



***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council passes Resolution 23-268, Fiscal Year 2021 Budget Submission Requirements Resolution of 2019
- Department of Behavioral Health solicits partners to operate Opioid Specific Recovery Residences in the District of Columbia
- Office of the State Superintendent of Education announces funding for programs that address systemic barriers to academic achievement for students with disabilities
- Board of Elections updates its regulations to implement the provisions of the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011
- Board of Ethics and Government Accountability issues an advisory opinion on lobbyists registration requirements
- Department of Health announces a temporary closure of all its operations on December 6, 2019
- The Mayor of the District of Columbia delegates authority to the Director of the District Department of Transportation to execute agreements with the Washington Metropolitan Area Transit Authority to transport elementary and secondary school students at subsidized or free fares (Mayor's Order 2019-120)
- Public Service Commission establishes reliability and safety standards for natural gas service providers operating in the District

# DISTRICT OF COLUMBIA REGISTER

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ADMINISTRATOR

**CONTENTS**

**ACTIONS OF THE COUNCIL OF THE DISTRICT OF COLUMBIA**

**D.C. ACTS**

A23-158 Attorney General Grant-Making Authority  
Temporary Amendment Act of 2019 (B23-447).....015334 - 015335

A23-159 Investigating Maternal Mortalities Temporary  
Amendment Act of 2019 (B23-469) .....015336 - 015338

A23-160 Student Activity Fund Theatrical and Music  
Performance Expenditures Temporary  
Act of 2019 (B23-478) .....015339 - 015340

A23-161 Indigenous Peoples' Day Temporary Amendment  
Act of 2019 (B23-484) .....015341 - 015342

A23-162 Sanctuary Values Temporary Amendment  
Act of 2019 (B23-486) .....015343 - 015344

A23-163 MLK Gateway Real Property Tax Abatement  
Amendment Act of 2019 (B23-403) .....015345 - 015348

A23-164 Intra-District Transfer Limitation Temporary  
Amendment Act of 2019 (B23-476) .....015349 - 015350

A23-165 Fiscal Year 2020 Budget Support Clarification  
Emergency Amendment Act of 2019 (B23-502) .....015351 - 015353

**RESOLUTIONS**

Res 23-246 Change Order Nos. 1 through 3 to Contract No.  
DCAM-18-CS-0117 Approval and Payment Authorization  
Emergency Declaration Resolution of 2019 .....015354 - 015355

Res 23-247 Contract No. NFPHCANTH-19-C-001 Approval  
and Payment Authorization Emergency Declaration  
Resolution of 2019 ..... 015356

Res 23-253 St. Elizabeths East Parcel 15 Surplus Declaration  
and Approval Resolution of 2019 .....015357 - 015358

Res 23-255 Food Policy Council Spike Mendelsohn  
Confirmation Resolution of 2019..... 015359

Res 23-256 Food Policy Council Emi Reyes Confirmation  
Resolution of 2019 ..... 015360

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

**RESOLUTIONS CONT'D**

Res 23-257 Food Policy Council Beverley Wheeler Confirmation  
Resolution of 2019 ..... 015361

Res 23-258 Food Policy Council Andre Towner Confirmation  
Resolution of 2019 ..... 015362

Res 23-259 Food Policy Council Philip Sambol Confirmation  
Resolution of 2019 ..... 015363

Res 23-260 Food Policy Council James Huang Confirmation  
Resolution of 2019 ..... 015364

Res 23-261 Food Policy Council Kristy McCarron Confirmation  
Resolution of 2019 ..... 015365

Res 23-262 Food Policy Council Winnie Huston Confirmation  
Resolution of 2019 ..... 015366

Res 23-263 Board of Library Trustees Antonio Williams  
Confirmation Resolution of 2019..... 015367

Res 23-264 District of Columbia Housing Finance Agency  
Board of Directors Stanley Jackson Confirmation  
Resolution of 2019 ..... 015368

Res 23-265 District of Columbia Housing Finance Agency  
Board of Directors Bryan Scottie Irving Confirmation  
Resolution of 2019 ..... 015369

Res 23-266 District of Columbia Housing Finance Agency  
Board of Directors Heather Howard Confirmation  
Resolution of 2019 ..... 015370

Res 23-267 Rental Housing Commission Rupa Puttagunta  
Confirmation Resolution of 2019..... 015371

Res 23-268 Fiscal Year 2021 Budget Submission Requirements  
Resolution of 2019 .....015372 - 015378

Res 23-269 Advisory Neighborhood Commission Accountability  
Clarification Emergency Declaration Resolution of 2019 .....015379 - 015380

**BILLS INTRODUCED AND PROPOSED RESOLUTIONS**

**Notice of Intent to Act on New Legislation -**

Bills B23-542 through B23-550, and  
Proposed Resolutions PR23-558 and PR23-561 .....015381 - 015382

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

**COUNCIL HEARINGS**

**Notice of Public Hearings -**

B23-0045	Bedbug Control Act of 2019 (Joint) (Revised).....	015383 - 015384
B23-0145	District of Columbia Psychology Interjurisdictional Compact Act of 2019 (Joint) (Revised).....	015383 - 015384
B23-0250	Professional Art Therapist Licensure Amendment Act of 2019 (Joint) (Revised) .....	015383 - 015384
B23-0546	Interstate Physical Therapy Compact Approval Act of 2019 (Joint) (Revised) .....	015383 - 015384
B23-132	Indoor Mold Remediation Enforcement Amendment Act of 2019 (Joint) .....	015385 - 015386
B23-193	Electric Vehicle Readiness Amendment Act of 2019 (Joint).....	015385 - 015386
B23-204	Energy Efficiency Standards Amendment Act of 2019 (Joint).....	015385 - 015386
B23-506	Zero Waste Omnibus Amendment Act of 2019 .....	015387 - 015388

**Notice of Public Roundtable -**

PR23-539	Public Employee Relations Board Harriet Segar Confirmation Resolution of 2019 .....	015389
----------	---	--------

**OTHER COUNCIL ACTIONS**

**Consideration of Temporary Legislation -**

B23-552	Medical Marijuana Plant Count Elimination Temporary Amendment Act of 2019.....	015390
---------	--	--------

**Notice of Grant Budget Modification -**

GBM 23-54	FY 2019 Grant Budget Modifications of October 28, 2019 .....	015391
GBM 23-55	FY 2019 Grant Budget Modifications of October 30, 2019 .....	015391

**ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES**

**PUBLIC HEARINGS**

**Alcoholic Beverage Regulation Administration -**

Brasserie Liberte - ANC 2E - Renewal .....	015392
Buckaroos - ANC 3F - New .....	015393
Casa de Montecristo - ANC 2B - Change of Hours .....	015394
Emissary - ANC 2B - New .....	015395
Menomale - ANC 6C - New .....	015396
Mirror Lounge - ANC 1B - Summer Garden .....	015397
MPIRE Club - ANC 2B - Renewal .....	015398

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PUBLIC HEARINGS CONT'D

Alcoholic Beverage Regulation Administration - cont'd

Salumeria - ANC 6C - New .....	015399
Salumeria 2703 - ANC 5B - Class Change .....	015400
Simple Bar and Grill - ANC 4C - Renewal - CORRECTION .....	015401
Simple Bar and Grill - ANC 4C - Renewal - RESCIND .....	015402
Swahili Village/The Consulate - ANC 2B - New .....	015403
The Lane - ANC 5D - New .....	015404
Wal-Mart #5968 - ANC 4B - New .....	015405
WeWork - ANC 2B - Expansion.....	015406

Mayor's Agent for Historic Preservation - Public Hearing Notice - January 10, 2020

H.P.A. 19-497 Scottish Rite Temple - ANC 2B .....	015407
---	--------

Zoning Adjustment, Board of - Public Hearing Notice - January 15, 2020 (Revised)

18744A Patterson SPE LLC - ANC 2B .....	015408 - 015412
20136 Andrew Christopher Hall - ANC 1A .....	015408 - 015412
20163 719 SIXTH ST LLC - ANC 6C .....	015408 - 015412
20165 Andrew Dunnaville - ANC 2E .....	015408 - 015412
20175 57th Street Mews Inc. - ANC 5D .....	015408 - 015412
20176 M Street Five, LLC - ANC 2E .....	015408 - 015412
20177 Aulona Alia - ANC 5E .....	015408 - 015412
20179 Eli Richman Kaplan NMP Revocable Trust - ANC 6E .....	015408 - 015412
20181 Medici Road - ANC 1A .....	015408 - 015412
20184 Fort Lincoln-Eastern Avenue LLC - ANC 5C .....	015408 - 015412

Zoning Adjustment, Board of - Public Hearing Notice - January 29, 2020

20178 Murat Kayali - ANC 2B .....	015413 - 015415
20183 The Residences of Columbia Heights, a Condominium - ANC 1B (Appeal) .....	015413 - 015415
20185 David Baillat and Marc Knobbe - ANC 6C .....	015413 - 015415
20187 Jon-Joseph Russo - ANC 6C .....	015413 - 015415

FINAL RULEMAKING

Elections, DC Board of -

Amend 3 DCMR (Elections and Ethics), Ch. 30 (Campaign Finance Operations: Committees, Candidates, Constituent Service Programs, Statehood Funds), Ch. 37 (Investigations and Hearings), Ch. 38 (Legal Defense Committees), Ch. 39 (Campaign Finance Operations: Inaugural Committees), Ch. 40 (Campaign Finance Operations: Transition Committees), Ch. 41 (Campaign Finance Operations: Exploratory Committees), and Ch. 99 (Definitions), to conform the Board's regulations with the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011 .....	015416 - 015454
---	-----------------

