and recreation facilities including East Potomac Park and the National Mall are also located in close proximity to the M Street Sites. Thus, the Commission finds that the M Street Sites will not adversely impact the availability of recreation centers and facilities in the surrounding area.
144. Finally, the Commission finds that the Project will not adversely impact fire stations or emergency response times. The Southwest is home to the newly constructed Engine

Company 13 (“EC13”), which was completed in November 2015 and is the first new fire station to be built in the District in more than 20 years. Located at 400 E Street, S.W., in close proximity to the project, EC13 is a facility used by D.C. Fire and Emergency Management Service (“FEMS”) and serves the population of Southwest.

145. Based on the foregoing, as well as information included in the Applicant’s Post-Hearing Submission and as testified to by Mr. Shane Dettman at the public hearing, the Commission concludes that the issues raised by DC4RD are unsubstantiated, generalized grievances, not specific to the M Street Sites or the second-stage PUD. (Ex. 131F.) And, to the extent that any of the issues raised are applicable to the Project, the Commission finds that the Applicant has fully addressed all of DC4RD’s relevant concerns.

CONCLUSIONS OF LAW

1. Pursuant to the Zoning Regulations, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD: (a) results in a project superior to what would result from the matter-of-right standards; (b) offers a commendable number or quality of meaningful public benefits; and (c) protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan. (11-X DCMR § 300.1.)
2. Under the PUD process of the Zoning Regulations, the Commission has the authority to modify the approved first-stage PUD and to consider an application for approval of a second-stage PUD. The Commission may impose development conditions, guidelines, and standards which may exceed or be less than the matter-of-right standards identified for height, density, lot occupancy, parking, loading, yards, and courts. The Commission may also approve uses that are permitted as special exceptions and would otherwise require approval by the Board of Zoning Adjustment.
3. Development of the property included in this Application carries out the purposes of 11-X DCMR, Chapter 3 of the Zoning Regulations to encourage the development of well planned developments which will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development. The Application is consistent with the purposes and goals of the Commission’s approval in the first-stage PUD and the proposed modifications serve to enhance the Overall Project.
4. The Application complies with the applicable height, bulk, and density standards of the Zoning Regulations and the first-stage PUD. The mix of uses is appropriate for the M Street Sites. The impact of the Project on the surrounding area is not unacceptable. Accordingly, the Application should be approved.
5. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

6. The Applicant did not request any flexibility from the Zoning Regulations, but did request flexibility with respect to the design of the M Street Buildings and surrounding public spaces, which are not inconsistent with the Comprehensive Plan. Moreover, the number and quality of benefits and amenities approved in the first-stage PUD and proposed in this Application are reasonable trade-offs for the flexibility and development incentives requested.
7. Ordinarily, the Commission’s approval of a second-stage PUD remains valid for two years, during which time an application for a building permit to construct the PUD must be filed and construction must be within three years of the order’s effective date. The Applicant has requested two vesting periods as follows: approval of the East M Building shall be valid for a period of two years from the effective date of Z.C. Order No. 02-38I. Within that time, the Applicant shall file for a building permit for the East M Building, and shall begin construction of the East M Building within three years of the effective date of Z.C. Order No. 02-38I. If either of these deadlines are missed, the approvals of the East M and West M Buildings shall expire. If both deadlines are met, approval of the West M Building shall be valid for a period of two years following issuance of the first certificate of occupancy for the East M Building. Within that time, the Applicant shall file for a building permit for the West M Building, and shall begin construction of the West M Building within three years of issuance of the first certificate of occupancy for the West M Building
8. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the Comprehensive Plan. In addition, the Project will promote the orderly development of the M Street Sites in conformity with the entirety of the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.
9. The Commission is required under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2001)), to give great weight to OP’s recommendations. The Commission carefully considered the OP reports in this case and, as explained herein, finds OP’s recommendation to grant the Application persuasive.
10. The Commission is required under § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)) to give great weight to the issues and concerns raised in the written report of the affected ANC. ANC 6D’s written report dated April 4, 2018 expressed conditional support for the Application, subject to the Applicant addressing certain outstanding conditions. (Ex. 68.) As described in this Order, the Applicant worked with ANC 6D following submission of its resolution and after the public hearing, and submitted a detailed response in its post-hearing submission to each of the questions and concerns that had been raised by the ANC at that time. (Ex. 131.) The ANC submitted a response to the Applicant’s post-hearing submission, which raised several new and additional concerns and conditions that were not previously raised by the ANC or addressed directly by the Applicant. (Ex. 134.) However, the Commission has given great weight to each of

the issues raised by the ANC, including the issues raised in Exhibit 134, and this Order makes findings and conclusions as to each of those issues. To the extent that the Commission does not follow the ANC's recommendations or agree with the ANC's conditions, it has provided findings and conclusions supported by evidence in the record supporting its position. Thus, the Commission finds its decision in this Order grants the ANC the great weight to which it is entitled.

11. The Application for a PUD is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401 et seq. (2007 Repl.)).

DECISION

In consideration of the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a second-stage PUD and a modification of significance to the previously approved first-stage PUD for the M Street Sites, subject to the guidelines, conditions, and standards set forth below:

A. Project Development

1. The M Street Buildings shall be developed with two mixed-use buildings containing residential, retail, office, and community center uses in accordance with the plans prepared by Perkins Eastman DC, dated July 2, 2018, and included in the record at Exhibits 131G1-131G13, ("Approved Second-Stage PUD Plans"), as modified by the supplemental landscape plan prepared by Perkins Eastman DC, dated July 16, 2018, and included in the record at Exhibit 135 ("Supplemental Landscape Plan") as modified by the guidelines, conditions, and standards herein.
2. The East M Building shall have a total of approximately 339,733 square feet of gross floor area, which will include approximately 282,208 square feet of gross floor area devoted to residential use; approximately 19,069 square feet of gross floor area devoted to retail use; approximately 32,456 square feet of gross floor area devoted to office use; and approximately 6,000 square feet of gross floor area devoted to a community center. The West M Building shall have a total of approximately 322,773 square feet of gross floor area, which will include approximately 301,670 square feet of gross floor area devoted to residential use and approximately 21,103 square feet of gross floor area devoted to retail use.
3. The East M Building shall include a below-grade parking garage with approximately 220 parking spaces. The West M Building shall include a below-grade parking garage with approximately 179 parking spaces.
4. The M Street Buildings shall include loading facilities as shown on the Approved Second-Stage PUD Plans.

5. The West M Building shall include landscaping as shown on the Approved Second-Stage PUD Plans. The East M Building shall include landscaping as shown on the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan.
6. The Applicant shall have flexibility with the design of the M Street Buildings in the following areas:
 - a. To provide a range in the number of residential units of plus or minus five percent;
 - b. To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the buildings, and specifically to modify the locations of demising walls and exact number of retailers within each M Street Building to provide the greatest amount of flexibility in use;
 - c. To make refinements to the garage configuration, including layout, parking spaces, and other elements, so long as the total minimum number of parking spaces is provided as set forth in Z.C. Order No. 02-38A;
 - d. To vary the final color of the exterior materials within the color ranges shown on the Approved Second-Stage PUD Plans, based on availability at the time of construction. Any such variations shall not reduce the overall quality of materials, nor substantially change the exterior appearance, proportions, or general design intent of the buildings;
 - e. To make minor variations to the location, attributes and general design of the streetscape within the overall PUD Site, including the location of short term exterior bicycle parking spaces and the proposed landscape plans included in the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, to comply with the requirements of and approval by the DDOT Public Space Division and the other Waterfront Station property owners, without changing the overall design intent, the general location and dimensions of landscaping and hardscaping, or the quality of materials;
 - f. To locate retail entrances in accordance with the needs of the retail tenants and to vary the façades as necessary;
 - g. To make minor refinements to the buildings' details and dimensions, including belt courses, sills, bases, cornices, railings, roof, skylight, architectural embellishments and trim, window mullions and spacing, or any other changes to comply with the District of Columbia Building Code or that are necessary to obtain a final building permit or any other

applicable approvals. Any refinements may not substantially change the buildings' external configurations, appearance, proportions, or general design intent;

- h. To vary the types of uses designated as “retail” use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Retail (11-B DCMR § 200.2(cc)); (ii) Services, General (11-B DCMR § 200.2(dd)); (iii) Services, Financial (11-B DCMR § 200.2(ee)); (iv) Eating and Drinking Establishments (11-B DCMR § 200.2(j)); (v) Medical Care (11-B DCMR § 200.2(p)); and (Arts, Design, and Creation (11-B DCMR § 200.2(e));
- i. To vary the types of uses designated as “office” use on the Approved Second-Stage PUD Plans to include the following use categories: (i) Office (11-B DCMR § 200.2(x)); (ii) Institutional, General (11-B DCMR § 200.2(q)); (iii) Medical Care (11-B DCMR § 200.2(p)); (iv) Daytime Care (11-B DCMR § 200.2(i)); and (v) Services, Financial (11-B DCMR § 200.2(ee));
- j. To vary the font, message, logo, and color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- k. To vary the configuration and layout of the exterior courtyards, so long as the courtyards continue to function in the manner proposed and the overall design intent, general locations for landscaping and hardscaping, and quality of materials are maintained; and
- l. In the retail and service areas, to vary the location and design of the ground-floor components in order to accommodate specific tenant requirements and/or to comply with any applicable District of Columbia laws and regulations, including the D.C. Department of Health, that are otherwise necessary for licensing and operation of any retail or service use, and to modify the number of retailers within each M Street Building.

B. Public Benefits

- 1. **The Applicant shall submit with its building permit application for the East M Building** a checklist evidencing that the East M Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.
- 2. **The Applicant shall submit with its building permit application for the West M Building** a checklist evidencing that the West M Building has been designed to achieve LEED Silver under LEED v4 for Building Design and Construction.

3. **The Applicant shall submit with its building permit application for the East M Building** a copy of the executed First Source Employment Agreement and a copy of the executed CBE Agreement, consistent with Exhibits 2K and 2L, respectively.
4. **The Applicant shall submit with its building permit application for the West M Building** a copy of the executed First Source Employment Agreement and a copy of the executed CBE Agreement, consistent with Exhibits 2K and 2L, respectively.
5. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has contributed \$30,000 to DDOT for the purpose of undertaking a safety study related to the 4th and M Street intersection. Should the safety study require additional adjustments that do not correspond to the approved PUD, then the Applicant shall support making those adjustments as recommended.
6. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that: (i) it met with ANC 6D up to three times to select a local artist who is familiar with the history of Waterfront Station to establish the general design and scope of work for installing the Public Space Element; and (ii) that it met once (physically or electronically) with ANC 6D for the purpose of creating and implementing a cohesive and enforceable management plan for Waterfront Station.
7. **During construction of the East and West M Street Buildings**, the Applicant shall abide by the terms of the applicable Construction Management Plan included in the record as part of Exhibit 131A.
8. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that the Public Space Element has been installed.
9. **Prior to the issuance of a certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) contributed up to \$500,000 for the community center's interior design and fit-out; (ii) contributed up to \$50,000 for furniture, fixtures, and equipment; and (iii) installed low-e coated glass with a solar heat gain coefficient (SHGC) of 0.39 maximum on the south face of the community center to minimize heat gain. The contributions shall be made to the community center operator. The Applicant shall provide a letter from the operator indicating that the interior design and fit-out has been or is being completed and furniture has been or is being purchased.
10. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it provided notice to ANC 6D when construction of the East M Building started

(“Notice of East Building Construction Start”) and proof that it met twice with ANC 6D within the first year following the date of the Notice of East Building Construction Start to continue work on implementing a management plan for Waterfront Station.

11. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall demonstrate to the Zoning Administrator that it provided notice to ANC 6D when construction of the West M Building started (“Notice of West Building Construction Start”) and proof that it met annually with ANC 6D following the first year after the date of the Notice of West Building Construction Start to continue work on implementing a management plan for Waterfront Station.
12. The Applicant shall provide environmental benefits as set forth in this condition:
 - a. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall provide information to the Zoning Administrator showing the total square footage of solar panel systems provided on the East M Building; and
 - b. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall provide information to the Zoning Administrator: (i) showing the total square footage of solar panel systems provided on the West M Building; and (ii) confirming that the total square footage of solar panel systems provided on the M Street Buildings combined is a minimum of 2,400 square feet.
13. **Within one year following the issuance of the final certificate of occupancy for the West M Building**, the Applicant shall provide proof to the Zoning Administrator that it met with ANC 6D to discuss its final issues and concerns.
14. **For the first 30 years following the issuance of the certificate of occupancy for the community center within the East M Building**, the Applicant shall not charge the community center operator for any: (i) rental fees; (ii) property taxes; (iii) building maintenance fees; (iv) operating expenses; or (v) utilities. The fees for utilities used by the community center during this 30-year timeframe shall be billed directly to the Applicant.
15. **For the life of the East M Building**, the Applicant shall dedicate a minimum of 6,000 square feet of gross floor area in the East M Building as a community center, and shall provide access for community center visitors and employees to the shared outdoor courtyard at the second level of the East M Building.
16. **For the life of the Project**, the Applicant shall: (i) use the retail space for neighborhood-serving retail and service uses, including, but not limited to, uses such as restaurants, coffee shops, flower shops, video stores, drug stores, banks,

electronic stores, bakeries, dry cleaners, and other similar types of uses in accordance with Condition No. 13 of Z.C. Order No. 02-38A; (ii) limit the size of the individual retail spaces in the M Street Buildings to a maximum of 10,000 square feet each; (iii) reserve a minimum of 6,000 square feet in the M Street Buildings combined for retail spaces having no more than 1,500 square feet, for a minimum commitment of four retail spaces each at a maximum of 1,500 square feet; (iv) ensure that no single retail space in the East M Building will have more than 7,500 square feet and no single retail space in the West M Building will have more than 10,000 square feet; (v) dedicate a minimum of 1,000 square feet in the M Street Buildings to small and local businesses as part of its compliance with Condition No. 14 of Z.C. Order No. 02-38A (which sets forth a 12,500 square feet minimum required for small and local retailers); and (vi) prohibit any digital advertising signage on the exterior of the M Street Buildings.

17. **For the life of the Project**, the Applicant shall only enter into residential leases of a minimum term between 12 to 24 months in the M Street Buildings and shall not provide any month-to-month residential leases, except in the limited scenario of on-site employees and existing tenants at the expiration of a lease. No residential rentals for under one month shall be provided at either of the M Street Buildings by the Applicant or by any agent acting on the Applicant’s behalf.

18. The Applicant shall provide affordable housing as set forth in this condition:

a. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing for the East M Building as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	231,491 sf (100%)	289	N/A	N/A	N/A	
Market Rate	211,920 sf (91.5%)	264	Market Rate	N/A	Rental	
IZ Required	18,519 sf (8%)	24	Up to 60% MFI	Life of the project	Rental	The Applicant shall reserve a minimum of three 3-bedroom units as IZ units. The 1,052 sf devoted to IZ above the 8% required will be located within one of the three 3-bedroom units.
Additional IZ (over the IZ requirement)	1,052 sf (0.5%)	1	Up to 60% MFI	Life of the project	Rental	
Total IZ Provided	19,571 sf (8.5%)	25	Up to 60% MFI	Life of the project	Rental	

- b. **For the life of the Project**, the Applicant shall provide the following housing and affordable housing for the West M Building as set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Income Type	Affordable Control Period	Affordable Unit Type	Notes
Total	257,371 sf (100%)	309	N/A	N/A	N/A	
Market Rate	236,781 sf (92%)	284	Market Rate	N/A	Rental	
IZ Required and Provided	20,590 sf (8%)	25	Up to 60% MFI	Life of the project	Rental	The Applicant shall reserve a minimum of three 3-bedroom units as IZ units.

- c. The covenant required by D.C. Official Code §§ 6-1041.05(a)(2)(2012 Repl.) shall include a provision or provisions requiring compliance with this condition.

C. MOA Conditions

1. As shown on the Approved Second-Stage PUD Plans and the Supplemental Landscape Plan, the East M Building shall be subject to the following requirements:
 - a. The North-South Private Drive on the east side of the East M Building shall have a minimum width of 22'-0" curb-to-curb and be repaved as shown on Sheets L2, L2A, and L4 of the Approved Second-Stage PUD Plans. The North-South Private Drive shall include an Americans with Disabilities Act-compliant sidewalk no less than four feet, six inches wide and greenspace of no less than two feet wide, except for in the area of the parking garage ramp, loading access point, and handicapped path clearances. (Ex. 131G10.) The final selection of plant materials will be selected in accordance with Section 2(b)(iii) of the MOA; (Ex. 131C.)
 - b. The ground-floor façade of the East M Building opposite Waterfront Tower (brick walls along east and north facades at the northeast corner of the East M Building) shall have vertical plantings of an evergreen plant material in the locations shown on the Supplemental Landscape Plan. The final selection of plant materials will be selected in accordance with Section 5 of the MOA; (*Id.*)

- c. The Applicant shall select and plant low-scale plantings between the East M Building and Waterfront Tower in the area shown on Sheets L2A and L4 of the Approved Second-Stage PUD Plans and Sheets L4r1 and 88r1 of the Supplemental Landscape Plan, to be coordinated with Waterfront Tower in accordance with Section 8 of the MOA; and (Ex. 131G10, 135.)
 - d. The North-South Private Drive shall have paving that matches the current treatment on the East-West Plaza.
2. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it included Waterfront Tower representatives in quarterly meetings, unless cancelled with agreement from Waterfront Tower, with representatives from adjacent buildings to discuss issues relating to the North-South Private Drive and East-West Plaza adjacent to Waterfront Tower (including topics such as lighting, landscaping, wayfinding and traffic signage, security, and traffic management). After occupancy of the East M Building, the Applicant shall inform Waterfront Tower of any proposed changes to the topics listed above and shall consider any input from Waterfront Tower on the proposed changes.
3. The Applicant shall abide by the following construction management conditions:
 - a. **Prior to the start of construction of the East M Building**, the Applicant shall perform a pre-construction survey to document the condition of the exterior and specified common areas in the interior of Waterfront Tower. **During construction of the East M Building**, the Applicant shall monitor Waterfront Tower for potential damage to the building from vibrations associated with construction of the East M Building. **No later than three months following the issuance of the first certificate of occupancy for the East M Building**, Waterfront Tower, at its election, may require the Applicant to pay for a post-construction survey to be completed within four weeks of the request. The pre- and post-construction survey and monitoring activities shall comply with the provisions set forth in the MOA. In the event that it is determined that Waterfront Tower sustained damage due to activities attributable to the Applicant's development, excavation, or construction of the East M Building, the Applicant shall coordinate repairs with Waterfront Tower and shall pay for all such repairs; and
 - b. **During construction of the East M Building**, the Applicant shall establish a Community Advisory Committee ("Committee") to oversee and coordinate community concerns and issues. The Committee will consist of, at a minimum, representatives of ANC 6D, Waterfront Tower, the Applicant, and the Applicant's general contractor. The Committee shall meet quarterly, as needed, and the Applicant shall send monthly email updates between the quarterly meetings, as needed, to provide

updates on issues related to construction of the M Street Buildings. The following conditions shall apply during construction of the East M Building:

- i. The Applicant shall provide Waterfront Tower with quarterly construction activity schedules;
 - ii. The Applicant shall provide Waterfront Tower with the name, title, and contact information of a point of contact through whom Waterfront Tower will communicate with the Applicant's construction manager in case of immediate concerns with daily or weekly construction activities to include, but not be limited to, resident safety concerns;
 - iii. The Applicant shall abide by construction permit hours and shall not perform outdoor construction before 7:00 a.m. on Saturday or at all on Sunday, in accordance with the D.C Construction Code Supplement, without prior written agreement from Waterfront Tower and ANC 6D Committee representatives;
 - iv. The Applicant shall enforce unimpeded access to Waterfront Tower at all times. The Applicant may provide alternative access options with prior written agreement from Waterfront Tower and ANC 6D Committee representatives (examples include, but are not limited to, a flag man directing traffic two ways down the one-way private drive); and
 - v. The Applicant shall pay all fees incurred by Waterfront Tower when construction-related activities do impede any service from accessing Waterfront Tower including, but not limited to, trash and recycling pick-up. The Applicant shall pay these fees in a timely manner.
4. **Prior to the issuance of a building permit for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it included Waterfront Tower representatives in quarterly meetings, unless cancelled with agreement from Waterfront Tower, with representatives from adjacent buildings to discuss issues relating to the North-South Private Drive and East-West Plaza adjacent to Waterfront Tower (including topics such as lighting, landscaping, wayfinding and traffic signage, security, and traffic management).
5. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall provide evidence to the Zoning Administrator that it took the following actions in accordance with the MOA with Waterfront Tower: (i) that it helped facilitate a meeting with a representative from The Bernstein Companies regarding alternative parking solutions for Waterfront Tower's

moving vans, deliveries, contractors, and visitors that currently use the North-South Private Drive adjacent to Waterfront Tower; (ii) subject to approval by the other Waterfront Station property owners, that the Applicant submitted an application to the D.C. Code Official for approval of street names for the North-South Private Drives; (iii) that the Applicant submitted a letter to DDOT in support of Waterfront Tower’s loading zone application on the west side of 3rd Street, S.W., north of M Street, S.W; and (iv) that the Applicant did not object to any work between Waterfront Tower and DDOT in the designation of a new curb cut on the west side of 3rd Street, north of M Street, for a pick-up and drop-off area.

6. **Within 30 days after publication of the Z.C. Order 02-38I in the D.C. Register, or by March 31, 2019, whichever is earlier,** the Applicant shall deposit \$40,000 into an escrow fund for the benefit of Waterfront Tower to be used to fund: (i) alternative parking solutions in the neighborhood for Waterfront Tower’s moving vans, deliveries, contractors, and visitors; (ii) energy efficiency improvements at Waterfront Tower (e.g. solar panel installation, LED conversion, modernizations to the existing heating and cooling systems); and/or (iii) beautification improvements along the North-South Private Drive and entrance to Waterfront Tower.

D. Transportation Mitigation Measures

1. **For the life of the Project,** the Applicant shall implement the following transportation demand management (“TDM”) measures:
- a. The Applicant shall identify a TDM leader (for planning, construction, and operations). The TDM leader shall work with residents and tenants of the M Street Buildings to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package;
 - b. The Applicant shall provide TDM leader contact information to DDOT and report TDM efforts and amenities to goDCgo staff once per year. The first report is due within six months following the point at which 75% of the residential units in the East M Building are leased, and shall be provided annually thereafter;
 - c. The Applicant shall post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - d. The Applicant shall provide website links to CommuterConnections.com and goDCgo.com on property websites;

- e. The Applicant shall unbundle all parking from the cost of the lease or purchase of residential units. Parking costs shall be set at the average market rate within one-quarter mile, at a minimum;
- f. **Prior to the issuance of the first certificate of occupancy for each M Street Building**, the Applicant shall install one Transportation Information Center Display (electronic screen) within each residential lobby of the M Street Buildings, containing information related to local transportation alternatives;
- g. The Applicant shall provide at least 20 collapsible shopping carts (10 in each M Street Building) for resident use to run errands and for grocery shopping;
- h. The Applicant shall exceed the 2016 Zoning Regulations' requirements for bicycle parking by approximately nine spaces. This includes secure interior bicycle parking (minimum of 85 spaces in the West M Building and 93 spaces in the East M Building) and short-term exterior bicycle parking around the perimeter of the M Street Sites (minimum of 47 spaces in total). Long-term bicycle storage shall be offered to residents and employees and will accommodate non-traditional sized bikes including cargo, tandem, and kids bikes;
- i. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall install a bicycle repair station within the East M Building's long-term bicycle storage room. **Prior to the issuance of the first certificate of occupancy for the West M Building**, the Applicant shall install a bicycle repair station within the West M Building's long-term bicycle storage room;
- j. The Applicant shall exceed 2016 Zoning Regulations' by providing a minimum of two showers and eight lockers in the West M Building and a minimum of two showers and 20 lockers in the East M Building. These facilities shall be available for use by office and retail employees such that each non-residential long-term bicycle parking space has an accompanying locker;
- k. The Applicant shall offer an annual Capital Bikeshare or carshare membership to each residential unit upon initial occupancy, at the choice of the resident;
- l. **Within six months following the point at which 75% of the residential units in the East M Building are leased**, the Applicant shall host a transportation event for residents, employees, and members of the community once per year for a total of three years (examples: resident

social, walking tour of local transportation options, lobby event, transportation fair, WABA Everyday Bicycling Seminar, etc.);

- m. The Applicant shall not apply for RPP for either of the M Street Buildings and shall include a rider in all residential leases, to be initialed by the residential tenant, that restricts all residential tenants of the M Street Buildings from obtaining RPPs while under the terms of their lease;
- n. The Applicant shall provide four spaces dedicated for carsharing services to use with right of first refusal. If no agreement has been reached for the use of all four spaces within six months following the issuance of the first certificate of occupancy for the West M Building, the following shall apply:
 - i. If an agreement has been reached with one or more carsharing services for only three spaces, the Applicant shall extend the annual transportation event described in Decision No. D(1)(l) for an additional year; and
 - ii. If an agreement has been reached with one or more carsharing services for only two spaces or less, the Applicant shall offer an additional year of Capital Bikeshare or carshare membership to each residential unit;
- o. **Prior to the issuance of the first certificate of occupancy for the East M Building**, the Applicant shall demonstrate to the Zoning Administrator that it has: (i) worked with DDOT to select an appropriate location for the relocation of the Capital Bikeshare station at the intersection of 4th and M Streets, S.W.; (ii) funded the expansion of at least four docks to the existing station; and (iii) contributed a minimum of \$3,800 to DDOT for the relocation and expansion described in (i) and (ii) above;
- p. **For the life of the East M Building (unless otherwise noted)**, the Applicant shall implement the following loading management measures for the East M Building:
 - i. The Applicant shall permit the East M Building's loading doors to remain open only to allow entry and exit of vehicles and shall not permit them to remain open during or between deliveries;
 - ii. The Applicant, through its on-site property management, shall instruct and enforce mail and parcel couriers (examples include, but are not limited to, USPS, UPS, and FedEx) to make deliveries to the East M Building only within the East M Building's indoor loading dock;

- iii. **For the first twelve months following the issuance of the first certificate of occupancy for the East M Building, or until the East M Building reaches 95% residential occupancy, whichever occurs first,** the Applicant shall restrict residential move-ins and move-outs at the East M Building to occur between the hours of 9:00 a.m. and 6:00 p.m., on the days of Sunday through Saturday, and within the East M Building’s indoor loading dock only. **After this initial period and for the remaining life of the East M Building,** residential move-ins and move-outs at the East M Building shall occur between the hours of 9:00 a.m. and 6:00 p.m., on the days of Monday through Saturday, and within the East M Building’s indoor loading dock only;
- iv. The Applicant shall restrict retail and residential deliveries to occur between the hours of 8:00 a.m. and 6:00 p.m., on the days of Monday through Saturday, and within the East M Building’s indoor loading dock only;
- v. The Applicant shall restrict restaurant deliveries to occur between the hours of 7:00 a.m. and 6:00 p.m., on the days of Sunday through Saturday, and within the East M Building’s indoor loading dock only;
- vi. The Applicant shall prohibit vehicles used for the activities described in Decision Nos. D(1)(P)(ii)-(v) from parking or idling in the North-South Private Drive adjacent to Waterfront Tower in transit to and from the East M Building’s indoor loading dock; and
- vii. The Applicant shall provide advance notice to Waterfront Tower of any proposed changes to the items listed in Decision No. D(1)(p)(ii)-(vi).