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

**FINAL RULEMAKING CONT'D**

- Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 51 (Anesthesiologist Assistants),  
 Sec. 5108 (Continuing Education Requirements) and  
 Sec. 5199 (Definitions), to update continuing education  
 requirements for anesthesiologist assistants .....015455 - 015456
  
- Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 73 (Occupational Therapy Assistants),  
 Sec. 7304 (Continuing Education Requirements),  
 Sec. 7309 (Reactivation), and  
 Sec. 7310 (Reinstatement), to require occupational therapy  
 assistants seeking to renew, reactivate, or reinstate the license  
 to complete continuing education in public health priorities .....015457 - 015459
  
- Public Service Commission - RM37-2017-01 and F.C. No. 977  
 to Amend 15 DCMR (Public Utilities and Cable Television),  
 Ch. 37 (Natural Gas Quality of Service Standards and  
 Reliability Performance), Sections 3700 - 3705, 3707 and  
 Sec. 3799 (Definitions), to establish reliability and  
 safety standards and requirements for natural gas  
 utility and service providers operating in the District.....015460 - 015487

**PROPOSED RULEMAKING**

- Contract Appeals Board -  
 Amend 27 DCMR (Contracts and Procurement),  
 Ch. 1 (General Rules of the Contract Appeals Board),  
 Ch. 2 (Appeal Procedures of the Contract Board),  
 Ch. 3 (Protest Procedures of the Contract Appeals Board), and  
 Ch. 4 (Electronic Filing), to harmonize the Board’s rules with  
 existing District of Columbia procurement statutes and to clarify  
 the Board’s existing practices and procedures.....015488 - 015531
  
- Health, Department of (DC Health) -  
 Amend 17 DCMR (Business, Occupations, and Professionals),  
 Ch. 92 (Teaching Licenses for Dentistry and Dental Hygiene),  
 Sec. 9211 (Continuing Education Requirements), to update  
 continuing education requirements for individuals licensed to  
 teach dentistry or dental hygiene .....015532 - 015541

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING CONT'D

- Human Services, Department of -  
 Amend 29 DCMR (Public Welfare),  
 Ch. 72 (Standards of Assistance and Payment Levels),  
     Sec. 7200 (Standards of Assistance and Payment Levels), and  
 Ch. 58 (Temporary Assistance for Needy Families),  
     Sec. 5814 (Income Disregards), to modify the District of Columbia’s  
 public assistance payment levels for District of Columbia residents  
 who have been participating in the TANF program, General Assistance  
 for Children, IDA, and POWER public benefit programs ..... 015542 - 015544
  
- Public Service Commission - RM3-2019-01, RM36-2019-01, & RM37-2019-02  
 Amend 15 DCMR (Public Utilities and Cable Television),  
 Ch. 3 (Consumer Rights and Responsibilities), to rename  
     Sec. 304 (Billing) to Sec. 304 (Billing and Billing Error Notification),  
 Ch. 36 (Electricity Quality of Service Standards), to repeal  
     Sec. 3604 (Billing Error Notification), and  
 Ch. 37 (Natural Gas Quality of Service Standards), to repeal  
     Sec. 3706 (Billing Error Notification), to revise provisions  
 for Billing and Billing Error Notifications..... 015545 - 015548
  
- Water and Sewer Authority, DC -  
 Amend 21 DCMR (Water and Sanitation),  
 Ch. 1 (Water Supply), Sec. 112 (Fees),  
 to revise DC Water’s engineering review fees  
 and charges .....015549 - 015555

EMERGENCY AND PROPOSED RULEMAKING

- Health Care Finance, Department of -  
 Amend 29 DCMR (Public Welfare),  
 Ch. 9 (Medicaid Program),  
 Sec. 995 (Medicaid Physician and Specialty  
     Services Rate Methodology),  
 to authorize the Department of Health Care Finance  
 to make recurring periodic supplemental payments for  
 one fiscal year to Medicaid-enrolled physician groups .....015556 - 015557



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

**EMERGENCY AND PROPOSED RULEMAKING CONT'D**

Health Care Finance, Department of -  
 Amend 29 DCMR (Public Welfare),  
 Ch. 95 (Medicaid Eligibility),  
 Sec. 9511 (Supplemental Security Income-Based Methodology  
 for Certain Non-MAGI Eligibility Groups), and  
 to add Sec. 9513 (Non-MAGI Eligibility Group: Optional  
 Aged, Blind and Disabled), to set the  
 non-Modified Adjusted Gross Income (non-MAGI) financial and  
 non-financial Medicaid eligibility requirements, for the optional  
 Aged, Blind and Disabled (ABD) group; Emergency and Second  
 Proposed Rulemaking to incorporate substantive and technical  
 changes made to § 9513 published on September 30, 2016 at  
 63 DCR 11910 .....015558 - 015563

State Athletic Association, DC -  
 Amend 5 DCMR (Education),  
 Subtitle A (Office of the State Superintendent of Education),  
 to repeal Ch. 27 (Interscholastic Athletics) in its entirety,  
  
 to add Subtitle F (District of Columbia State Athletic Association),  
 Ch. 1 (Interscholastic Athletics),  
 Sections 100 - 113 and Sec. 199 (Definitions),  
 to align the District’s interscholastic athletics regulations  
 with the governance structure and requirements established  
 in the DC State Athletics Consolidation Act of 2016 .....015564 - 015587

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

2019-120 Delegation – Authority to the Directors of the District  
 Department of Transportation and the Department of  
 Employment Services pursuant to the Student, Foster  
 Youth, Summer Youth Employee, and Adult Learner  
 Transit Subsidies Act of 2019 .....015588 - 015589

2019-121 Amended Establishment – Creative Affairs Office .....015590 - 015591

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

Behavioral Health, Department of -  
 Notice of Funding Availability - Recovery  
 Residences Grant (RFA No. RM0 RR112219) .....015592 - 015593

Education, Office of the State Superintendent of -  
 Notice of Funding Availability - Special Education  
 Enhancement Fund Competitive Grant .....015594 - 015595

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

Ethics and Government Accountability, Board of -  
 Advisory Opinion - Redacted - Lobbyists  
 Registration Requirements .....015596 - 015598

Friendship Public Charter School -  
 Request for Proposals - Branded, Personalized and  
 Promotional Goods and Related Services ..... 015599

Health, Department of (DC Health) -  
 Notice of Temporary Closure - December 6, 2019 ..... 015600

KIPP DC Public Charter Schools -  
 Request for Proposals - Violence Interrupter Services ..... 015601

Public Employee Relations Board - Opinion -  
 1713 PERB Case No. 18-N-05 Board of Trustees of the  
 University of the District of Columbia v. University  
 of the District of Columbia Faculty Associations .....015602 - 015607

Secretary, Office of the -  
 Recommendations for Appointments as DC Notaries  
 Public - Effective January 2, 2020 .....015608 - 015614

Sentencing Commission, DC -  
 Notice of Public Meeting - November 19, 2019 ..... 015615  
 Notice of Public Meeting Update - December 17, 2019 (Cancelled) ..... 015616

Sojourner Truth Public Charter School -  
 Request for Proposals - Family and Community  
 Engagement Services ..... 015617

Zoning Adjustment, Board of - Cases -  
 13540-A National Geographic Society - ANC 2B - Order .....015618 - 015620  
 20104 Zeta Phi Beta Sorority, Inc. - ANC 2B - Order.....015621 - 015623  
 20114 3569 Warder LLC - ANC 1A - Order .....015624 - 015627  
 20127 David Boggs - ANC 2F - Order .....015628 - 015631  
 20137 WH Development - ANC 1A - Order .....015632 - 015634  
 20138 Joyce Cowan - ANC 2F - Order .....015635 - 015637  
 20139 716 L ST SE LLC - ANC 6B - Order .....015638 - 015641  
 20140 Todd Vassar & Bryant Hall - ANC 3C - Order .....015642 - 015644

Zoning Adjustment, Board of - Public Meeting Notice - January 29, 2020  
 20173 Susan Ludwig and Laura Olsen - ANC 5E .....015645 - 015647

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

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

Zoning Commission - Cases -

15-27E	350 Morse CPK Owner, LLC - Notice of Filing .....	015648
18-21	Hanover R.S. Limited Partnership - Order .....	015649 - 015696
19-25	Airdome, LLC - Notice of Filing .....	015697

ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-158**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To amend, on a temporary basis, the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010 to expand the Attorney General’s grant-making authority for crime reduction and violence interruption.

BE IT ENACTED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Attorney General Grant-Making Authority Temporary Amendment Act of 2019”.

Sec. 2. Section 108c(a) of the Attorney General for the District of Columbia Clarification and Elected Term Amendment Act of 2010, effective May 10, 2019 (D.C. Law 22-313; D.C. Official Code § 1-301.88f(a)), is amended by striking the phrase “grants not to exceed the total amount of \$360,000 for” and inserting the phrase “grants for” in its place.

Sec. 3. Applicability.

This act shall apply as of October 1, 2019.

Sec. 4. Fiscal impact statement.


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

Sec. 5. Effective date.

(a) 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.

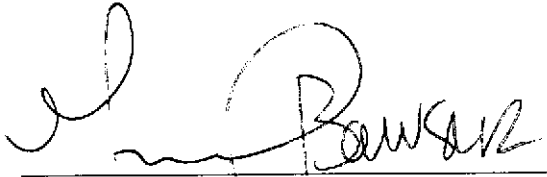
(b) This act shall expire after 225 days of its having taken effect.

ENROLLED ORIGINAL



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia  
APPROVED  
November 18, 2019

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-159**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To amend, on a temporary basis, the Establishment of the Office of the Chief Medical Examiner Act of 2000 to require the Office of the Chief Medical Examiner to investigate all maternal mortalities occurring in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Investigating Maternal Mortalities Temporary Amendment Act of 2019".

Sec. 2. Section 2906 of the Establishment of the Office of the Chief Medical Examiner Act of 2000, effective October 19, 2000 (D.C. Law 13-172; D.C. Official Code § 5-1405), is amended as follows:

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

(1) Paragraph (11) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (12) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (13) is added to read as follows:

"(13) All maternal mortalities."

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

"(b-1) For the purposes of subsection (b) of this section, the term:

"(1) "Maternal mortalities" means pregnancy-associated deaths and pregnancy-related deaths, as those terms are defined in section 2(4) and (5) of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.01(4) and (5)), and deaths resulting from severe maternal morbidity.

"(2) "Severe maternal morbidity" means one of the following outcomes of labor and delivery that results in short-term or long-term consequences to a woman's health:

"(A) Acute myocardial infarction;

"(B) Acute renal failure;

"(C) Adult respiratory distress syndrome;

"(D) Air and thrombotic embolism;

"(E) Amniotic fluid embolism;

## ENROLLED ORIGINAL

- “(F) Anesthesia complications;
- “(G) Aneurysm;
- “(H) Blood products transfusion;
- “(I) Cardiac arrest/ventricular fibrillation;
- “(J) Conversion of cardiac rhythm;
- “(K) Disseminated intravascular coagulation;
- “(L) Eclampsia;
- “(M) Heart failure/arrest during surgery or procedure;
- “(N) Hysterectomy;
- “(O) Puerperal cerebrovascular disorders;
- “(P) Pulmonary edema/acute heart failure;
- “(Q) Sepsis;
- “(R) Shock;
- “(S) Sickle cell disease with crisis;
- “(T) Temporary tracheostomy; or
- “(U) Ventilation.”.

**Sec. 3. Fiscal impact statement.**

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

**Sec. 4. Effective date.**

(a) 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

ENROLLED ORIGINAL

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

(b) This act shall expire after 225 days of its having taken effect



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia  
APPROVED  
November 18, 2019



ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-160**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To provide, on a temporary basis, that expenditures on school-administered theatrical and music performances, including stipends for non- District of Columbia Public Schools employees, shall be an allowable expenditure from a school’s Student Activity Fund.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Student Activity Fund Theatrical and Music Performance Expenditures Temporary Act of 2019”.

Sec. 2. Use of Student Activity Funds for theatrical and music performances.

(a) Expenditures on school-administered theatrical and music performances, including stipends for non-District of Columbia Public Schools employees, but excluding stipends for District of Columbia Public Schools (“DCPS”) employees, shall be an allowable expenditure from a DCPS school’s Student Activity Fund.

(b) For the purposes of this act, the term “theatrical and music performances” means the planning, rehearsal, or presentation of a musical, staged play, choral production, orchestral or band concert, variety show, improvised or sketch comedy performance, or other live performance.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) 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,

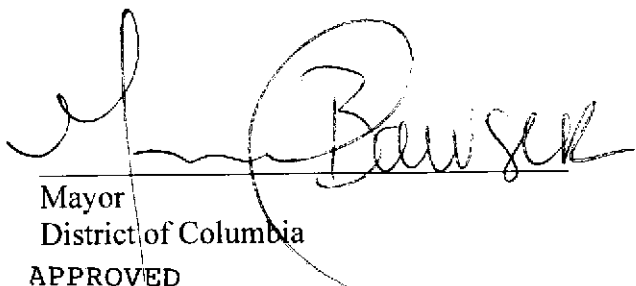
ENROLLED ORIGINAL

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

(b) This act shall expire after 225 days of its having taken effect.



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
November 18, 2019

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-161**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To amend on a temporary basis, the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to change the name of the legal holiday celebrated on the 2nd Monday in October from Columbus Day to Indigenous Peoples' Day; and to amend sections 25-723 and 28-2701 of the District of Columbia Official Code to do the same.

BE IT ENACTED BY THE COUNCIL FOR THE DISTRICT OF COLUMBIA, That this act may be cited as the "Indigenous Peoples' Day Temporary Amendment Act of 2019".

Sec. 2. Section 1202(a)(7) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-319; D.C. Official Code § 1-612.02(a)(7)), is amended by striking the phrase "Columbus Day" and inserting the phrase "Indigenous Peoples' Day" in its place.

Sec. 3. Section 25-723(c)(1)(B) of the District of Columbia Official Code is amended by striking the phrase "Columbus Day" and inserting the phrase "Indigenous Peoples' Day" in its place.

Sec. 4. Section 28-2701 of the District of Columbia Official Code is amended by striking the phrase "Columbus Day" and inserting the phrase "Indigenous Peoples' Day" in its place.

Sec. 5. Fiscal impact statement.

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


Sec. 6. Effective date.

(a) 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

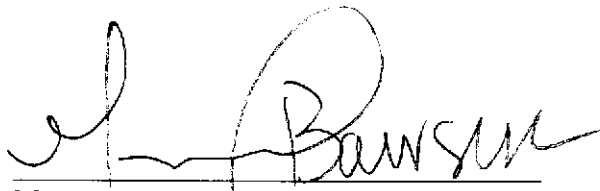
24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

(b) This act shall expire after 225 days of its having taken effect.



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Chairman  
Council of the District of Columbia



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Mayor  
District of Columbia

APPROVED  
November 18, 2019

ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-162**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To amend, on a temporary basis, An Act To create a Department of Corrections in the District of Columbia to limit the District’s cooperation with federal immigration agencies, including by complying with detainer requests, absent a judicial warrant or order.

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

Sec. 2. Section 7 of An Act To create a Department of Corrections in the District of Columbia, effective December 11, 2012 (D.C. Law 19-194; D.C. Official Code § 24-211.07), is amended to read as follows:

“Sec. 7. Prohibition on cooperation with federal immigration agencies.

“(a) Absent a judicial warrant or order, issued by a federal judge appointed pursuant to Article III of the United States Constitution or a federal magistrate judge appointed pursuant to 28 U.S.C. § 631, that authorizes a federal immigration agency to take into custody the person who is the subject of such warrant or order, the District of Columbia shall not:

“(1) Hold an individual in the District’s custody after that individual would have been otherwise released, except as provided in section 2a(c)(6);

“(2) Except as provided in Intergovernmental Agreement No. 16-00-0016, entered into between the Department of Corrections and the United States Marshals Service, provide to a federal immigration agency an individual’s date and time of release, location, address, or criminal case information;

“(3) Provide to any federal immigration agency an office, booth, or any facility or equipment for a generalized search of or inquiry about an individual in the District’s custody;

“(4) Permit any federal immigration agency to interview an individual in the District’s custody without giving the individual an opportunity to have counsel present; or

“(5) Except as provided in Intergovernmental Agreement No. 16-00-0016, entered into between the Department of Corrections and the United States Marshals Service, grant any federal immigration agency access to a District detention facility, including St. Elizabeths Hospital or a facility under the control of the Department of Corrections or the Department of Youth Rehabilitation Services, for the purpose of releasing an individual into federal custody.

ENROLLED ORIGINAL

“(b) The District shall not inquire into the immigration status of an individual in its custody.

“(c) Nothing in this section shall be construed to establish a right to counsel that does not otherwise exist in law.

“(d) Nothing in this section shall be construed to create a private right of action.”.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

(b) This act shall expire after 225 days of its having taken effect.



Chairman  
Council of the District of Columbia



Mayor  
District of Columbia

APPROVED  
November 18, 2019

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-163**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2019**

To amend Chapter 46 of Title 47 of the District of Columbia Official Code to provide an abatement of real property taxes for property located at 1201-1215 Good Hope Road, S.E., and known for tax and assessment purposes as Lots 1017, 847, 867, 866, and 864 in Square 5769.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “MLK Gateway Real Property Tax Abatement Amendment Act of 2019”.

Sec. 2. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

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

“§ 47-4671. MLK Gateway real property tax abatement.”.

(b) A new section 47-4671 is added to read as follows:

“§ 47-4671. MLK Gateway real property tax abatement.

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

“(1) “CBE” means a certified business enterprise or joint venture certified pursuant to the CBE Act.

“(2) “CBE Act” means the Small and Certified Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).

“(3) “Developer” means MLK Gateway Partners LLC, a District of Columbia limited liability company, with a business address of 3401 8th Street, N.E., comprised of the Menkiti Group, with a business address of 3401 8th Street N.E., or its successors, or one of its affiliates or assignees and Enlightened Inc., with a business address of 1101 Connecticut Avenue, N.W., Washington D.C. 20036, or its successors, or one of its affiliates or assignees, as approved by the Mayor.

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

## ENROLLED ORIGINAL

“(5) “Project” means a mixed-use commercial project, including renovating the historic storefronts, new office and retail space, and any ancillary uses allowed under applicable law.

“(6) “Property” means the real property described as 1201-1215 Good Hope Road, S.E., known for tax and assessment purposes as Lots 1017, 847, 867, 866, and 864 in Square 5769, and any improvements on that real property.