E. Miscellaneous

- 1. No building permit shall be issued for the M Street Buildings until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the M Street Sites in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
- 2. Approval of the East M Building shall be valid for a period of two years from the effective date of Z.C. Order No. 02-38I. Within that time, the Applicant shall file for a building permit for the East M Building, and shall begin construction of the

East M Building within three years of the effective date of Z.C. Order No. 02-38I. If either of these deadlines are missed, the approvals of the East M and West M Buildings shall expire. If both deadlines are met, approval of the West M Building shall be valid for a period of two years following issuance of the first certificate of occupancy for the East M Building. Within that time, the Applicant shall file for a building permit for the West M Building, and shall begin construction of the West M Building within three years of issuance of the first certificate of occupancy for the West M Building.

3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended, D.C. Official Code § 2-1401.01 et seq., (“Act”) the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.

On September 17, 2018, upon the motion of Commissioner Turnbull, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the Application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of 11-Z DCMR § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 18, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 15-15A
Z.C. Case No. 15-15A
JBG/Boundary 1500 Harry Thomas Way, LLC and
JBG/Boundary Eckington Place, LLC
(Modification of Consequence of Consolidated PUD @ Square 3576, Lot 57¹)
September 17, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held public meetings on July 30, 2018, and on September 17, 2018. At the September 17, 2018 meeting, the Commission approved the application of JBG/Boundary 1500 Harry Thomas Way, LLC and JBG/Boundary Eckington Place, LLC (collectively, “Applicant”) for a modification of consequence of the consolidated PUD application approved by Z.C. Order No. 15-15. The property (Lot 57 in Square 3576) that is the subject of this application is bounded by rowhouses, a vacant lot, and a self-storage facility to the north, Eckington Place, N.E. to the west, a multi-family property to the south, and Harry Thomas Way, N.E. to the east (“Property”). The modification request was made pursuant to § 703 of the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations.

FINDINGS OF FACT

BACKGROUND INFORMATION

1. The Commission approved the PUD in 2016 by Z.C. Order No. 15-15. The Property consists of approximately 135,099 square feet of land area. Z.C. Order No. 15-15 approved a consolidated PUD and a related Zoning Map amendment for the Property from M to CR, under the 1958 Zoning Regulations then in effect, to allow construction of a mixed-use development consisting of four structures containing residential units, ground-floor commercial uses, and underground parking. The PUD project will have an overall density of up to 5.2 floor area ratio (“FAR”), including up to approximately 695 residential units, and up to approximately 77,184 gross square feet of commercial, retail, and service uses (“Project”).
2. The Commission, at its July 30, 2018 public meeting², determined that the application qualified as a modification of consequence under Subtitle Z § 703 of the Zoning Regulations, and that no public hearing was necessary pursuant to Subtitle Z § 703.1. The Commission therefore, pursuant to Subtitle Z § 703.17(c)(2), established a timeframe for additional filings and for the Commission’s deliberations on the merits of the application and for the submission of comments by the parties, if any.

¹ Lot 57 was consolidated into one record lot from Lots 814 and 2001-2008 (formerly Lot 805) in Square 3576.

² The application was originally scheduled for initial consideration at the Commission’s public meeting on June 11, 2018, but was rescheduled to July 30, 2018, at the Applicant’s request.

CURRENT APPLICATION

3. The modification proposed by this application revises the design of the south façade of the Project’s southeast structure (“Southeast Structure”) to enclose the rear open corridors and balconies for the first five floors of the building. The modification is requested in order for the Southeast Structure to comply with the Fire Code (Subtitle H of Title 12, DCMR), which requires 10 feet of separation from exterior egress balconies, accessways, and stairs to the nearest lot line. The Southeast Structure, as designed, provides a zero lot line condition and, thus, cannot accommodate the code-required separation. Accordingly, a modification is required. (Exhibits [“Ex.”] 1, 1C, 12, 13A1, 13A2.)
4. The new proposed south wall of the Southeast Structure will be located along the property line and will include fenestration to ensure the availability of light, articulate the façade, break down the mass of the building, and achieve an overall aesthetic in keeping with the Project’s original design scheme. The proposed wall will be composed of cementitious siding painted with lighter brown and grey hues to enhance ambient light between the Southeast Structure and The Gale building immediately to the south. (Ex. 1, 12, 13A1, 13A2.)
5. As outlined in the Applicant’s submissions, enclosing the rear corridors and balconies of the Southeast Structure will enhance the privacy of the residents of The Gale building, which is approximately six feet from the shared lot line. The residential units in the Southeast Structure front onto the woonerf to the north of the building and face The Gale development to the south, with unit entrances on the south side on the corridor levels (Floors 1, 3, and 5). The previously approved design would externalize traffic to and from unit entrances along the unenclosed south corridors. In addition, the previous design included balconies facing south towards The Gale on Floors 2 and 4. Both the unenclosed corridors and balconies would offer direct views into certain windows of The Gale building. Enclosing the corridors and replacing the balconies with internal unit space mitigates the privacy impact of the previously approved design on The Gale units. This modification also enhances privacy for the residents of the Southeast Structure who, under the proposed design, are able to access their units without being viewable outside of their own corridors, in addition to providing protection from the elements. (Ex. 12, 13A2.)
6. In addition, the proposed modification also increases the second-floor living space for units on Floors 1-2 and 3-4 of the Southeast Structure by enclosing the balconies on Floors 2 and 4. Because these units face onto the woonerf to the north, with either outdoor patio or balcony space facing the woonerf, replacing the southern balconies with enclosed living space will provide the benefits described above, while still maintaining outdoor recreation space for residents. (Ex. 12, 13A2.)
7. Any impact from the proposed modification on light and air available to The Gale building will be minimal, as the footprint of the Southeast Structure will remain the same

as originally proposed, with the only difference being the enclosure of the corridor and balcony space on the first five floors. Further, eliminating the corridor and balcony overhangs may, in fact, improve ambient light between the buildings by allowing the wall to reflect light entering that space, rather than light being captured and lost to the shadows of the overhangs. (Ex. 1, 12, 13A1, 13A2.)

8. As noted above, the only other party to the original PUD approval was ANC 5E. In satisfaction of Subtitle Z § 703.13, the Applicant provided a Certificate of Service which noted that ANC 5E was served with the application. (Ex. 1.) ANC 5E did not submit any comments into the record regarding the requested modification.
9. OP submitted a report on July 24, 2018, recommending that the Commission consider the application as a modification of consequence. (Ex. 14.) OP concluded that the proposed modification is not likely to have a significant impact on the appearance of the structure from the public way and that the proposed design would provide greater privacy for residents of The Gale building to the south than would the previously approved design.

CONCLUSIONS OF LAW

Pursuant to Subtitle Z § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence is “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.” (11 DCMR Subtitle Z § 703.3.) Examples of modifications of consequence “include, but are not limited to, a proposed change to a condition in the final order, a change in position on an issue discussed by the Commission that affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (*Id.* § 703.4.)

The Commission concludes that the modifications requested in the subject application and depicted in the plans submitted as Exhibit 1C, 13A1, and 13A2 are modifications of consequence and, therefore, can be granted without a public hearing. The Commission finds that the proposed modifications constitute a redesign of architectural elements under Subtitle Z § 703.4 and are entirely consistent with the Commission’s previous approval of the PUD. The use of the Property has not changed, and the Applicant is only proposing a redesign of architectural elements of the building that do not diminish or detract from the Commission’s original approval of the Project as a result of Fire Code requirements.

The Commission is required under D.C. Official Code § 1-309.10(d)(3)(A) (2012 Repl.), to give “great weight” to the issues and concerns contained in the written report of an affected ANC. In this case, ANC 5E did not submit comments into the record regarding the requested modification. The Commission is also required to give great weight to OP’s recommendations under D.C. Official Code § 6-623.04 (2012 Repl.). The Commission concurs with OP’s recommendation that the application be considered as a modification of consequence application. The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

In consideration of the above Findings of Fact and Conclusions of Law contained in this order, the Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the consolidated PUD project approved in Z.C. Order No. 15-15. The conditions in the approved PUD remain unchanged, except as follows. Condition No. 1 of Z.C. Order No. 15-15 is revised to read as follows:

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on July 5, 2016 (Exhibit 51A for Case No. 15-15), as modified by the plans submitted on May 11, 2018 (Exhibit 1C for Case No. 15-15A) and on July 24, 2018 (Exhibits 13A1 and 13A2 for Case No. 15-15A), and as modified by the guidelines, conditions, and standards herein (collectively, the “Plans”).

On September 17, 2018, upon the motion of Commissioner Hood, as seconded by Vice Chairman Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **4-0-1** (Anthony J. Hood, Robert E. Miller, Peter G. May, and Michael G. Turnbull to approve; Peter A. Shapiro, not present, not voting).

In accordance with the provisions of Subtitle Z § 604.9 of the Zoning Regulations, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on January 18, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 16-09A
Z.C. Case No. 16-09A
1200 3rd Street, N.E., LLC
(PUD Modification of Consequence @ Square 747, Lot 8)
November 19, 2018

Pursuant to notice, a public meeting of the Zoning Commission for the District of Columbia (“Commission”) was held on November 19, 2018. At that meeting, the Commission approved the application of 1200 3rd Street, LLC (“Applicant”) for a modification of consequence to Z.C. Order No. 16-09 (“Order”). The property that is the subject of this modification comprises Lot 8 in Square 747 (“Property”). The modification request was pursuant to § 703 of the Commission’s Rules of Practice and Procedure, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (“DCMR”).

As discussed below, no party, person, or entity appeared in opposition to the application at the public meeting or filed anything in the record. Accordingly, a decision by the Commission to grant this application would not be adverse to any party, and pursuant to 11-Z DCMR § 604.7, the Commission waives the requirements for findings of facts and conclusions of law. As set forth below, the Commission hereby approves the application.

Application, Parties, and Public Meeting

1. Pursuant to Chapter 24 of the 1958 Zoning Regulations, the Commission approved the design of a mixed-use project on the Property that includes residential, retail, and hotel uses (“Project”). This approval is reflected in Z.C. Order No. 16-09. (Exhibit [“Ex.”] 1B.)
2. On August 29, 2018, the Applicant submitted an application for a modification of consequence related to the materials approved for the hotel building as well as a modification of the approved parking plan. The Applicant included a set of plans depicting each of the following modifications: (Ex. 1, 1C.)
 - a. Hotel Materials: Two materials on the east façade of the hotel will be changed. The wood composite and formed metal panels will be replaced with glazed terra cotta tiles that will be embedded in precast panels to form a composite façade cladding assembly; and
 - b. Parking Plan: The parking plan is modified to provide compact spaces in clusters less than five spaces, as required pursuant to § 2115.4, and to allow standard spaces that are nine feet by 18 feet in size rather than nine feet by 19 feet, as required by § 2115.1.
3. The Office of Planning (“OP”) submitted a report dated October 10, 2018, recommending approval of the modification of consequence as requested. OP supported the modifications as they were “relatively minor adjustment to materials of a similar quality and color.” It further supported the parking relief as the overall number of parking spaces was not being modified. (Ex. 5.)

4. Advisory Neighborhood Commission (“ANC”) 6C submitted a letter dated November 19, 2018, in support of the modifications, but noted a concern regarding a potential change in the location of the exterior door for the vehicular entry point opening onto M Street, N.E. (Ex. 6.) Because the Applicant did not include a request to modify the location of the exterior door of the garage in its application, the Commission did not consider such a request as part of this application.
5. The Commission, at its October 22, 2018 public meeting, determined that the application was properly a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, and that no public hearing was necessary pursuant Subtitle Z § 703.1. It noted that while the application requested additional relief from Subtitle Z §§ 2115.1 and 2115.4, it did not qualify as a modification of significance because holding a hearing on these issues would not be helpful. The Commission finds that the standard stated in Subtitle Z § 703.6 is flexible and the principal distinction between a modification of consequence and a modification of significance is whether a hearing would be helpful. Given that the record was complete, the rationale for the modification was sound and there was no opposition to the application, the Commission does not believe that a hearing would have been helpful on the application.
6. Upon determining that the application was properly before it as a modification of consequence, the Commission was then required by Subtitle Z § 703.17(c)(2) to establish a timeframe for the parties in the original proceeding to file a response in opposition to or in support of the request and for the Applicant to respond thereto; and schedule the request for deliberations. The ANC was the only party to the original proceeding, and its Single Member District representative indicated prior to the public meeting on October 22, 2018, that it had no objection to the modifications and that the ANC did not intend to take the matter up. The Commission noted that in the event the ANC changed its mind, it would be required to file its response no later than November 9, 2018. The Commission scheduled the request for deliberations for November 19, 2018.
7. As noted in Finding of Fact No. 4 above, the ANC opted to submit a letter in support of the modifications. The Commission accepted the letter into the record despite the fact that it was submitted on November 19, 2018.
8. No opposition to the modification application was filed in the record of this case.
9. The Commission, at its November 19, 2018 public meeting, voted to approve the modification of consequence.