“(b)(1) Beginning with the tax year during which a certificate of occupancy (whether temporary or final) is issued authorizing Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia approved by the Mayor, any use of the Property, the tax imposed by Chapter 8 of this title on the Property, subject to funding, shall be abated for 15 real property tax years. The total amount of the abatement shall not exceed \$3 million.

“(2) For the initial transfer of the property, the project and property shall be exempt from the recordation taxation imposed pursuant to Chapter 11 of Title 42 and from transfer taxes imposed pursuant to Chapter 9 of this title. The exemptions provided by this paragraph shall not apply to any successor developer of the project or subsequent transfers of the property.

“(3) Notwithstanding paragraph (1) of this subsection, in no case shall the abatement provided in paragraph (1) of this subsection begin before October 1, 2020.

“(c) For the Property to receive the abatement described in this section, the:

“(1) Developer shall maintain a lease agreement with Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia approved by the Mayor, for approximately 20,000 square feet of office space within the Project.

“(2) Project shall include 35% CBE participation;

“(3) Project shall comply with a First Source Hiring Agreement; and

“(4) Developer shall conduct 2 employment fairs in Ward 8 to encourage local participation in the redevelopment of the Property and make local residents aware of job opportunities in the redevelopment of the Property and in the businesses that will occupy the Property after completion of the redevelopment.

“(d)(1) The Mayor shall certify to the Office of Tax and Revenue the Property’s eligibility for the abatement provided pursuant to this section. The Mayor’s certification shall include:

“(A) A description of the Property by street address, square, suffix, and lot, and the date the abatement begins and ends;

“(B) The date a certificate of occupancy for Enlightened Inc., or another locally owned and operated business with employees in the District of Columbia as approved by the Mayor, authorizing any use of the Property was issued;

“(C) A statement that the conditions specified in subsection (c) of this section have been satisfied; and

“(D) Any other information that the Mayor considers necessary or appropriate.



## ENROLLED ORIGINAL

“(2) If at any time the Mayor determines that the Property has become ineligible for the abatement provided pursuant to this section, the Mayor shall notify the Office of Tax and Revenue and shall specify the date that the Property became ineligible. The entire Property shall be ineligible for the abatement on the first day of the tax year following the date when ineligibility occurred.

“(e) The exemption provided by this section shall be in addition to, and not in lieu of, any other tax relief or assistance from any other source applicable to the MLK Gateway Disposition, as approved by the MLK Gateway Disposition Approval Resolution of 2017, effective December 5, 2017 (Res. 22-319; 65 DCR 33).”.

**Sec. 3. 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. 4. Fiscal impact statement.**

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

**Sec. 5. Effective date.**

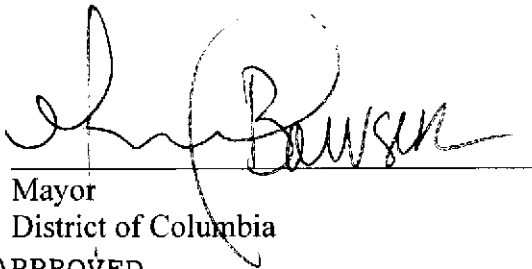
This act shall take effect following approval of the Mayor (or, in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

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  
November 18, 2019

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-164**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 20, 2019**

To amend, on a temporary basis, section 47-362 of the District of Columbia Official Code to provide that intra-District transfers shall not be used to establish new programs or to change allocations specifically denied, limited, or increased by the Council in the budget act, or the accompanying budget report or mark-up sheets.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Intra-District Transfer Limitation Temporary Amendment Act of 2019”.

Sec. 2. Section 47-362(b) of the District of Columbia Official Code is amended by striking the phrase “Reprogrammings shall” and inserting the phrase “Reprogrammings or intra-District transfers shall” in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) 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



ENROLLED ORIGINAL

AN ACT  
**D.C. ACT 23-165**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 20, 2019**

To amend, on an emergency basis, the Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority Act of 2012, the Lead Service Line Priority Replacement Assistance Act of 2004, Title 47 of the District of Columbia Official Code, the Rental Housing Commission Independence Clarification Amendment Act of 2018, and the Short-Term Rental Regulation Act of 2019 to clarify provisions supporting the Fiscal Year 2020 budget; and to provide for the award of a grant in the amount of \$100,000 from the Washington Convention and Sports Authority to the Historical Society of Washington, D.C.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Fiscal Year 2020 Budget Support Clarification Emergency Amendment Act of 2019”.

Sec. 2. Section 2032 of the Deputy Mayor for Planning and Economic Development Limited Grant-Making Authority Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 1-328.04), is amended by adding a new subsection (g) to read as follows:

“(g) Notwithstanding the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), in Fiscal Year 2020, the Deputy Mayor for Planning and Economic Development shall award a grant to assist with capital improvements and related facility maintenance, and general operating expenses for a theatre that is a National Center for Latino Performing Arts, located in the District-owned Tivoli Building, in an amount not to exceed \$1 million.”.

Sec. 3. Section 6019b(b)(1)(A)(i) of the Lead Service Line Priority Replacement Assistance Act of 2004, effective March 13, 2019 (D.C. Law 22-241; D.C. Official Code § 34-2159(b)(1)(A)(i)), is amended by striking the phrase “median income; and” and inserting the phrase “median income; or” in its place.

Sec. 4. Title 47 of the D.C. Official Code is amended as follows:

(a) Section 47-1005.03(b)(3) is amended to read as follows:

## ENROLLED ORIGINAL

“(3)(A) Rents charged to the tenants described in paragraph (1) of this subsection are not in excess of 30% of 80% of the adjusted median income for a household consisting of the number of persons indicated by the maximum occupancy standard for the unit occupied by such tenant; and rents charged to tenants described in paragraph (2) of this subsection are not in excess of 30% of 120% of the adjusted median income for a household consisting of the number of persons indicated by the occupancy standard for the unit occupied by such tenant; provided, that the total rent paid to the nonprofit landlord for any individual unit shall not exceed the greater of the Housing Choice Voucher Program rent for the submarket in which the property is located or for the submarket immediately adjacent to the property, established annually by the District of Columbia Housing Authority;

“(B) For the purposes of this paragraph, the term “occupancy standard” means, for a:

- “(i) Studio/efficiency unit, 1 person;
- “(ii) One-bedroom unit, 1.5 persons;
- “(iii) Two-bedroom unit, 3.0 persons;
- “(iv) Three-bedroom unit, 4.5 persons; and
- “(v) Four-bedroom unit, 6 persons.”.

(b) Section 47-4665.06 is amended as follows:

(1) Subsection (a)(13) is amended to read as follows:

“(13) “Property” means a portion of the real property located at 2445 M Street, N.W., known for tax and assessment purposes as Lot 871 in Square 0024, that is subject to real property taxation under Chapter 8 of this title.”.

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

“(2) The lease execution shall occur on or before August 1, 2019.”.

Sec. 5. (a) Notwithstanding the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), and Rule 730 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 23, Resolution of 2019, effective January 2, 2019 (Res. 23-1; 66 DCR 272), in Fiscal Year 2020, the Washington Convention and Sports Authority (“Events DC”) shall award the Historical Society of Washington, D.C. a grant in the amount of \$100,000 to assist with the transition into new space and to facilitate the anticipated increase in visitors.

(b) In Fiscal Year 2020, of the funds allocated to the Non-Departmental Account, \$100,000 shall be transferred to Events DC to use for the grant authorized by subsection (a) of this section.

Sec. 6. Subject-to-appropriation repealers.

## ENROLLED ORIGINAL

(a) Section 4 of the Rental Housing Commission Independence Clarification Amendment Act of 2018, effective February 22, 2019 (D.C. Law 22-200; 65 DCR 12066), is repealed.

(b) Section 301 of the Short-Term Rental Regulation Act of 2019, effective April 25, 2019 (D.C. Law 22-307; 66 DCR 898), is repealed.

Sec. 7. Applicability.

This act shall apply as of October 1, 2019.

Sec. 8. Fiscal impact statement.

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

Sec. 9. Effective date.

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



Chairman  
Council of the District of Columbia

\_\_\_\_\_  
UNSIGNED

Mayor  
District of Columbia  
November 18, 2019

ENROLLED ORIGINAL

A RESOLUTION

23-246

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To declare the existence of an emergency with respect to the need to approve Change Order Nos. 1 through 3 to Contract No. DCAM-18-CS-0117 with Stevens School Developer, LLC, for design-build services for exterior renovations to the Thaddeus Stevens School, and to authorize payment for the goods and services received and to be received under the change orders.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Change Order Nos. 1 through 3 to Contract No. DCAM-18-CS-0117 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2(a) There exists an immediate need to approve Change Order Nos. 1 through 3 to Contract No. DCAM-18-CS-0117 with Stevens School Developer, LLC, (“Contract”) for design-build services for the exterior renovations to the Thaddeus Stevens School exterior renovation and to authorize payment in the not-to-exceed amount of \$7,452,006 for the goods and services received and to be received under the change orders.

(b) On July 6, 2019, the underlying Contract was deemed approved by the Council as CA23-0211 in the not-to-exceed amount of \$3,047,568.

(c) The Department of General Services subsequently issued Change Order Nos. 1 and 2. Change Order No. 1, in the amount of \$0, added administrative language to the Contract. Change Order No. 2 increased the Contract’s not-to-exceed amount by \$996,230, bringing the total Contract value to \$4,043,798.

(d) Council approval is now required as proposed Change Order No. 3 would increase the Contract value by \$6,455,776 and establish an amount for the Contract of \$10,499,574. If approved, the aggregate increase to the total Contract value, via Change Order Nos. 1 through 3, would be \$7,452,006. Proposed Change Order No. 3 would cause the aggregate value of all change orders issued after the last Council approval to exceed \$1 million and thus Council approval of Change Order No. 3 is now required pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51).



**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Change Order Nos. 1 through 3 to Contract No. DCAM-18-CS-0117 Approval and Payment Authorization Emergency Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

23-247

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To declare the existence of an emergency with respect to the need to approve Contract No. NFPHCANTH-19-C-001 between the Not-for-Profit Hospital Corporation (“Hospital”) and Northrium Health, LLC, to provide 24-hour anesthesia services, vascular access and infusion services to the Hospital, and to authorize payment for the goods and services received and to be received under the contract.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Contract No. NFPHCANTH-19-C-001 Approval and Payment Authorization Emergency Declaration Resolution of 2019”.

Sec. 2. (a) There exists an immediate need to approve Contract No. NFPHCANTH-19-C-001 (“Contract”) between the Not-for-Profit Hospital Corporation (“Hospital”) and Northrium Health, LLC, to provide 24-hour anesthesia services, vascular access, and infusion services to the Hospital and to authorize payment for the goods and services received and to be received under the contract.

(b) The base year of the Contract addresses the period from August 2, 2019 to August 1, 2020 in the amount of \$ 1,660,945.83.

(c) Work on this critical patient care contract began in August 2019 while the Hospital obtained all requisite approvals.

(d) This Contract has an aggregate value that exceeds \$1 million in a 12-month period, and therefore Council approval is necessary.

(e) Emergency approval of this Contract for \$ 1,660,945.83 is necessary to prevent any impact to the hospital’s provision of 24-hour anesthesia services, vascular access, and infusion services.

(f) Without Council approval, Northrium cannot be paid for these critical services provided and to be provided in excess of \$ 1 million.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Contract No. NFPHCANTH-19-C-001 Approval and Payment Authorization Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

23-253

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To declare that the District-owned real property, known as St. Elizabeths East Parcel 15, located between Sycamore Drive, S.E., and Oak Drive, S.E., and known for taxation and assessment purposes as Lot 810 in Square S-5868, is no longer required for public purposes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “St. Elizabeths East Parcel 15 Surplus Declaration and Approval Resolution of 2019.”

Sec. 2. Findings.

(a) The District is the owner of the real property located between Sycamore Drive, S.E., and Oak Drive, S.E., and known for taxation and assessment purposes as Lot 810 in Square S-5868 (“Property”). The Property consists of approximately 187,000 square feet of land.

(b) The Property is no longer required for public purposes because its condition cannot viably accommodate District agency use or other public use without cost-prohibitive renovation. The most pragmatic solution for reactivating this site is to declare the Property surplus and dispose of it for redevelopment.

(c) The District has satisfied the public hearing requirements of section 1(a-1)(4) of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801(a-1)(4)) (“Act”), by holding a public hearing on December 17, 2018, at R.I.S.E. Demonstration Center located at 2730 Martin Luther King Jr. Ave., S.E.

Sec. 3. Pursuant to section 1(a-1) of the Act, the Council determines that the Property is no longer required for public purposes.

Sec. 4. Transmittal.

The Secretary to the Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

**ENROLLED ORIGINAL**

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 resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

23-255

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the reappointment of Mr. Evangelos S. “Spike” Mendelsohn as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Spike Mendelsohn Confirmation Resolution of 2019”.

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

Mr. Evangelos S. “Spike” Mendelsohn  
16th Street, N.W.  
Washington, D.C. 20036  
(Ward 2)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a term to end March 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

23-256

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Ms. Emi Reyes as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Emi Reyes Confirmation Resolution of 2019”.

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

Ms. Emi Reyes  
9th Street, N.W.  
Washington, D.C. 20011  
(Ward 4)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), succeeding Jonas Singer, for a term to end March 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

23-257

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Dr. Beverley Wheeler as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Beverley Wheeler Confirmation Resolution of 2019”.

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

Dr. Beverley Wheeler  
10th Street, N.W.  
Washington, D.C. 20010  
(Ward 1)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), succeeding Jeremiah Lowery, for a term to end March 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

23-258

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Rev. Andre Towner as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Andre Towner Confirmation Resolution of 2019”.

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

Rev. Andre Towner  
Anderson Place, S.E.  
Washington, D.C. 20032  
(Ward 8)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), replacing Caesar Layton, for a term to end March 1, 2020, and for a new term to end March 1, 2023.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

23-259

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the reappointment of Mr. Philip Sambol as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Philip Sambol Confirmation Resolution of 2019”.

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

Mr. Philip Sambol  
Rhode Island Avenue, N.E.  
Washington, D.C. 20018  
(Ward 5)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), for a term to end March 1, 2022.

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

Sec. 4. This resolution shall take effect immediately.

## ENROLLED ORIGINAL

## A RESOLUTION

23-260

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Dr. James Huang as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council James Huang Confirmation Resolution of 2019”.

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

Dr. James Huang  
1st Street, N.E.  
Washington, D.C. 20002  
(Ward 5)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), replacing Alexander Moore, for the remainder of an unexpired term to end March 1, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

23-261

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Ms. Kristy McCarron as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Kristy McCarron Confirmation Resolution of 2019”.

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

Ms. Kristy McCarron  
Florida Avenue, N.W.  
Washington, D.C. 20001  
(Ward 5)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), replacing Paula Reichel, for the remainder of an unexpired term to end March 1, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-262

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Ms. Winnie Huston as a voting member of the Food Policy Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Food Policy Council Winnie Huston Confirmation Resolution of 2019”.

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

Ms. Winnie Huston  
Spring Place, N.W.  
Washington, D.C. 20012  
(Ward 4)

as a voting member of the Food Policy Council, established by section 3 of the Food Policy Council and Director Establishment Act of 2014, effective March 10, 2015 (D.C. Law 20-191; D.C. Official Code § 48-312), replacing Alexandra Ashbrook, for the remainder of an unexpired term to end March 1, 2020, and for a new term to end March 1, 2023.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

## A RESOLUTION

23-263

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Mr. Antonio Williams to the Board of Library Trustees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Library Trustees Antonio Williams Confirmation Resolution of 2019”.

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

Mr. Antonio Williams  
S Street, N.W.  
Washington, D.C. 20001  
(Ward 5)

as a member of the Board of Library Trustees, established by section 4 of An Act To establish and provide for the maintenance of a free public library and reading room in the District of Columbia, approved June 3, 1896 (29 Stat. 244; D.C. Official Code § 39-104), replacing Faith Hubbard for a term to end January 5, 2020, and for a new term to end January 5, 2025.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-264

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the reappointment of Mr. Stanley Jackson to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Stanley Jackson Confirmation Resolution of 2019”.

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

Mr. Stanley Jackson  
Brandywine Street, S.W.  
Washington, D.C. 20032  
(Ward 8)

as a member, representing community or consumer interests, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-265

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the reappointment of Mr. Bryan Scottie Irving to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Bryan Scottie Irving Confirmation Resolution of 2019”.

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

Mr. Bryan Scottie Irving  
Fairmont Street, N.W.  
Washington, D.C. 20009  
(Ward 1)

as a member, with experience in home building, real estate, architecture, or planning, of the District of Columbia Housing Finance Agency Board of Directors, established by section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), for a term to end June 28, 2021.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-266

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the appointment of Ms. Heather Howard to the District of Columbia Housing Finance Agency Board of Directors.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “District of Columbia Housing Finance Agency Board of Directors Heather Howard Confirmation Resolution of 2019”.

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

Ms. Heather Howard  
12th Street, N.E.  
Washington, D.C. 20017  
(Ward 5)

as a member, with experience in home building, real estate, architecture, or planning, of the District of Columbia Housing Finance Agency Board of Directors, pursuant to section 202 of the District of Columbia Housing Finance Agency Act, effective March 3, 1979 (D.C. Law 2-135; D.C. Official Code § 42-2702.02), succeeding Sheila Miller, for a term to end June 28, 2021.

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

Sec. 4. This resolution shall take effect immediately.



ENROLLED ORIGINAL

## A RESOLUTION

23-267

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To confirm the reappointment of Mrs. Rupa Puttagunta to the Rental Housing Commission.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Rental Housing Commission Rupa Puttagunta Confirmation Resolution of 2019”.

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

Rupa Puttagunta  
12th Street, N.W.  
Washington, D.C. 20009  
(Ward 1)

as a member of the Rental Housing Commission, established by section 201 of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.01), for a term to end July 18, 2022.

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

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

23-268

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To establish the date by which the Mayor shall submit to the Council the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2021, to identify information and documentation to be submitted to the Council with the proposed budget for the government of the District of Columbia for the fiscal year ending September 30, 2021, and to require the Mayor to submit performance plans and accountability reports pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Fiscal Year 2021 Budget Submission Requirements Resolution of 2019”.

Sec. 2. Pursuant to section 442(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 798; D.C. Official Code § 1-204.42(a)) (“Home Rule Act”), the Mayor shall submit to the Council, and make available to the public, not later than March 19, 2020, the proposed budget for the District government and related budget documents required by sections 442, 443, and 444 of the Home Rule Act (D.C. Official Code §§ 1-204.42, 1-204.43, and 1-204.44), for the fiscal year ending September 30, 2021.