Pursuant to 11-Z DCMR § 703.1, the Commission, in the interest of efficiency, is authorized to make “modifications of consequence” to final orders and plans without a public hearing. A modification of consequence means a “modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance. (11-Z DCMR § 703.3.) Examples of modifications of consequence “include but are not limited to, a proposed change to a condition in a change in position on an issue discussed by the Commission that

affected its decision, or a redesign or relocation of architectural elements and open spaces from the final design approved by the Commission.” (11-Z DCMR § 703.4.)

The Commission concludes that the refinement of plans and the request for additional relief, as described above, is a modification of consequence and therefore can be granted without a public hearing.

The Commission finds that the proposed modifications are entirely consistent with the Commission’s previous approval of the Project and the Order. The refinements are supported by OP and the affected ANC.

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

The Zoning Commission for the District of Columbia **ORDERS APPROVAL** of a modification of consequence to the design review project approved in Z.C. Case No. 16-09. The conditions in Z.C. Order No. 16-09 remain unchanged except as follows (deletions noted by ~~striketrough~~, additions in **bold underline**):

1. The Project shall be built in accordance with the architectural drawings submitted into the record as Exhibit 22, as modified by Exhibits 37 and 46 **in the record for Case No. 16-09, as modified by the guidelines, conditions, and standards contained in Order No. 16-09, as amended by the architectural drawings submitted into the record as Exhibit 1C in Case No. 16-09A** and the guidelines, conditions, and standards herein (collectively, the “Plans”). The Plans will incorporate:
 - a. Approximately 6,000 square feet of space in the Metro plaza;
 - b. The Applicant will record an easement in the land records prior to the issuance of a residential certificate of occupancy for the northern building to provide public access to the Metro plaza and to accommodate a connection to a future pedestrian tunnel to the NOMA-Gallaudet U Metro station;
 - c. Approximately 3,000 square feet of space for the M Street plaza; and
 - d. Approximately 500 square feet of space for the Florida Avenue plaza.
2. The Project will have flexibility from the following zoning requirements:
 - a. Section 411.4(c): special exception relief to allow a restaurant in the hotel penthouse;
 - b. Section 411.9: relief to allow varying heights for the habitable penthouse space;

- c. Section 775.5: relief from the side yard requirement;
- d. Section 2115.9: relief to allow include valet parking spaces in the proposed parking supply;
- e. Section 2201.1: relief from the requirement to provide a 55-foot loading berth for the residential uses; ~~and~~
- f. Section 2605: The Applicant is exploring the potential for establishing the southern residential building as a condominium building. In the event it does so, it seeks flexibility to locate all of the affordable units available to households with an annual income no greater than 50% AMI in the northern (rental) residential building-;
- g. **Section 2115.1: relief to allow parking spaces that are nine feet by 18 feet in size; and**
- h. **Section 2115.4: relief from the requirement that compact parking spaces be provided in clusters of at least five spaces.**

On November 19, 2018, upon the motion of Commissioner Shapiro, as seconded by Commissioner Miller, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public meeting by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to approve).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on January 18, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 18-17
Z.C. Case No. 18-17
Events DC
(Design Review @ Parcel 149/66)
December 6, 2018

Pursuant to notice, the Zoning Commission for the District of Columbia (“Commission”) held a public hearing on December 6, 2018 to consider an application by Events DC (“Applicant”) for approval of an unenclosed pavilion at Robert F. Kennedy (“RFK”) campus pursuant to 11-A DCMR § 209.2(c)(ii) of the District of Columbia Zoning Regulations (“Zoning Regulations”), Title 11 of the District of Columbia Municipal Regulations. The application is to construct an unenclosed pavilion, as part of a larger community fields complex, on a former parking lot serving the RFK Stadium.

The Commission considered the application for design review pursuant to Subtitles X and Z of the Zoning Regulations. The public hearing was conducted in accordance with the provisions of 11-Z DCMR § 400 *et seq.* As set forth below, the Commission hereby approves the application.

Application, Parties, and Hearing

1. The property that is the subject of the design review consists of a portion of Parcel 149/66 in Ward 7 (“Property”). (Exhibit [Ex.] 2.)
2. The Property is unzoned. An unenclosed pavilion is allowed on the Property subject to approval by the Zoning Commission through design review pursuant to 11-A DCMR § 209.2(c)(ii). The Applicant is redeveloping an existing parking lot on the RFK Campus with a recreational facility to include three playing fields, three accessory structures, and shade structures. The unenclosed pavilion is part of this broader redevelopment. This design review application applies only to the subject pavilion. (Ex. 2, 2F.)
3. On September 14, 2018, the Applicant filed an application for approval of the unenclosed pavilion for design review. (Ex. 1, 2-2F.)
4. Prior to filing the application, on April 20, 2018, the Applicant mailed a notice of intent to file the map amendment application to all property owners within 200 feet of the Property as well as Advisory Neighborhood Commission (“ANC”) 7D. The Applicant also presented the pavilion project to the ANC as part of the Applicant’s regular presentations regarding the parking lot redevelopment at the RFK Campus. Accordingly, the Applicant satisfied the notice requirements of 11-Z DCMR §§ 301.6 and 301.8. (Ex. 2D.)
5. The application satisfied the filing requirements of 11-Z DCMR § 301 *et seq.* (Ex. 2.)

6. Notice of the public hearing was provided in accordance with the requirements of 11-Z DCMR § 400 et seq. (Ex. 5-7.)
7. On November 6, 2018, the Applicant filed a Comprehensive Transportation Review (“CTR”) that detailed the transportation impacts of the project. (Ex. 12-12A.)
8. On November 16, 2018, the Applicant filed a supplemental submission that provided the expert witnesses to testify at the hearing and provided additional details regarding the pavilion and its approval process. (Ex. 15-15D.)
9. The Property is located entirely within ANC 7D. At a duly noticed public meeting with a quorum present, the ANC voted in support of the application and submitted a report in support. (Ex. 10.) The report noted the promises of Events DC to construct a new playground alongside the fields together with or soon after those fields are constructed. The report also noted Events DC’s promise to provide dedicated parking for Kingman and Heritage Islands while construction is ongoing. The ANC indicated that it looked forward to a permanent solution to its concerns about access to those islands and that its support for this application without those promises having been made.
10. On November 26, 2018, the Office of Planning (“OP”) filed a report in support of the project conditioned upon the Applicant providing a wayfinding signage plan and a lighting plan for the project. (Ex. 17.)
11. On November 26, 2018, the District Department of Transportation (“DDOT”) filed a report in support of the project subject to certain conditions. (Ex. 18.)
12. On December 3, 2018, the Applicant filed a response to the OP and DDOT reports, providing the requested plans from OP’s report and agreeing to DDOT’s conditions. (Ex. 21-21C.)
13. On December 6, 2018, the Commission held a public hearing in accordance with 11-Z DCMR § 408.
14. No person, party, or entity appeared in support or opposition to the application.
15. OP testified in support of the project at the hearing.
16. Pursuant to 11-Z DCMR § 506.5, at the close of the hearing, the Commission took final action to approve the application.

As directed by 11-Z DCMR § 408.8, the Commission has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for approval of design review pursuant to 11-X DCMR § 604.

As required by law, the Commission must give “great weight” to the recommendations of OP as well as the issues and concerns expressed by ANC 7D as the affected ANC. As noted on November 26, 2018, OP filed a report in support of the project conditioned upon the Applicant providing a wayfinding signage plan and a lighting plan for the project, which the Applicant provided. The Commission finds OP’s support for the Applicant to be persuasive. As to the ANC, the issues and concerns it expressed were not directly related to this application, and therefore not entitled to great weight.

Based upon the record before the Commission, the Commission concludes that the proposed unenclosed pavilion is not inconsistent with the Comprehensive Plan, creates an activated environment with public gathering space for the community with an attractive pavilion structure, includes sustainable landscaping, and, with the improvements conditioned in this Order, provides connectivity for all kinds of transit to the site. Further, the Commission concludes the pavilion is in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map and will not adversely affect the use of neighboring properties. Pursuant to 11-X DCMR §§ 604.5-604.7, the Commission concludes that the unenclosed pavilion meets the requirements for design review, as detailed in the application and in the OP Report.

The Applicant is subject to compliance with D.C. Law 2-38, the Human Rights Act of 1977.

DECISION

The Zoning Commission for the District of Columbia **ORDERS APPROVAL** of Case Number 18-17 for design review. This approval is subject to the following conditions, standards, and flexibility:

1. The pavilion shall be built in accordance with the plans, dated November 16, 2018, and marked as Exhibit 15D of the record.
2. The Applicant shall implement the following pedestrian network improvements:
 - a. Resurface and widen the shared-use path along Oklahoma Avenue between the site driveway and Benning Road;
 - b. Create a walkway interior to the site using paint and flexiposts to connect the fields to Oklahoma Avenue along the path of the vehicular driveway; and
 - c. Provide wayfinding between the Stadium-Armory Metro Station and the fields.
3. The Applicant shall upgrade the existing driveway on Oklahoma Avenue to current DDOT standards, which will be completed through the public space review process.

On December 6, 2018, upon the motion of Vice Chairman Miller, as seconded by Commissioner Shapiro, the Zoning Commission took **FINAL ACTION** to **APPROVE** the application at its public hearing by a vote of **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull in support).

In accordance with the provisions of 11-Z DCMR § 604.9, this Order shall become effective upon publication in the *D.C. Register*; that is on January 18, 2019.

BY THE ORDER OF THE D.C. ZONING COMMISSION

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

Government of the District of Columbia
Public Employee Relations Board

<hr/>)	
In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-11
	Petitioner)	
)	Opinion No. 1686
	v.)	
)	
Fraternal Order of Police/)	
Metropolitan Police Department)	
Labor Committee)	
)	
	Respondent)	
<hr/>)	

DECISION AND ORDER

I. Introduction

On April 17, 2018, the Metropolitan Police Department (“MPD”) filed an Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act (“CMPA”), D.C. Official Code § 1-605.02(6). MPD seeks review of an arbitration award (“Award”) granting the grievance filed by the Fraternal Order of Police (“FOP”) on behalf of the Grievant. The Award rescinded the Grievant’s termination and ordered the payment of pre- and post-judgment interest. MPD seeks review of the Award claiming the Arbitrator exceeded his jurisdiction.

Pursuant to the CMPA, the Board is permitted to modify, set aside, or remand a grievance arbitration award only if: (1) the arbitrator was without, or exceeded, his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means.¹ For the reasons stated herein, the request is denied.

¹ D.C. Official Code § 1-605.02(6).

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PERB Case No. 18-A-11
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II. Statement of the Case

The Grievant has been an employee with MPD since 2005. On December 13, 2011, the Internal Affairs Division initiated an investigation of the Grievant's alleged involvement in a domestic violence incident.² On July 26, 2012, the Grievant was served with a Notice of Proposed Adverse Action that set forth the following charges:³

Charge 1: committing an act that could constitute a crime (arrested for simple assault)

Charge 2: engaging in conduct unbecoming an officer (physical assault of his wife) and

Charge 3: failing to obey rules of police force (engaging in the assault of his wife)

On September 5, 2012, a panel of senior officers held an adverse action hearing and recommended termination. The panel exonerated the Grievant on Charge 3 and sustained Charge 1 and Charge 2. Subsequently, the Grievant was sent a Final Notice of Adverse Action. On November 15, 2012, the MPD Chief of Police denied the Grievant's appeal and FOP sought arbitration.⁴

III. Arbitrator's Award

The Arbitrator was tasked with determining two issues:

1. Whether the evidence presented by MPD was sufficient to support the charges against the Grievant and
2. Whether the termination of the Grievant was the appropriate remedy

Before the Arbitrator, FOP argued that there was not sufficient evidence to support the allegations of Charge 1 because MPD failed to provide factual support for the arrest within the specification.⁵ Moreover, FOP maintained that there was not sufficient evidence to support Charge 2.⁶ MPD argued that complete record demonstrates that there was a preponderance of evidence to support the charges.⁷

The Arbitrator found that Charge 1 was legally insufficient and that an assault did not occur, specifically stating that the Grievant was in fact trying to restrain his wife.⁸ The Arbitrator dismissed the charges in their entirety and ordered the Grievant's reinstatement with full back pay, lost benefits, and the payment of pre-judgment and post-judgment interest. He did not provide a full analysis of Charge 2 anywhere in the Award.

² Request at 3.

³ *Id.* at 4.

⁴ Award at 2-4.

⁵ Award at 13.

⁶ Award at 9-11.

⁷ Award at 3.

⁸ Award at 13.