Sec. 3. The proposed budget shall contain:

(1) Required budget documents as follows:

(A) For the entire District government, including all subordinate agencies, independent agencies, independent instrumentalities, and independent authorities (“agency”), the proposed budget shall contain a summary statement and a table showing the proposed budget and financial plan, to include the following:

(i) Actual revenues and expenditures for Fiscal Year 2018, actual revenues and expenditures for Fiscal Year 2019, projected revenues and expenditures for the Fiscal Year 2020 approved and revised budgets, projected revenues and expenditures for the Fiscal Year 2021 proposed budget, and projected revenues and expenditures for Fiscal Years 2022 through 2024;

(ii) Revenues by source (local, dedicated tax, special purpose, federal, and private);

(iii) Expenditures by appropriation title; and

## ENROLLED ORIGINAL

(iv) Expenditure growth assumptions used to develop the financial plan by agency and Comptroller Source Group (“CSG”);

(B) A detailed explanation of the revenue assumptions used for the proposed budget and financial plan to include the following for each dedicated tax and special purpose fund:

(i) Actual Fiscal Year 2018 revenue;

(ii) Fiscal Year 2018 end-of-year fund balance;

(iii) Actual Fiscal Year 2019 revenue;

(iv) Fiscal Year 2019 end-of-year fund balance;

(v) Certified revenues for Fiscal Years 2020 through 2024; and

(vi) Certification from the Chief Financial Officer that projected fund revenues and transfers are consistent with current policies and proposed policies included in the Mayor’s Fiscal Year 2021 Budget Support Act;

(C) For each agency or separate Organizational Level I line item in the District’s annual budget:

(i) The following information shall be provided in table format for Fiscal Year 2018 actual, Fiscal Year 2019 actual, Fiscal Year 2020 approved budget, and the proposed Fiscal Year 2021 budget:

(I) Total operating budget, capital budget, and full-time equivalents (“FTEs”) allocated to each;

(II) Amount of funding and FTEs by revenue source (local, dedicated tax, special purpose, federal, private, and intra-district);

(III) Operating budget expenditures by CSG;

(IV) Operating budget expenditures and FTEs by Program (Organizational Level II) and Activity (Organizational Level III); and

(V) Itemized changes, by revenue type, between the Fiscal Year 2020 approved budget and the Fiscal Year 2021 proposed budget;

(ii) The following information shall be provided in narrative form:

(I) A description of each Program and Activity that explains the purpose and services to be provided; and

(II) An explanation of each proposed programmatic change and its corresponding budget amount by Program, Activity, CSG, and fund type, disaggregated for any change greater than \$100,000;

(iii) A program performance report, provided in an appendix published on the website of the Office of the Chief Financial Officer, which shall include the status of efforts to comply with the reports of the District of Columbia Auditor;

(D) School-related budget documents as follows:

(i) A summary statement or table showing the number of full-time and part-time school-based personnel in the District of Columbia Public Schools (“DCPS”), by school level (e.g., elementary, middle, junior high, pre-kindergarten through 8th grade, senior high school) and school, including school-based personnel funded by other District agencies, federal funds, or private funds;

## ENROLLED ORIGINAL

(ii) A summary statement or table showing the number of special-education students served by school level (e.g., elementary, junior high), including the number of students who are eligible for Medicaid services;

(iii) A summary table showing the projected enrollment and local budget of each public charter school;

(iv) A summary table showing the projected enrollment and budget, by fund type, of each District of Columbia public school;

(v) For each District of Columbia public school, a summary statement or table of the local-funds budget, including the methodology used to determine each school's local funding and a separate budget line item for at-risk funding allocated to the school, as coded in the system of record, the System of Accounting and Reporting ("SOAR"); and

(vi) For DCPS, a table showing the amount of at-risk funding allocated to central office, the amount allocated to school support, and the amount allocated to each school, as coded in SOAR;

(E) Agency budgets shall be structured to ensure accessibility and transparency regarding the way taxpayer dollars will be disbursed. Agency budget structures should align with current or proposed agency organizational structures and programs and clearly indicate the source and amount of funding needed for each individual program, facility, or venue identified on the agency's website. Agency Program and Activity titles shall be specific and descriptive and reflect the programs and activities within the agency. The following shall be eliminated:

(i) Program titles that reiterate the agency name;

(ii) Duplicate Program and Activity titles within an agency; and

(iii) Discretionary budget that is not clearly identified and

explained.

(F) A Capital Improvements Plan ("CIP") for Fiscal Years 2021 through 2026 that is based on the current approved CIP and the current schedule of investment in existing capital assets that is needed to attain and maintain a state of good repair. The proposed CIP shall include all capital projects (inclusive of subprojects) as defined in section 103(8) of the Home Rule Act (D.C. Official Code § 1-201.03(8)). The proposed CIP shall be presented separately in one volume and shall include the following information:

(i) A detailed description for each project with planned allotment in Fiscal Years 2021 through 2026. The projects shall be organized alphabetically by title, summarized by owner agency, and listed in a table of contents. Each project description shall include the following:

(I) A specific scope consistent with the project title;

(II) The purpose;

(III) The current status;

(IV) The location (address and ward, if applicable);

(V) A facility name or identifier, if applicable;

(VI) Appropriate maps or other graphics;

(VII) The estimated useful life;

## ENROLLED ORIGINAL

- (VIII) The current estimated full-funded cost;
- (IX) Proposed sources of funding;
- (X) Current allotments, expenditures, and encumbrances;
- (XI) Proposed allotments by fiscal year;
- (XII) For each pool project, a Fiscal Year 2021 spending plan that identifies the specific District assets that will be improved with the proposed budget; provided, that spending of more than \$5 million on a specific asset shall be budgeted in a separate project;
- (XIII) The change in budget authority request from the prior year;
- (XIV) The number of FTE positions and the amount of Personnel Services budget to be funded with the project, as a percentage of the proposed allotment;
- (XV) The estimated impact that the project will have on the annual operating budget, to include the required ongoing maintenance and repair funding needed to avoid deferred maintenance costs; and
- (XVI) Projected dates and actual dates where applicable for project environmental approvals, design start, design complete, construction start, construction complete, and closeout that are consistent with the budget request;
- (ii) A chart identifying the estimated funding gaps for capital maintenance projects in each fiscal year of the current approved and proposed CIPs and an explanation of the progress being made in closing those gaps. The explanation shall address projects being funded through public-private partnerships (“P3s”) and identify the impact that the proposed P3s will have on the financial plan and debt-cap analysis;
- (iii) The proposed Highway Trust Fund budget and the projected local Highway Trust Fund cash flow for Fiscal Years 2021 through 2026, with actual expenditures for Fiscal Year 2019 and the approved plan for Fiscal Year 2020;
- (iv) A capital budget pro forma setting forth the sources and uses of new allotments by fund detail and owner agency;
- (v) An explanation of the debt-cap analysis used to formulate the capital budget and a table summarizing the analysis by fiscal year, which shall include total borrowing, total debt service, total expenditures, the ratio of debt service to expenditures, and the balance of debt-service capacity for each fiscal year included in the capital improvement plan; and
- (vi) An analysis, prepared by the Mayor, of whether the proposed CIP is consistent with the Comprehensive Plan, Transportation Improvement Program, Washington Metropolitan Area Transit Authority capital budget, and other relevant planning programs, proposals, or elements developed by the Mayor as the central planning agency for the District. The Mayor’s analysis shall highlight and explain any differences between the proposed CIP and other programs and plans on a project-by-project basis.

(2) Additional documents as follows:

**ENROLLED ORIGINAL**

(A) Copies of all documents referenced in and supportive of the budget justification for Fiscal Year 2021, including the proposed Fiscal Year 2021 Local Budget Act of 2020, proposed Fiscal Year 2021 Federal Portion Budget Request Act of 2020, and any other legislation that is necessary for implementation of the proposed budget for the District for Fiscal Year 2021; provided, that the proposed Fiscal Year 2021 Federal Portion Budget Request Act of 2020 shall reflect the actual budget requests from the named entities.

(B) The proposed Housing Production Trust Fund budget and the projected cash flow to include actual Fiscal Year 2018 revenue and expenditures, Fiscal Year 2018 end-of-year fund balance, Fiscal Year 2019 revenue and expenditures, Fiscal Year 2019 end-of-year fund balance, certified revenues for Fiscal Year 2020 through Fiscal Year 2024, and planned expenditures for Fiscal Year 2020 through Fiscal Year 2024. This shall include the total amount of loan repayments due to the Housing Production Trust Fund, and the total amount paid, per audited annual statement through the year ending September 30, 2019, and the total amount of loans due, and paid, as of December 31, 2019.