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IV. Discussion

MPD seeks the Board's review to determine if the Arbitrator exceeded his authority when he did not provide a rationale with respect to Charge 2 and whether he exceeded his jurisdiction by awarding the grievant "pre- and post-judgment interest."⁹

A. The Arbitrator did not exceed his jurisdiction when he failed to provide rationale for overturning Charge 2.

MPD relies on *Northwest Airlines, Inc. v. Air Line Pilots Association International*,¹⁰ and argues that an arbitrator cannot deviate from deciding all the issues before him.¹¹ The instant matter is distinguishable. In *Northwest Airlines*, the arbitrators refused to address the definition of "pilot seniority list" because they mistakenly believed that the issue was resolved by a stipulation and agreement between the parties.¹² The refusal to address the issue was an undisputed mistake of fact.¹³ *Northwest Airlines* is a narrow holding that stands for the proposition that an arbitration award may be unenforceable when an undisputed mistake of fact causes an arbitrable issue to be removed from the arbitration.¹⁴ Here, there is no mistake of fact and the Arbitrator addressed all issues presented.

In the present case, the Arbitrator would need to find that the Grievant physically assaulted his wife to sustain Charge 2. It is well settled that the arbitrator has the authority to resolve issues of fact including determinations regarding the credibility, significance, and weight of the evidence.¹⁵ The Arbitrator held that the Grievant did not assault his wife, and he specifically found that the Grievant was trying to restrain his wife.¹⁶ As FOP points out in its Opposition, the Arbitrator considered the evidence and determined the evidence was insufficient to confirm that an assault occurred and therefore would not support Charge 2.¹⁷ The allegations of both Charge 1 and Charge 2 are addressed within the Arbitrator's decision. The Arbitrator dismissed the charges in their entirety and determined that termination was not appropriate.

The Board has limited authority to review an arbitration award. In determining whether the arbitrator has exceeded his authority, the Board looks to whether the arbitrator complied with the essence of the collective bargaining agreement ("CBA"). The relevant questions in this examination are:

⁹ Opposition at 4.

¹⁰ 530 F.2d 1048 (D.C. Cir. 1976)

¹¹ Request at 8.

¹² *Northwest Airlines, Inc. v. Air Line Pilots Ass'n Int'l*, 530 F.2d 1048, 1049 (D.C. Cir. 1976).

¹³ *Id.*

¹⁴ *Id.* at 1050.

¹⁵ *DCDHCD v. AFGE Local 2725 AFL-CIO*, 45 D.C. Reg. 326, Slip Op. 527 at 2, PERB Case No. 97-A-03(1998).

AFSCME District Council 20 AFL-CIO v. D.C. General Hospital, 37 D.C. Reg. 6172, Slip Op. 253, PERB Case No. 90-A-04 (1990).

¹⁶ Award at 13.

¹⁷ Opposition at 5.

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1. Did the arbitrator act outside his authority by resolving a dispute not committed to arbitration and
2. In resolving legal and factual disputes was the arbitrator arguably construing or applying the contract¹⁸

We have held that an arbitrator is not required to explain the reason for his decision, and that the failure to do so does not render the decision unenforceable.¹⁹ The Arbitrator's decision in this case was based on the precise issues of the sufficiency of the evidence and the appropriateness of the termination. The parties agreed and submitted their dispute to the Arbitrator. We have held that, by submitting a grievance to arbitration, parties agree to be bound by the arbitrator's interpretation of their contract, rules, and regulations; and agree to accept the arbitrator's evidentiary findings and conclusions.²⁰ No statutory basis for reviewing the Award exists where, as here, there is a mere disagreement with the Arbitrator's evaluation of the facts.²¹

B. The Arbitrator did not exceed his jurisdiction by awarding interest.

Both parties agree that the source of the arbitrator's authority is derived from Article 19, E, Section 5.4 of the CBA, which states in part:

The arbitrator shall not have the power to add to, subtract from or modify the provisions of this Agreement in arriving at a decision on the issue presented and shall confine his decision solely to the precise issue submitted for arbitration... The arbitrator shall render his/her decision in writing, setting forth his/her opinion and conclusions on the issues submitted, within thirty (30) days after the conclusion of the hearing.²²

We have previously held that an arbitrator's authority under the contract provides wide latitude and flexibility in crafting remedies for CBA violations, so long as the remedy is not expressly limited by the collective bargaining agreement.²³

Here, MPD argues that pre-judgment and post-judgment interest awards are outside of the arbitrator's jurisdiction. MPD does not point to any provision within the contract that would restrict the interest award of the arbitrator.

¹⁸ *Mich. Family Resources, Inc. v. Serv. Emp' Int'l Union, Local 517M*, 475 F.3d 746, 753 (2007), quoted in *F.O.P./Dep't of Corrs. Labor Comm. v. D.C. Dep't of Corrs.*, 59 D.C. Reg. 9798, Slip Op. No. 1271 at 7, PERB Case No. 10-A-20 (2012), and *D.C. Fire & Emergency Med. Servs. v. AFGE Local 3721*, 59 D.C. Reg. 9757, Slip Op. No. 1258 at 4, PERB Case No. 10-A-09 (2012).

¹⁹ *FOP/MPD Labor Committee (on behalf Harris) v. MPD*, 59 D.C. Reg. 11329, Slip Op. 1295 at 9, PERB Case No. 9-A-11 (2012).

²⁰ *MPD v. FOP/MPD Labor Committee (on behalf of Sims)*, Slip Op. 633 at 3, PERB Case No. 00-A-04 (2000).

²¹ *AFSCME District Council 20 AFL-CIO v. D.C. General Hospital*, 37 D.C. Reg. 6172, Slip Op. 253 at 3, PERB Case No. 90-A-04 (1990).

²² Request, Ex. 6 at 27, *District of Columbia Metropolitan Police Department and the Fraternal Order of Police/MPD Labor Committee (CBA) Effective FY 2004-2008*.

²³ *MPD v. FOP/MPD Labor Committee (on behalf of Gutterman)*, 39 D.C. Reg. 6232, Slip Op. 282 at 3-4, PERB Case No. 87-A-04 (1991). *Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No.12-A-01 (2012).

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Moreover, the FOP cites our recent decision in *District of Columbia Metropolitan Police Department v. Fraternal Order of Police/ Metropolitan Police Department Labor Committee (on behalf of Michael Muldrow)*.²⁴ In *Muldrow*, MPD filed an arbitration review request to challenge the award of 4% pre-judgment and 10% post-judgment interest on backpay.²⁵ MPD argued that the arbitrator did not have the authority under Article 19, E, Section 5.4 to award pre-judgment interest and that post-judgment interest was contrary to Article 46.²⁶ We held that pre-judgment and post-judgment interest awards are within the jurisdiction of the arbitrator when not restricted by the collective bargaining agreement.²⁷ We have held that the power to award pre-and post-judgment interest arises out of the broad equitable powers of the arbitrator.²⁸ Here, MPD again questions the arbitrator's jurisdiction under Article 19, E, Section 5.4. In the absence of any contractual restrictions, we find the ability to order pre-judgment and post-judgment interest is within the arbitrator's authority to determine an appropriate equitable remedy.

V. Conclusion

The Board rejects the MPD's arguments and finds no cause to set aside, modify, or remand the Arbitrator's Award. Accordingly, MPD's request is denied and the award is enforceable as written.

ORDER

IT IS HEREBY ORDERED THAT:

1. MPD's 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 Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

September 27, 2018

²⁴ 64 D.C. Reg. 7604, Slip Op. 1625, PERB Case No. 16-A-11 (2017).

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 4.

²⁸ *Id.* at 3.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-11, Op. No. 1686 was sent by File and ServeXpress to the following parties on this the 28th day of September, 2018.

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Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-14
Petitioner)	
)	Opinion No. 1688
v.)	
)	
Fraternal Order of Police/ Metropolitan)	
Police Department Labor Committee)	
)	
Respondent)	
<hr/>)	

DECISION AND ORDER

I. Introduction

On July 31, 2018, the District of Columbia Metropolitan Police Department (“MPD”) filed this Arbitration Review Request pursuant to the Comprehensive Merit Personnel Act (“CMPA”), section 1-605.02(6) of the D.C. Official Code. MPD seeks review of an arbitration award (“Award”) issued on July 6, 2018, granting the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) on behalf of the Grievant. The Award rescinded the Grievant’s termination. MPD seeks review of the Award claiming it is contrary to law and public policy.

Pursuant to the CMPA, the Board is permitted to modify, set aside, or remand a grievance arbitration award only if: (1) the arbitrator was without or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion, or other similar unlawful means.¹ Upon consideration of the Arbitrator’s conclusions, applicable law, and record presented by the parties, for the reasons stated herein, the request is denied.

II. Statement of the Case

On February 14, 2012, the Grievant was arrested and charged with assault and false imprisonment related to a domestic dispute with his wife.² On June 4, 2012, the District Court of Maryland for Anne Arundel County found the Grievant not guilty of the criminal charges.³

¹ D.C. Official Code § 1-605.02(6).

² Award at 3.

³ Award at 4.

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Page 2

MPD's internal affairs division investigated the incident and on June 20, 2012, issued to the Grievant a Notice of Proposed Adverse Action for the following:

- Charge 1: Committing an act that constitutes criminal conduct (an arrest)
- Charge 2: Violation of general orders (under influence of alcohol while off duty)
- Charge 3: Conduct unbecoming an officer (alleged assault)⁴

The Grievant contested Charge 1 and Charge 3 but admitted to Charge 2. An adverse action hearing was held on August 24, 2012.⁵ The adverse action panel ("Panel") found the Grievant guilty, recommended termination for Charge 1 and Charge 3, and recommended a 10-day suspension for Charge 2. The Grievant's appeal to the Chief of Police was denied, and the FOP made a demand for arbitration.⁶

III. Arbitration

The Arbitrator addressed two issues:

1. Whether the evidence presented by MPD was sufficient to support the alleged charges; and
2. Whether termination was the appropriate penalty.⁷

MPD argued that substantial evidence existed in the record to support Charges 1 and 3.⁸ Also, MPD claimed that the Panel properly considered the *Douglas* Factors⁹ and found them overwhelmingly aggravating in support of termination.

FOP asserted that the evidence was insufficient to support Charge 1 and 3. FOP argued that the *Douglas* Factors were mitigating and submitted previous arbitration decisions that contemplated similar facts but resulted in less severe punishments.¹⁰

The Arbitrator found that MPD presented sufficient evidence to reach a reasonable conclusion that the Grievant was guilty of Charge 1 and Charge 3, however the Arbitrator determined that termination was not an appropriate disciplinary action.¹¹ The Arbitrator found that the Panel failed to demonstrate that the penalty was consistent with prior disciplinary decisions and ordered the Grievant suspended for 40 days and then reinstated.¹²

IV. Discussion

⁴ Award at 4.

⁵ Award at 5.

⁶ Award at 5.

⁷ Award at 2.

⁸ Award at 5.

⁹ *Douglas v. Veteran's Administration* 5 M.S.P.B. 280 (1981) provides a list of 12 factors as guidance to determine the appropriateness of discipline for public sector employees. At issue here is factor number six which provides for consideration of "consistency of the penalty with those imposed upon other employees for the same or similar offenses."

¹⁰ Award at 9.

¹¹ Award at 12.

¹² Award at 12.

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Page 3

MPD argues that the Arbitrator’s decision is contrary to law and public policy. MPD seeks the Board’s review to determine whether the Arbitrator properly analyzed *Douglas* consistent with law and if reinstatement was consistent with public policy.

A. The Arbitrator’s decision is consistent with the law.

MPD argues that the Arbitrator’s decision is contrary to law because the Award only discusses *Douglas* Factor six in overturning the Panel’s decision to terminate the Grievant’s employment.¹³ MPD relies on *Stokes v. District of Columbia*¹⁴ in arguing that the Arbitrator was required to defer to the Panel in weighing of the evidence.¹⁵

As we have ruled in numerous cases, *Stokes* is applicable to cases brought before the Office of Employee Appeals; it is not applicable to the grievance-arbitration process.¹⁶ The grievance-arbitration process is a product of the parties’ collective bargaining agreement.¹⁷ By submitting a dispute to arbitration “the parties agree to be bound by the Arbitrator’s interpretation of the parties’ agreement, related rules and regulations as well as the evidentiary findings and conclusions on which the decision is based.”¹⁸ Here, the Arbitrator made a decision on the precise issue that the parties submitted to him. He determined that termination was not the appropriate penalty based on the evidence before him and the Board will not substitute its judgment for that of the duly designated arbitrator.¹⁹

Moreover, arbitrators may overturn a termination decision based on their assessment of the *Douglas* Factors. We have previously upheld an arbitrator’s finding that MPD did not properly analyze the *Douglas* Factors in its decision to terminate, reasoning that the arbitrator effectively determined that there was insufficient “cause” to support termination as the appropriate remedy.²⁰ In this case, the Arbitrator found that the Panel did not properly analyze a *Douglas* Factor when it completely failed to demonstrate “like punishment for like offenses.”²¹ We find the Arbitrator’s decision consistent with the law.

B. The Arbitrator’s decision is consistent with public policy

Finally, MPD argues that the Award is contrary to the public policy requiring police officers to preserve the peace, protect life, and uphold the law. The Board’s scope of review,

¹³ Request at 8.

¹⁴ 502 A. 2d 1006, 1011 (1985).

¹⁵ Request at 8.

¹⁶ E.g., *MPD v. NAGE Local R-35 (on behalf of Burrell)*, 59 D.C. Reg. 2983, Slip Op. 785 at 4-5, PERB Case No. 03-A-08 (2012); *MPD v. FOP/MPD Labor Committee (on behalf of Hector)*, 54 D.C. Reg. 3154, Slip Op. 872 at 6-7, PERB Case No. 07-A-02 (2007).

¹⁷ *Id.*

¹⁸ *MPD v. FOP/MPD Labor Committee (on behalf of Melby)*, 59 D.C. Reg. 6730, Slip Op. 1125 at 15, PERB Case No. 10-A-11 (2012).

¹⁹ *MPD v. FOP/MPD Labor Committee (on behalf of Mendoza)*, 64 D.C. Reg. 10152, Slip Op. 1639 at 4, PERB Case No. 16-A-12 (2017); *FOP/MPD Labor Committee (on behalf of Haselden) v. MPD*, 59 D.C. Reg. 353, Slip Op. 882 at 6, PERB Case No. 06-A-13 (2012); *MPD v. FOP/MPD Labor Committee (on behalf of Resper)*, 59 D.C. Reg. 3579, Slip Op. 887 at 5, PERB Case No. 6-A-21 (2012); *Dep’t of Corrections v. IBT Local 246 (on behalf of Edwards)*, 34 D.C. Reg. 3616, Slip Op. 157 at 3, PERB Case No. 87-A-02 (1987).

²⁰ *MPD v. FOP/MPD Labor Committee (on behalf of Kennie)*, 61 D.C. Reg. 12364, Slip Op. 1493 at 5, PERB Case No. 14-A-06 (2014).

²¹ Award at 12.

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particularly concerning the public policy exception, is extremely narrow.²² The Board has adopted the D.C. Circuit Court’s holding that a violation of public policy “must be well defined and dominant, and is to be ascertained by reference to the laws and legal precedents and not from general considerations of supposed public interest.”²³ The court went on to explain that the “exception is designed to be narrow so as to limit potentially intrusive judicial review of arbitration awards under the guise of public policy.”²⁴ The Board has previously rejected MPD’s argument that the public policy to preserve peace, protect life, and uphold the law is sufficiently specific to serve as a basis for overturning an arbitration award.²⁵

Here, MPD has failed to show the violation of an explicit, well-defined public policy grounded in law or legal precedent. In the absence of a clear violation of law and public policy apparent on the face of the Award, the Board may not modify, set aside, or remand the Award as contrary to law and public policy.²⁶ Therefore, MPD’s request must be denied.

V. Conclusion

The Board rejects MPD’s arguments and finds no cause to modify, set aside, or remand the Arbitrator’s Award. Accordingly, MPD’s request is denied and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By Unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

November 15, 2018

²² *American Postal Workers v. US Postal Serv.*, 789 F.2d 1 (D.C. Cir. 1986).

²³ *FOP/Dep’t of Corr. Labor Comm. v. D.C. Dep’t of Corr.*, 59 D.C. Reg. 9798, Slip Op. 1271 at p. 2, PERB Case No. 10-A-20 (2012) (citing *W.R. Grace & Co. v. Local Union 759, International Union of Rubber, Cork, Linoleum & Plastic Workers of America*, 461 U.S. 757, 766(1983)).

²⁴ *American Postal Workers v. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986).

²⁵ *MPD v. FOP/MPD Labor Committee*, 65 D.C. Reg. 7468, Slip Op.1667 at 4, PERB Case No. 18-A-04 (2018).

²⁶ *Id.* at 5.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-14, Op. No. 1688 was sent by File and ServeXpress to the following parties on this the 27th day of November, 2018.

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Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
)	
Fraternal Order of Police/)	
Metropolitan Police)	
Department Labor Committee)	
)	PERB Case No. 18-U-33
Petitioner)	
)	Opinion No. 1689
v.)	
)	
Metropolitan Police Department)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Introduction

On August 9, 2018, the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“FOP”) filed this Unfair Labor Practice Complaint on behalf of Grievant alleging that the Metropolitan Police Department (“MPD”) and Police Chief Peter Newsham (“Chief Newsham”) violated section 1-617.04(a)(1) and (5) of the D.C. Official Code by refusing to abide by the Award on Remand (“Award”) issued by Arbitrator Garvin Lee Oliver (“Arbitrator”) on April 12, 2018. On August 28, 2018, MPD filed an Answer and requested dismissal of the Complaint and dismissal of Chief Newsham as a Respondent.

The Board hereby dismisses Chief Newsham as a Respondent.¹ After a review of the record the Board finds that MPD has committed an unfair labor practice by refusing to implement the Award at issue.

II. Statement of the Case

¹ Section 1-617.04 of the D.C. Official Code provides that the “District, its agents, and representatives” are prohibited from engaging in unfair labor practices. The Board has held that suits against District officials in their official capacity should be treated as suits against the District. Therefore, MPD’s request to dismiss Chief Newsham as a Respondent in these matters is granted. See *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Metro. Police Dep’t*, 59 D.C. Reg. 6579, Slip Op. No. 1118 at p. 4-5, PERB Case No. 08-U-19 (2011); see also *Fraternal Order of Police/Metro. Police Dep’t Labor Comm. v. D.C. Pub. Emp. Relations Bd.*, Civ. Case No. 2011 CA 007396 P(MPA) (D.C. Super. Ct. Jan 9, 2013).

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This case arises from an off-duty incident involving the Grievant in which he visited his wife at work, under the influence of alcohol, and in possession of a firearm. MPD investigated and issued a Notice of Proposed Adverse Action to the Grievant. Subsequently, an adverse action panel issued the Grievant a 60-day suspension. MPD's Human Resources ("HR") Director reviewed the determination of the adverse action panel and decided to increase the penalty from a 60-day suspension to a termination of employment.² FOP invoked arbitration.

On October 10, 2017, the Arbitrator issued an award that sustained the grievance in part and denied it in part. The Arbitrator determined that the HR Director could not increase the penalty for charges sustained by the adverse action panel under 6A DCMR §1001.5³ and reversed the termination. However, the Arbitrator held that the HR Director could increase the penalty for charges sustained upon review and imposed a 150-day suspension.⁴ FOP then filed an Arbitration Review Request with the Board seeking review of the award.⁵

On March 23, 2018, the Board issued a Decision and Order in PERB Case No.18-A-02 (Slip Op. No. 1662), which reversed and remanded the arbitration award.⁶ There the Board held that pursuant to 6A DCMR Sec. 1001.5 a decision of an Adverse Action Panel may not be increased, the Arbitrator erred in upholding a suspension that had been so increased, and his Award was therefore contrary to law and public policy. The Board directed the Arbitrator to issue a decision consistent with the findings in PERB Case No. 18-A-02. The Arbitrator complied and issued an Award on Remand that imposed the original 60-day penalty ordered by the adverse action panel, thereby entitling the Grievant to 90 days of backpay.⁷

MPD has admitted in its Answer that it refused to issue backpay to the Grievant in accordance with the Award.⁸

III. Discussion

In accordance with Board Rule 520.10 "if the investigation reveals that there is no issue of fact to warrant a hearing, the Board may render a decision upon the pleadings or may request briefs and/or oral arguments."⁹ The facts of this case are undisputed, and therefore it is appropriate for a decision on the pleadings.

MPD's Refusal to Implement the Arbitration Award is an Unfair Labor Practice

To establish an unfair labor practice under section 1-617.04(a)(1) and (5), a party must show that the respondent interfered with, restrained, or coerced an employee in the exercise of rights guaranteed by this subsection, or that the respondent refused to bargain in good faith. Failure to implement the terms of an arbitration award where no genuine dispute exists over its

² Complaint at 3.

³ Complaint Ex.2 at 12.

⁴ Complaint Ex.2 at 26.

⁵ Complaint at 4.

⁶ Complaint Ex.3 at 6.

⁷ Complaint Ex.4 at 2.

⁸ Answer at 4.

⁹ 6-B DCMR §520.10

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Page 3

terms constitutes a failure to bargain in good faith and, consequently, is an unfair labor practice under the D.C. Official Code.¹⁰

MPD admits in its Answer that it has failed to pay the Grievant in compliance with the Award.¹¹ MPD's failure to comply is not based on a genuine dispute over the terms of the Award, but rather is a simple refusal to comply. By this action, MPD interfered with the rights of employees and failed to bargain in good faith in violation of the Comprehensive Merit Personnel Act.¹²

This conduct constitutes a violation of MPD's duty to bargain in good faith under section 1-617.04(a)(5), and an interference with bargaining unit employees' rights in violation of section 1-617.04(a)(1).¹³ We have recently ruled that the same activity in other cases was an unfair labor practice. We see the matter no differently here.¹⁴

IV. Conclusion

MPD violated section 1-617.04(a)(1) and (5) by refusing to implement the terms of the Award. The Complaint is sustained and MPD's request to dismiss on the merits is denied. MPD is directed to fully comply with the terms of the arbitration award within fourteen (14) days of the issuance of this Decision and Order if it has not done so already. Additionally, MPD shall post a notice of the violation.

ORDER

IT IS HEREBY ORDERED THAT:

1. District of Columbia Metropolitan Police Department's request to dismiss Chief Newsham as a Respondent is granted.

¹⁰ *AFGE, Local 383 v. D.C. Dep't of Youth Rehab. Servs.*, 60 D.C. Reg., 15983, Slip Op. 1423, PERB Case No. 10-U-48 (2013), *Int'l Bhd. of Police Officers, Local 446 v. D.C. Health & Hosps. Pub. Benefit Corp.*, 47 D.C. Reg. 7184, Slip Op. 622 at p. 4, PERB Case No. 99-U-30 (2000).

¹¹ Answer at 4.

¹² D.C. Official Code § 1-617.04(a)(1) and (5).

¹³ *AFGE, Local 1000 v. D.C. Dep't of Empl. Servs.*, 61 D.C. Reg. 9776, Slip Op. 1486, PERB Case No. 13 U-15 (2014), See also *AFGE, Local 2725 v. D.C. Hous. Auth.*, 46 D.C. Reg. 8356, Slip Op. 597, PERB Case No. 99-U-23 (1999).

¹⁴ See, *FOP/MPD Labor Committee v. MPD*, Slip Op. 1674 at 3, PERB Case No. 18-U-19 (20018). See also, *FOP/MPD Labor Committee v. MPD*, 65 D.C. Reg 3306, Slip Op. 1651 at 4, PERB Case Nos. 17-U-26, 18-U-04,18-U-06 (2018).

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PERB Case 18-U-33
Page 4

2. Fraternal Order of Police/ Metropolitan Police Department Labor Committee’s Unfair Labor Practice Complaint is sustained.
3. The District of Columbia Metropolitan Police Department shall cease and desist from violating section 1-617.04(a)(1) and (5) of the D.C. Official Code by failing to implement the arbitration award.
4. The District of Columbia Metropolitan Police Department shall conspicuously post, where notices to employees are normally posted, notices that the Board will furnish to MPD in each of the Department’s buildings. The notice shall be posted within fourteen (14) days of receipt and shall remain posted for thirty (30) consecutive days.
5. Within fourteen (14) days from the issuance of this Decision and Order, the District of Columbia Metropolitan Police Department shall fully comply with the terms of the arbitration award if it has not already done so.
6. Within fourteen (14) days from the date of the receipt of the notice, MPD shall notify the Public Employee Relations Board in writing that the attached notice has been posted accordingly and on what date they were posted.
7. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

November 15, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-U-33, Op. No. 1689 was sent by File and ServeXpress to the following parties on this the 15th day of November, 2018.

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Public Employee Relations Board

GOVERNMENT OF THE DISTRICT OF COLUMBIA



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NOTICE

TO ALL EMPLOYEES OF THE METROPOLITAN POLICE DEPARTMENT, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN SLIP OPINION NO. 1689, PERB CASE NO. 18-U-33, (November 15, 2018).

WE HEREBY NOTIFY our employees that the District of Columbia Public Employee Relations Board has found that we committed an Unfair Labor Practice by failing to implement an arbitration award in the manner alleged in PERB Case No. 18-U-33 and has ordered MPD to post this Notice.

WE WILL cease and desist from violating D.C. Official Code §§ 1-617.04(a)(1) and (5) in the manners stated in Slip Opinion No. 1689, PERB Case No. 18-U-33.

WE WILL, within fourteen (14) days from the issuance of Slip Opinion No. 1689, PERB Case No. 18-U-33 pay the impacted officer back pay.

Metropolitan Police Department

Date: _____ By: _____

This Notice must remain posted for thirty (30) consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any questions concerning this Notice or MPD’s compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board by U.S. Mail at 1100 4th Street, SW, Suite E630; Washington, D.C. 20024, or by phone at (202) 727-1822.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

November 15, 2018
Washington, D.C.

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)
)
American Federation of State,)
County and Municipal Employees,)
District Council 20, Local 1959)
	PERB Case No. 18-U-20)
)
Petitioner)
	Opinion No. 1690)
)
v.)
)
Office of the State Superintendent of)
Education)
)
Respondent)
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DECISION AND ORDER

I. Introduction

On February 14, 2018, the American Federation of State County and Municipal Employees, District Council 20, Local 1959 (“AFSCME”) filed this unfair labor practice complaint (“Complaint”) alleging that the District of Columbia Office of the State Superintendent of Education (“OSSE”) violated section 1-617.04(a)(1), (2), (3), and (5) of the D.C. Official Code.¹ In essence, AFSCME alleges that OSSE has committed an unfair labor practice by failing to bargain in good faith and engaging in disparate treatment toward AFSCME. In an Answer filed on February 23, 2018, OSSE denied committing any unfair labor practices.² OSSE also filed a Motion to Dismiss in which it further asserted that the Complaint was untimely.³

After a thorough review of the record, the Board finds that the Complaint is untimely and therefore should be dismissed.