(C) A filterable and sortable table, produced from PeopleSoft on March 19, 2020, which lists all existing and proposed positions by agency, position number, past and current job titles, whether the position is regular or temporary, whether the position is filled or vacant, the date that any vacant position became vacant, and the date the position was posted as vacant, and:

(i) Actual Fiscal Year 2018 expenditures for the position, including a column showing overtime for the position;

(ii) Actual Fiscal Year 2019 expenditures for the position, including a column showing overtime for the position;

(iii) Projected Fiscal Year 2020 expenditures for the position, including a column showing overtime for the position;

(iv) Approved Fiscal Year 2020 expenditures for the position;

(v) Proposed Fiscal Year 2021 budget for the position by fund, program, and activity or project; and

(vi) Proposed Fiscal Year 2021 vacancy savings for the position;

(D) A table summarizing the fixed cost budgets by agency, CSG, and address, which shall include the:

(i) Actual Fiscal Year 2018 expenditures;

(ii) Actual Fiscal Year 2019 expenditures;

(iii) Approved Fiscal Year 2020 expenditures;

(iv) Fiscal Year 2020 expenditures to date;

(v) Proposed Fiscal Year 2021 budget; and

(vi) A description of the methodology used to determine the amount budgeted;

(E) A list, by agency, of all special-purpose-revenue-fund balances, each fund-balance use, carryover of funds from prior fiscal years, a narrative description of each fund, and the revenue source for each special-purpose-revenue fund, which shall include the:

(i) Actual amounts for Fiscal Year 2018;

ENROLLED ORIGINAL

- (ii) Actual amounts for Fiscal Year 2019;
- (iii) Approved amounts for Fiscal Year 2020; and
- (iv) Proposed amounts for Fiscal Year 2021;

(F) A table of all intra-district funds included in the Fiscal Year 2021 budget, including the receiving and transmitting agency, and whether there is a signed Memorandum of Understanding for each intra-district funding arrangement;

(G) A table showing all tax-supported debt issued and authorized within and above the debt cap and spending authority remaining within the cap;

(H) A summary table, which shall include a list of all intra-agency and inter-agency changes of funding, with a narrative description of each change sufficient to provide an understanding of the change in funds and its impact on services;

(I) A detailed crosswalk for any agency that has undergone a budget restructuring in Fiscal Year 2020 or which would undergo a proposed budget restructuring in Fiscal Year 2021 that shows the agency’s allocations by program, activity, and CSG before the restructuring under the new or proposed structure;

(J) A table showing each agency’s actual fringe rate and amount for Fiscal Years 2018 and 2019, the approved rate and amount for Fiscal Year 2020, and the proposed rate and amount for Fiscal Year 2021;

(K) A spreadsheet detailing each revenue source by line item, including the actual amount received for that revenue line item in the prior 2 fiscal years and the amount projected to be received for that revenue line item in the proposed budget;

(L) Copies of all agency operating, capital, FTE, and programmatic budget enhancement requests, including the “Form B” for all agencies, and any similar documentation describing in detail agencies’ budget needs or requests, consistent with D.C. Official Code § 47-318.05a;

(M)(i) A master schedule of fees collected by the District, by agency, which shall include:

- (I) Each fee collected;
- (II) The amount collected from each fee;
- (III) The statute or regulation authorizing the fee;
- (IV) The fund or special purpose revenue fund where the

fee is deposited;

(V) The total revenue collected from each fee for Fiscal Year 2018, Fiscal Year 2019, and Fiscal Year 2020 to date; and

(VI) Whether the fee can be paid online;

(ii) For the purposes of this subparagraph, the term “fee” includes fines and other charges;

(iii) The master schedule shall be transmitted in a filterable and sortable format;

(N) Spending plans for all capital projects with proposed budget authority of \$10 million or more;

## ENROLLED ORIGINAL

(O) A spreadsheet listing every reprogramming, including those that did not require Council approval, for each of the past 3 fiscal years, by agency, in a format suitable for filtering and sorting, which shall include:

(i) The source of the reprogrammed funds, by program, activity, and service level; and

(ii) The recipient of the reprogrammed funds, whether internal or external, by program, activity, and service level;

(P) A filterable and sortable table showing Fiscal Year 2020 approved budget, Fiscal Year 2021 budget as approved in the Fiscal Year 2020 through Fiscal Year 2023 financial plan, and the proposed Fiscal Year 2021 budget by agency, program, and activity;

(Q) A summary table showing anticipated expenditures for facilities maintenance, organized by owner agency; and

(R) A list of all existing, new, and anticipated leases funded by the proposed budget, including the following information for each lease:

(i) Agency utilizing the leased space;

(ii) Square footage;

(iii) Amount of funding allocated;

(iv) Start date and renewal date; and

(v) Number of full-time employees working or expected to work in the leased space.

Sec. 4. Pursuant to Title XIV-A of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective May 16, 1995 (D.C. Law 11-16; D.C. Official Code § 1-614.11 *et seq.*), the Mayor shall submit to each Councilmember and the Council Officers, and make available to the public, not later than January 31, 2020, all performance accountability reports for Fiscal Year 2019 that cover all publicly funded activities of each District government agency.

Sec. 5. Pursuant to section 446 of the Home Rule Act, the Council's budget-review period shall begin after the date that all materials required to be submitted by sections 2 through 4, except for section 3(2)(M), have been submitted in accordance with this resolution and the Council's rules.

Sec. 6. The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor.

Sec. 7. This resolution shall take effect immediately upon the first date of publication in the District of Columbia Register.



## ENROLLED ORIGINAL

## A RESOLUTION

23-269

## IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 5, 2019

To declare the existence of an emergency with respect to the need to amend the Advisory Neighborhood Councils Act of 1975 to clarify when an Advisory Neighborhood Commission shall forfeit quarterly allotments for failing to timely file quarterly reports approved by the Office of Advisory Neighborhood Commissions.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Advisory Neighborhood Commission Accountability Clarification Emergency Declaration Resolution of 2019”.

Sec. 2. (a) On June 18, 2019, the Council passed the Advisory Neighborhood Commission Accountability Amendment Act of 2019, effective September 11, 2019 (D.C. Law 23-16; 66 DCR 8621) (“Act”), which tightened financial reporting accountability measures for Advisory Neighborhood Commissions.

(b) The Act requires the forfeiture of Advisory Neighborhood Commission allotments when Commissions fail to timely file 2 or more consecutive quarterly reports approved by the OANC.

(c) Prior to the Act, Advisory Neighborhood Commissions had until the last day of the fiscal year to file quarterly reports before the Commissions forfeited all unclaimed allotments for the fiscal year.

(d) The effective date of the Act would result in Commissions forfeiting allotments for failure to timely file quarterly reports prior to the Commissions receiving notice of the new requirements in the Act.

(e) The Act also resulted in a lack of accountability for a Commission failing to timely file 2 or more non-consecutive quarterly reports.

(f) This emergency legislation would amend section 16(j)(3) of the Advisory Neighborhood Councils Act of 1976 to clarify that the implementation of new financial reporting accountability measures will take effect for the failure to timely file quarterly financial reports beginning with the 2020 fiscal year and to provide that forfeiture shall result for failure to file 2 or more quarterly reports, regardless of whether or not they are consecutive.

**ENROLLED ORIGINAL**

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Advisory Neighborhood Commission Accountability Emergency Amendment Act of 2019 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

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

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

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

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

B23-542            District Government Continuity of Operations Plans Amendment Act of 2019

Intro. 11-18-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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B23-543            Suicide Prevention Continuing Education Amendment Act of 2019

Intro. 11-19-19 by Councilmembers Grosso, Silverman, Todd, Gray, Bonds, and Cheh and referred to the Committee on Health

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B23-544            Reckless Driver Accountability Act of 2019

Intro. 11-19-19 by Councilmembers Silverman, Allen, Evans, Grosso, Bonds, and Todd and referred to the Committee on Transportation and the Environment

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B23-545            Small Business Procurement Reform Omnibus Amendment Act of 2019

Intro. 11-19-19 by Councilmembers R. White, McDuffie, Nadeau, T. White, Cheh, Bonds, and Todd and referred sequentially to the Committee on Facilities and Procurement and the Committee on Business and Economic Development

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- B23-546 Interstate Physical Therapy Compact Approval Act of 2019  
Intro. 11-19-19 by Councilmembers Gray, Cheh, Grosso, and Bonds and referred to the Committee of the Whole with comments from the Committee on Health
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- B23-547 Native American Birth Recognition Amendment Act of 2019  
Intro. 11-19-19 by Councilmembers Allen, Nadeau, Bonds, Grosso, Todd, and Evans and referred to the Committee on Health
- 
- B23-548 1666 Articles of Peace and Amity Recognition Amendment Act of 2019  
Intro. 11-19-19 by Councilmembers Allen, Nadeau, Bonds, T. White, Grosso, Todd, and R. White and referred to the Committee on Transportation and the Environment
- 
- B23-549 Local Business Support Amendment Act of 2019  
Intro. 11-19-19 by Councilmembers Grosso and McDuffie and referred to the Committee on Business and Economic Development
- 
- B23-550 Affordable Housing Community Land Trust Program Establishment Act of 2019  
Intro. 11-19-19 by Councilmembers T. White, R. White, Nadeau, and Grosso and referred to the Committee on Housing and Neighborhood Revitalization
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### **PROPOSED RESOLUTIONS**

- PR23-558 District of Columbia Combat Sports Commission Roger A. Mitchell Jr. Confirmation Resolution of 2019  
Intro. 11-13-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
- 
- PR23-561 The Howard University Revenue Bonds Project Approval Resolution of 2019  
Intro. 11-18-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
-

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

**REVISED**

**CHAIRMAN PHIL MENDELSON, CHAIRPERSON  
COMMITTEE OF THE WHOLE**

**AND**

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

**ANNOUNCE A JOINT PUBLIC HEARING ON**

**BILL 23-0045, "BEDBUG CONTROL ACT OF 2019"**

**BILL 23-0145, "DISTRICT OF COLUMBIA PSYCHOLOGY INTERJURISDICTIONAL  
COMPACT ACT OF 2019"**

**BILL 23-0250, "PROFESSIONAL ART THERAPIST LICENSURE AMENDMENT ACT  
OF 2019"**

**BILL 23-0546, "INTERSTATE PHYSICAL THERAPY COMPACT APPROVAL ACT OF  
2019"**

**THURSDAY, DECEMBER 19, 2019  
10:00 A.M., ROOM 412, JOHN A. WILSON BUILDING  
1350 PENNSYLVANIA AVENUE, N.W.  
WASHINGTON, D.C. 20004**

Chairman Phil Mendelson, Chairperson of the Committee of the Whole, and Councilmember Vincent C. Gray, Chairperson of the Committee on Health, announce a Joint Public Hearing on Bill 23-0045, the "Bedbug Control Act of 2019", Bill 23-0145, the "District of Columbia Psychology Interjurisdictional Compact Act of 2019", Bill 23-0250, the "Professional Art Therapist Licensure Amendment Act of 2019", and Bill 23-0546, the "Interstate Physical Therapy Compact Approval Act of 2019." The hearing will be held on Thursday, December 19, 2019 at 10 a.m., in Room 412 of the John A. Wilson Building. **This notice has been revised to reflect the addition of Bill 23-0546, the "Interstate Physical Therapy Compact Approval Act of 2019", to the hearing agenda.**

Bill 23-0045, the "Bedbug Control Act of 2019", creates regulations that govern the removal of bedbugs. It also requires landlords to notify adjoining tenants of infestations. Landlords and pest control operators are required to report infestations to DCRA and among other things are required to provide a 12-month history for a dwelling of prior infestations before the signing of a lease.