¹ Complaint at 4.

² Complaint at 9.

³ Motion to Dismiss at 9. AFSCME filed an untimely Opposition to OSSE’s Motion to Dismiss. The Board has stated that it may relax a deadline to allow a case to proceed despite untimely service if there is good cause as to why it should not be dismissed. The Board accepts AFSCME’s allegation that the untimeliness was a result of a clerical error and AFSCME’s Opposition in this case should be considered.

Decision and Order
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Page 2

II. Statement of the Case

OSSE has separate collective bargaining agreements with AFSCME and the International Brotherhood of Teamsters (“Teamsters”). AFSCME is the exclusive representative of a bargaining unit of part-time OSSE bus drivers and attendants.⁴ The Teamsters represent a smaller bargaining unit comprised of OSSE senior motor vehicle operators and senior bus attendants.⁵

OSSE and the Teamsters included a provision in their new collective bargaining agreement (“CBA”) stating that “for each overtime assignment available at a terminal, OSSE agrees that every other overtime assignment shall be offered to an employee represented by [the Teamsters].”⁶ OSSE admits that it applies this negotiated provision of the Teamsters’ CBA.⁷

In reaching agreement with the Teamsters over this provision, according to OSSE it shared the overtime provision with AFSCME’s chief negotiator through email.⁸ AFSCME’s chief negotiator replied in a February 14, 2017 email that the same language should be incorporated into AFSCME’s successor CBA.⁹ Afterward, when OSSE and AFSCME began negotiations, OSSE declared the proposed language regarding overtime nonnegotiable.¹⁰

III. Position of the Parties

OSSE asserts that the Complaint is untimely. PERB Rule 520.4 states that an unfair labor practice complaint shall be filed no later than 120 days after the date on which the alleged violations occurred. The Complaint was filed on February 14, 2018. OSSE contends that the event alleged in the Complaint occurred on May 4, 2017, when the Mayor signed the Teamsters’ CBA containing the overtime provision.¹¹ At the latest, OSSE argues that AFSCME clearly knew of the acts alleged as unfair labor practices in this case by August 4, 2017, when it filed a negotiability appeal raising the same arguments that AFSCME makes in this Complaint; that 90 percent of the attendants employed by OSSE are represented by AFSCME and that OSSE is refusing to bargain about overtime even though OSSE has bargained the same issue with the Teamsters.¹² According to OSSE, the Complaint was filed far more than 120 days after both the date of the Mayor signing the CBA and the date of the filing of the negotiability appeal. Therefore the Complaint was untimely.

⁴ Complaint at 1.

⁵ Complaint at 2.

⁶ Complaint at 2.

⁷ Answer at 3.

⁸ Answer at 3.

⁹ Answer at 3.

¹⁰ On August 4, 2017, AFSCME filed a negotiability appeal with the Board concerning ten proposals including one proposal related to overtime which was found to be nonnegotiable. *AFSCME, Local 1959 v. OSSE*, 65 D.C. Reg. 7657, Slip Op No. 1659, PERB Case No. 17-N-04 (2018).

¹¹ Answer at 4.

¹² Answer at 4-5.

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PERB Case No. 18-U-20
Page 3

AFSCME argues that, by applying the terms of the Teamsters' CBA, OSSE is in violation of section 1-617.04(a)(1), (2), (3), and (5) of the D.C. Official Code. According to AFSCME, the language in the Teamsters' CBA results in AFSCME's bargaining unit receiving only 50 percent of the available overtime assignments even though it represents more than 90 percent of the workforce.¹³ The remaining 50 percent is available to the employees represented by the Teamsters, less than 10 percent of the workforce.¹⁴ According to AFSCME, the provision in the Teamster's CBA and OSSE's refusal to negotiate any overtime protection is an unfair labor practice in violation of section 1-617.04(a)(1), (2), (3), and (5).

AFSCME further argues that the Complaint is timely because OSSE's conduct is a continuing violation.¹⁵ According to AFSCME, OSSE continues its refusal to bargain regarding overtime assignment and continues to implement an overtime policy that gives members of the Teamsters' bargaining unit preferential treatment.¹⁶ AFSCME states that it is this conduct by OSSE that gives rise to the Complaint, not the signing of the Teamster's CBA or the filing of a negotiability appeal.¹⁷

IV. Discussion

A. Timeliness

In light of the aforementioned, the Complaint is untimely. According to AFSCME the violations are (1) OSSE's agreement to the provision in the Teamsters CBA, (2) the application of the provision to the detriment of AFSCME's bargaining unit, and (3) OSSE's refusal to negotiate an overtime assignment provision with AFSCME.¹⁸ The Board received AFSCME's negotiability appeal in PERB Case No. 17-N-04 on August 4, 2017. The negotiability appeal clearly states: "currently, the Union represents roughly 90% of the drivers and all of the attendants employed by OSSE with a small portion of drivers represented by the Teamsters. OSSE has negotiated with the Teamsters how overtime hours will be shared with this Union and this proposal aims to do the same." AFSCME filed this Complaint more than 120 days from the date of its negotiability appeal in PERB Case No. 17-N-04. At this point AFSCME was aware of the existence of the proposal and its implementation. Once a negotiability appeal is submitted to the Board, the parties cease bargaining and await the Board's determination on the negotiability of a proposal. The overtime proposal was submitted to the Board on August 4, 2017; therefore, the parties did not bargain over this proposal after that date. Accordingly, all of the violations alleged by AFSCME occurred before August 4, 2017. AFSCME was aware of this alleged violation more than 120 days before it filed the Complaint.

¹³ Complaint at 3.

¹⁴ Complaint at 3.

¹⁵ Opposition to the Motion to Dismiss at 6.

¹⁶ Opposition at 6-7.

¹⁷ Opposition at 7.

¹⁸ Opposition at 3.

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Page 4

B. Continuing Violation

AFSCME has not established a continuing violation. The Superior Court has stated that the “mere failure to right a wrong cannot be a continuing violation which tolls the statute of limitations for if it were, the exception would prove the rule.”¹⁹ Furthermore, when an act that falls outside the limitations period is merely a failure to cure a previous breach, that failure “neither constitutes a new breach nor saves [the party]’s claims from operation of the limitations bar.”²⁰ It is clear from AFSCME’s negotiability appeal that it was aware of the impact of the Teamsters’ CBA provision no later than August 4, 2017. There was no further act on which the Complaint could be renewed. There was only the failure of OSSE to change its position. Accordingly, the Complaint is not tolled by the continuing violation doctrine.

V. Conclusion

The Board finds that the Complaint is untimely under PERB Rule 520.4. Therefore, the Complaint is dismissed with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The unfair labor practice complaint is dismissed with prejudice.
2. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

Washington, D.C.

November 15, 2018

¹⁹ *MPD v. FOP/MPD*, 62 D.C. Reg. 14606, Slip Op. No. 1535, PERB Case No. 09-U-48(R) (2015), citing *AKM LLC, d/b/a Volks Constructors v. Sec’y of Labor*, 675 F.3d 752, 757 (D.C. Cir. 1977).

²⁰ *Kyriakopolous v. George Washington Univ.*, 866 F.2d 438, 443 (D.C. Cir. 1989).

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-U-20, Op. No. 1690 was transmitted to the following parties on this the 16th day of November, 2018.

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Government of the District of Columbia
Public Employee Relations Board

_____)	
In the Matter of:)	
)	
Metropolitan Police Department)	
)	PERB Case No. 18-A-10
Petitioner)	
)	Opinion No. 1691
and)	
)	
Fraternal Order of Police/)	
Metropolitan Police Department)	
Labor Committee)	
)	
Respondent)	
_____)	

DECISION AND ORDER

I. Introduction

On April 30, 2018, the Metropolitan Police Department (“MPD”) filed this Arbitration Review Request (“Request”) pursuant to the Comprehensive Merit Personnel Act, D.C. Official Code § 1-605.02(6). MPD seeks review of an arbitration award (“Award”) served April 9, 2018, granting, in part, five grievances filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (“Union”) on behalf of Officer Wendell Cunningham,¹ Sergeant Steven Urps, Sergeant Renee Dyson, and Sergeant Daymeoin Harris (“Grievants”). The Arbitrator awarded back pay for the Grievants’ previously-scheduled overtime and for the overtime they would have earned during their suspensions. MPD seeks review of the Arbitrator’s back pay award on the grounds that the Arbitrator exceeded his jurisdiction and that the Award is contrary to law and public policy.²

The Board is permitted to modify, set aside, or remand an arbitration award if: (1) an arbitrator was without, or exceeded his or her jurisdiction; (2) the award on its face is contrary to law and public policy; or (3) the award was procured by fraud, collusion or other similar and

¹ Two grievances were filed on behalf of Officer Cunningham.

² Request at 2; *See* D.C. Official Code § 1-605.02(6).

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unlawful means.³ Having reviewed the Arbitrator’s conclusions, the pleadings of the parties, and the applicable law, the Board concludes that the Arbitrator did not exceed his jurisdiction and that the Award on its face is not contrary to law and public policy. Thus, the Request is denied.

II. Statement of the Case

This matter arose from six consolidated grievances that were filed on behalf of five MPD members.⁴ All six grievances relate to the members’ suspensions from the Automated Traffic Enforcement Unit (“ATEU”), a unit tasked with managing MPD’s automated traffic enforcement.⁵ The Grievants volunteered as certified automated traffic enforcement officers outside of their regularly assigned tour of duty and received overtime compensation.⁶ During the relevant time period, the ATEU program operated under a set of “Photo Radar Speed Enforcement Program Business Rules” (“Business Rules”).⁷ The Business Rules called for the members’ suspension for the violation of certain rules.⁸ During the time the Grievants took part in the ATEU program, MPD temporarily suspended the Grievants for violating the Business Rules. The Union filed grievances on their behalf. Thereafter, the Union invoked arbitration. Arbitration was conducted on the six consolidated grievances on March 27, 2018.⁹

III. Arbitrator’s Award

The Arbitrator considered the following issues:

1. Whether summary suspensions executed under the 2008 business rules of the Automated Traffic Enforcement Unit (ATEU) violated Article 4, Management Rights, of the parties’ Labor Agreement effective FY 2004 - FY 2008 because the suspensions were not exercised in accordance with laws, rules, and regulations? If so, what is the remedy?
2. Whether requiring Sergeant Christopher Leary to take retraining after not working in the ATEU program for 1-3 years violated Article 4, Management Rights, of the parties’ Labor Agreement, effective FY 2004 - FY 2008 because such request for retraining was not exercised in accordance with laws, rules, and regulations? If so, what is the remedy?¹⁰

Before the Arbitrator, the Union alleged that MPD violated Article 4 of the parties’ collective bargaining agreement which states, in pertinent part, that “management rights are to be

³ D.C. Official Code § 1-605.02(6).

⁴ The Arbitrator denied the grievance of Sergeant Leary. Before the Board are five grievances.

⁵ Award at 4.

⁶ Award at 6.

⁷ Award at 5.

⁸ Award at 6.

⁹ Opposition at 1.

¹⁰ Award at 2.

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exercised in accordance with applicable laws, rules and regulations.”¹¹ The Union asserted that no official rules were provided for the ATEU program or the summary suspensions, and that when suspended, the Grievants did not have a chance to respond to the discipline except by filing a grievance.¹² MPD claimed that it did not violate Article 4 because it “acted pursuant to management’s rights” in establishing the Business Rules for the program.¹³ MPD contended that the suspensions under the Business Rules were valid, approved by the appropriate officials, and commonly used by MPD.¹⁴ Finally, MPD asserted that a suspension under the Business Rules did not amount to discipline under the parties’ collective bargaining agreement or constitute an adverse action because ATEU was a voluntary program and a violation of the Business Rules was not considered an adverse action or discipline, as there was no investigation of misconduct, or removal or reduction in pay in the members’ regularly assigned duties, responsibilities, or tour of duty.¹⁵

In the Award, the Arbitrator granted five of the six grievances, in part.¹⁶ The Arbitrator agreed that the “management rights established in the Business Rules were not ‘exercised in accordance with applicable laws, rules and regulations’ under Article 4 to the extent that they allowed summary suspensions.”¹⁷ The Arbitrator added, “[t]he Department’s directive system at the relevant time ‘that members were required to comply with and enforce’ did not include ‘business rules.’”¹⁸ Additionally, the Arbitrator determined that MPD’s summary suspension of the Grievants was not “exercised in accordance with applicable laws, rules and regulations” under Article 4 of the parties’ collective bargaining agreement.¹⁹ The Arbitrator concluded that a suspension is an adverse action under the parties’ collective bargaining agreement as well as the General Order Disciplinary Procedures and Processes (“General Order”).²⁰ The Arbitrator stated that the Grievants were not provided with a notice of proposed adverse action, an opportunity to respond, and other procedural steps granted under the collective bargaining agreement and General Order.²¹

Accordingly, the Arbitrator determined that MPD violated Article 4 of the collective bargaining agreement by suspending the Grievants in a manner conflicting with applicable laws, rules, and regulations.²² The Arbitrator awarded back pay for the Grievants’ previously-scheduled overtime and for the overtime they would have earned during their suspensions.²³

¹¹ Award at 7.

¹² Award at 7.

¹³ Award at 7-8.

¹⁴ Award at 8.

¹⁵ Award at 8.

¹⁶ The Arbitrator denied the grievance of Sergeant Leary.

¹⁷ Award at 8.

¹⁸ Award at 8.

¹⁹ Award at 8.

²⁰ Award at 8.

²¹ Award at 8.

²² Award at 7.

²³ Award at 21-23.

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I. Discussion

A. The Arbitrator did not exceed his jurisdiction.

MPD first seeks reversal of the Award on the grounds that the Arbitrator exceeded his jurisdiction by (1) granting relief that the Union did not request in its grievance; (2) finding that MPD waived its argument that the grievances by Officer Cunningham, Sergeant Dyson, and Sergeant Urps were untimely filed; (3) finding that MPD violated Article 4 of the parties' collective bargaining agreement by suspending the Grievants from the ATEU program.

When determining if an Arbitrator has exceeded his jurisdiction, the Board looks to whether or not “the Award draws its essence from the collective bargaining agreement.”²⁴ The Board has held that by agreeing to submit a grievance to arbitration, it is the Arbitrator's interpretation, not the Board's, for which the parties have bargained.²⁵ Moreover, “[t]he Board will not substitute its own interpretation or that of the Agency for that of the duly designated arbitrator.”²⁶ A party's disagreement with an arbitrator's interpretation of a provision in the parties' collective bargaining agreement does not mean that the arbitrator exceeded his jurisdiction.²⁷

First, MPD states that the Arbitrator had no jurisdiction to issue the award because the Union never requested the relief granted by the Arbitrator in its grievances even though the Union was required to do so by the contract.²⁸ MPD states that the Arbitrator awarded back pay even though the Grievants did not request back pay during the grievance process.²⁹ MPD notes that Article 19 of the parties' collective bargaining agreement states that a written grievance must contain “[t]he specific remedy or adjustment sought.”³⁰ Further, MPD states that Article 19, Part E, Section 5 states, “the parties to the grievance on appeal shall not be permitted to assert in such arbitration proceeding any ground . . . not previously disclosed to the other party.”³¹ In awarding relief that the Union did not request during the grievance process, MPD argues that the Arbitrator also violated Article 19, Part E, Section 5.4, which prohibits an arbitrator from “add[ing] to, subtract[ing] from or modify[ing] the provisions of [the collective bargaining agreement] in arriving at a decision.”³² Additionally, MPD asserts that permitting the Union to pursue a remedy not sought in the grievance process was prejudicial to MPD, as MPD was not prepared to rebut

²⁴ *UDC v. UDC Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320, PERB Case No. 92-A-04 (1992) (citing *Michigan Family Resources, Inc. v. SEIU Local 517M*, 475 F.3d 746, 753 (6th Cir. 2007)).

²⁵ *UDC v. UDC Faculty Ass'n*, 39 D.C. Reg. 9628, Slip Op. 320, PERB Case No. 92-A-04 (1992).

²⁶ *D.C. Dep't of Corr. and Int'l Bhd. of Teamsters, Local Union No. 246*, 34 D.C. Reg. 3616, Slip Op. 157 at 3, PERB Case No. 87-A-02 (1987).

²⁷ *D.C. Dept. Pub. Works v. AFSCME Local 2091*, Slip Op. 194, PERB Case No. 87-A-08 (1988).

²⁸ Request at 4.

²⁹ As a remedy, all five Grievants requested, *inter alia*, that they be allowed to sign up and work immediately in ATEU overtime and that the Department follow its own rules and District law when changing or creating new policies, rules, or regulations. The Arbitrator determined that the ATEU program ended in May 2015. Award at 7.

³⁰ Request at 8.

³¹ Request at 8.

³² Request at 9.

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the Union’s requested remedy. Finally, MPD argues that the Arbitrator did not mention in the Award that MPD made this argument at arbitration.³³

The Board finds no merit to MPD’s argument that the Arbitrator exceeded his authority in determining a remedy not included in the initial grievance. The Arbitrator’s authority to devise a remedy in the instant case constitutes an exercise of his equitable powers arising out of the parties’ collective bargaining agreement.³⁴ The Board has held that an arbitrator does not exceed his authority by exercising his equitable powers, unless these powers are expressly restricted by the parties’ collective bargaining agreements.³⁵ Here, none of the provisions of the collective bargaining agreement cited by MPD restrict the Arbitrator’s authority to determine an appropriate remedy in this case. Further, the issue of an appropriate remedy was explicitly presented to the Arbitrator.³⁶ The Board has repeatedly held that it will not overturn an arbitration award based simply upon the petitioning party’s disagreement with the arbitrator’s findings.³⁷ It is well settled that “[b]y agreeing to submit a matter to arbitration, the parties also agree to be bound by the Arbitrator’s decision, which necessarily includes the . . . evidentiary findings and conclusions upon which his decision is based.”³⁸ Therefore, MPD’s disagreement with the Arbitrator’s Award does not present a statutory ground for review.

Second, MPD contends that the Arbitrator exceeded his jurisdiction by finding that MPD waived its argument that the grievances by Officer Cunningham, Sergeant Dyson, and Sergeant Urps were untimely filed.³⁹ MPD states that during arbitration, the Arbitrator ruled that MPD waived the untimeliness argument because MPD did not raise this argument in response to the grievances, pursuant to Article 19, Section E, Part 5.2.⁴⁰ MPD contends that it should have been permitted to argue that the grievances were untimely since the Union was permitted to request remedies during arbitration that were not requested during the initial grievance.⁴¹

The Board finds that MPD’s contentions here are merely disagreements with the Arbitrator’s findings. At the hearing, the Arbitrator found no merit to MPD’s contentions that the grievances were untimely filed.⁴² The Arbitrator further stated that Article 19, Section E, Part 5.2

³³ Request at 9.

³⁴ *Metro. Police Dep’t v. Nat’l Ass’n of Gov’t Emps., Local R3-5*, 59 D.C. Reg. 2983, Slip Op. No. 785 at 5, PERB Case No. 03-A-08 (2006).

³⁵ *E.g., Univ. of D.C. v. AFSCME, Council 20, Local 2087*, 59 D.C. Reg. 15167, Slip Op. 1333 at 6, PERB Case No. 12-A-01 (2012); *MPD v. FOP/MPDLC*, 59 D.C. Reg. 12709, Slip Op. 1327 at 4-5, PERB Case No. 06-A-05 (2012); *D.C. Metro. Police Dep’t and FOP/MPD Labor Comm.*, 47 D.C. Reg. 7217, Slip Op. 633, PERB Case No. 00-A-04 (2000).

³⁶ Award at 2.

³⁷ *Metro. Police Dep’t v. Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 64 D.C. Reg. 10138, Slip Op. No. 1637 at 2, PERB Case No. 17-A-07 (2017).

³⁸ *Id.*

³⁹ Request at 10.

⁴⁰ Request at 10.

⁴¹ Request at 10.

⁴² Award at 11, 14, 16.

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prohibited MPD from raising this argument for the first time at arbitration.⁴³ MPD's disagreement with the Arbitrator's findings is not a sufficient basis for finding that the Arbitrator exceeded his jurisdiction.

Third, MPD states that the Arbitrator exceeded his jurisdiction by finding that MPD violated the Managements Rights provision in Article 4 of the parties' collective bargaining agreement by suspending the Grievants from the ATEU program. MPD contends that the Arbitrator failed to analyze how the temporary removal of the Grievants from "this voluntary overtime program, which was not part of the member's regular duties, was an adverse action as there was no fine, suspension, removal from service, reduction in pay in the member's regularly assigned duties or reduction in rank."⁴⁴ MPD contends that the Arbitrator exceeded his authority by "essentially creating a right to overtime" where none exists in the collective bargaining agreement.⁴⁵

The Board finds that MPD's contentions here are merely disagreements with the Arbitrator's evidentiary findings and conclusions. MPD's position is a reiteration of the arguments presented before the Arbitrator and rejected in the Award.⁴⁶ The Board has repeatedly held that "[a]n Arbitrator need not explain the reason for his or her decision."⁴⁷ An Arbitrator's decision is not unenforceable merely because he or she fails to explain a certain basis for his or her decision.⁴⁸ Moreover, the Board has held that an arbitrator need not address and consider all the arguments made at arbitration.⁴⁹ In the present case, the Arbitrator made ample factual conclusions and discussed the Parties' arguments in supporting his decision. As stated previously, the Arbitrator found that a suspension is an adverse action under Article 12 of the parties' collective bargaining agreement as well as under General Order Article III, Sections 2,2; Article III, Section 8; and Article VI, Section H.⁵⁰ Therefore, the Board finds that MPD's argument also lacks merit.

B. The Award was not contrary to law and public policy.

As a second basis for review, MPD asserts that the Arbitrator's Award violates law and public policy on the grounds that the back pay award is speculative and provides unjust enrichment. The Board's scope of review, particularly on the basis of law and public policy, is narrow. "[T]he exception is designed to be narrow so as to limit potentially intrusive judicial

⁴³ Award at 11, 14, 16. The Board notes that the Arbitrator determined that even if MPD were permitted to make a timeliness argument, the grievance of Sergeant Urps was timely filed.

⁴⁴ Request at 15.

⁴⁵ Request at 16.

⁴⁶ *D.C. Pub. Sch. v. Wash. Teachers' Union, Local #6, Am. Fed'n of Teachers, AFL-CIO*, 64 D.C. Reg. 4875, Slip Op. No. 1610 at 5, PERB Case No. 16-A-09 (2016).

⁴⁷ *FOP/Dep't of Corr. Labor Comm. v. D.C. Dep't of Corr.*, 61 D.C. Reg. 11301, Slip Op. 955 at 8, PERB Case No. 08-A-06 (2010) (citing *Lopata v. Coyne*, 735 A.2d 931, 940 (D.C. 1999)); *FOP/MPD Labor Comm. v. D.C. MPD*, 59 D.C. Reg. 3543, Slip Op 882 at n.7, PERB Case No. 07-A-13 (2008); *FOP/MPD Labor Comm. v. D.C. MPD*, 59 D.C. Reg. 3875, Slip Op. 911 at n.8, PERB Case No. 06-A-12 (2007).

⁴⁸ *Id.* (citing *Chicago Typographical Union 16 v. Chicago Sun Times Inc.*, 935 F.2d 1501, 1506 (7th Cir. 1991)).

⁴⁹ *Id.*

⁵⁰ Award at 8.

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review of arbitration awards under the guise of public policy.”⁵¹ The law and public policy question must be “well defined and dominant,” and is to be ascertained “by reference to the law and legal precedents and not from general considerations of supposed public interest.”⁵² Absent a clear violation of law evident on the face of the arbitrator’s award, the Board lacks authority to substitute its judgment for that of the arbitrator.⁵³

MPD takes the position that there is a law and public policy against the “extraction of compensation for services not performed.”⁵⁴ MPD contends that this law and public policy is articulated in section 158(b)(6) of the National Labor Relations Act, which prohibits “extracting compensation from employers for work not performed.”⁵⁵ MPD states that this public policy is evident in decisions of the Supreme Court applying this statute.⁵⁶ MPD also contends that the Award is contrary to section 1-611.03(e) of the D.C. Official Code, which prohibits the payment of overtime for hours not worked, in accordance with the overtime provision of section 7 of the Fair Labor Standards Act.⁵⁷ However, MPD does not explain how the Award violates the stated law and public policy. Additionally, the Award does not contravene section 1-611.03(e) of the D.C. Official Code or section 158(b)(6) of the National Labor Relations Act since neither statute prohibits an arbitrator from awarding back pay as a remedy. In the absence of express contractually agreed-upon limits to back pay awards by the parties for arbitration awards, the Board does not find that the awarding of back pay contravenes applicable law and public policy.

II. Conclusion

The Board rejects MPD’s arguments and finds no cause to set aside or modify the Arbitrator’s Award. Accordingly, the Department’s request is denied and the matter is dismissed in its entirety.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 599, this Decision and Order is final upon issuance.

⁵¹ *Metro. Police Dep’t and Fraternal Order of Police/Metro. Police Dep’t Labor Comm.*, 59 D.C. Reg. 3959, Slip Op. No. 925, PERB Case No. 08-A-01 (2012) (quoting *Am. Postal Workers Union v. US Postal Serv.*, 789 F. 2d 1, 8 (D.C. Cir. 1986)).

⁵² *DC Metro. Police. Dep’t v. Fraternal Order of Police/ DC Metro. Police Dep’t Labor Comm.*, 63 DC Reg. 4573, Slip Op. 1561, PERB Case No. 14-A-09 (2016); *See Am. Postal Workers Union v. U.S. Postal Serv.*, 789 F.2d 1, 8 (D.C. Cir. 1986).

⁵³ *DC Metro. Police. Dep’t*, Slip Op. 1561 at 6.

⁵⁴ Request at 15.

⁵⁵ Request at 12.

⁵⁶ Request at 13-14.

⁵⁷ Request at 11.

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BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, Barbara Somson, and Douglas Warshof.

November 15, 2018

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 18-A-10, Opinion No. 1691 was sent by File and ServeXpress to the following parties on this the 27th day of November, 2018.

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