Bill 23-0145, the “District of Columbia Psychology Interjurisdictional Compact Act of 2019”, regulates the practice of tele-psychology and the face to face practice of psychology across state boundaries. Among other things, the bill provides legal recognition to psychologists properly licensed out of state. It also requires that all compact states share licensee information with compact states and create a coordinated database on participating compact psychologists.

Bill 23-0250, the “Professional Art Therapist Licensure Amendment Act of 2019”, defines the practice of professional art therapy, which includes assisting people to improve cognitive and sensory-motor functions, increase self-esteem, cope with grief and traumatic experience, resolve conflicts and distress, and enhance social functioning through art media. The bill establishes licensure requirements for art therapists and provides for the addition of a professional art therapist to the Board of Professional Counseling.

Bill 23-0546, the “Interstate Physical Therapy Compact Approval Act of 2019”, facilitates the interstate practice of physical therapy with the goal of improving public access to physical therapy services. The practice of physical therapy occurs in the state where the patient/client is located at the time of the patient/client encounter. The Compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The Committee of the Whole and Committee on Health invite the public to testify at the hearing. Those who wish to testify should contact Malcolm Cameron, Committee Legislative Analyst at (202) 654-6179 or [mcameron@dccouncil.us](mailto:mcameron@dccouncil.us), and provide your name, organizational affiliation (if any), and title with the organization, preferably by 5:00 p.m. on Tuesday, December 17, 2019.

Witnesses who anticipate needing language interpretation, or require sign language interpretation, are requested to inform the Committee on Health of the need as soon as possible, but no later than December 12, 2019. We will make every effort to fulfill timely requests, however requests received after this date may not be fulfilled and alternatives may be offered.

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

COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE & COMMITTEE ON TRANSPORTATION  
AND THE ENVIRONMENT  
NOTICE OF A JOINT PUBLIC HEARING  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
&  
COUNCILMEMBER MARY CHEH, CHAIRPERSON  
COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT  
ANNOUNCE A JOINT PUBLIC HEARING

on

**Bill 23-132, Indoor Mold Remediation Enforcement Amendment Act of 2019**  
**Bill 23-193, Electric Vehicle Readiness Amendment Act of 2019**  
**Bill 23-204, Energy Efficiency Standards Amendment Act of 2019**

on

**Monday December 9, 2019, 2:00 p.m.**  
**Room 412, John A. Wilson Building**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington, DC 20004**

Council Chairman Phil Mendelson and Councilmember Mary Cheh announce a joint public hearing of the Committee of the Whole and the Committee on Transportation and the Environment on **Bill 23-132**, the “Indoor Mold Remediation Enforcement Amendment Act of 2019,” **Bill 23-193**, the “Electric Vehicle Readiness Amendment Act of 2019,” and **Bill 23-204**, “the Energy Efficiency Standards Amendment Act of 2019.” The hearing will be on **Monday, December 9, 2019 at 2:00 p.m. in Room 412** of the John A. Wilson Building.

The purpose of **Bill 23-132** is to require housing inspectors with the Department of Regulatory and Consumer Affairs (DCRA) to be certified to conduct mold assessment and remediation, and to require DCRA to issue notices of violation to remediate indoor mold and impose penalties on property owners who fail to remediate mold. Currently, only the Department of Energy and the Environment may enforce violations regarding mold. The purpose of **Bill 23-193** is to require that newly constructed or substantially renovated commercial or multi-unit buildings shall include electrical vehicle infrastructure for at least 20% of their parking spaces. The purpose of **Bill 23-204** is to provide energy efficiency standards for appliances such as air compressors, faucets, portable air conditions, and showerheads that are sold, offered for sale, or installed in the District.

Those who wish to testify are asked to email the Committee of the Whole at [cow@dccouncil.us](mailto:cow@dccouncil.us), or to call Blaine Stum, Legislative Policy Advisor, at (202) 724-8092, and to provide your name, address, telephone number, organizational affiliation, and title (if any) by the close of business **Thursday, December 5, 2019**. Persons wishing to testify are encouraged, but not required, to submit 15 copies of written testimony. If submitted by the close of business on December 5<sup>th</sup> the testimony will be distributed to Councilmembers before the hearing. Witnesses should limit their testimony to four minutes; less time will be allowed if there are a large number of witnesses. Copies of the legislation can be obtained through the Legislative Services Division of the Secretary of the Council’s office or on <http://lims.dccouncil.us>. Hearing materials, including a draft witness list, can be accessed 24 hours in advance of the hearing at <http://www.chairmanmendelson.com/circulation>.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Monday, December 30, 2019.



COUNCIL OF THE DISTRICT OF COLUMBIA  
**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**  
MARY M. CHEH, CHAIR

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**NOTICE OF PUBLIC HEARING ON**

**B23-506, the Zero Waste Omnibus Amendment Act of 2019**

Friday, December 13, 2019, at 12:00 PM  
in Room 412 of the John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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On Friday, December 13, 2019, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B23-506, the Zero Waste Omnibus Amendment Act of 2019. The hearing will begin at 12:00 PM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B23-506 would make several changes to the District's waste management system to increase the amount of waste diverted from landfill and incineration, including requiring the Mayor to prepare plans for recycling infrastructure in the public space, create training and outreach guides on source separation, and establish a uniform labeling scheme; requiring large commercial food waste generators to source separate commercial food waste; requiring waste collectors to address contamination in recyclables and compostables and requiring the Mayor to impose a surcharge on recycling disposed of at District transfer stations when recycling loads exceed a contamination threshold; requiring certain private collection properties to separate glass; requiring private collection properties to develop a waste management plan; establishing a reuse and donation program to reduce needless waste and increase diversion of reusable materials; establishing extended producer responsibility programs for batteries and home-generated sharps waste; and amending the requirements for disposable foodservice ware to require that food service entities use reusable foodservice ware for on-premises consumption and provide accessory disposable foodservice ware only upon request.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Witnesses who anticipate needing language interpretation, or requiring sign language interpretation, are requested to inform the Committee of the need as soon as possible but no later than five business days before the hearing. We will make every effort to fulfill timely requests, however requests received in less than five business days may not be fulfilled and alternatives may be offered.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on December 27, 2019.

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

1350 Pennsylvania Avenue, NW, Washington, DC 20004

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

**ANNOUNCES A PUBLIC ROUNDTABLE ON**

**PR23-539, Public Employee Relations Board Harriet Segar  
Confirmation Resolution of 2019**

**Wednesday, December 11, 2019, 10:00 a.m.  
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 roundtable before the Committee on PR23-539, Public Employee Relations Board Harriet Segar Confirmation Resolution of 2019. The resolution would approve the nomination of Harriet Segar as a member of the Public Employee Relations Board, replacing Ann Hoffman, for a term to end December 12, 2022. The roundtable will be held at 10 a.m. on Wednesday, December 11, 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](mailto:labor@dccouncil.us) or (202) 724-7772 by 5:00 p.m. on Monday, December 9, 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. Witnesses who anticipate needing language interpretation or American Sign Language (ASL) interpretation, are requested to inform the Labor Committee of the need by Tuesday, December 3, 2019 at 5:00 pm. Those wishing to testify are encouraged, but not required, to bring 15 copies of written testimony to the roundtable. 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 a member of the public is 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](mailto:labor@dccouncil.us) or mailed to the Committee on Labor and Workforce Development, Council of the District of Columbia, Suite 115 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on Wednesday, December 18, 2019.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**CONSIDERATION OF TEMPORARY LEGISLATION**

**Bill 23-552**, Medical Marijuana Plant Count Elimination Temporary Amendment Act of 2019 was adopted on first reading on November 19, 2019. This temporary measure was considered in accordance with Council Rule 413. A final reading on this measure will occur on December 3, 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

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**GBM 23-54:** FY 2019 Grant Budget Modifications of October 28, 2019

RECEIVED: 14-day review begins November 19, 2019

**GBM 23-55:** FY 2019 Grant Budget Modifications of October 30, 2019

RECEIVED: 14-day review begins November 19, 2019

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
11/22/2019

Notice is hereby given that:

License Number: ABRA-109998

License Class/Type: C Restaurant

Applicant: Georgetown Dining, Inc.

Trade Name: Brasserie Liberte

ANC: 2E03

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

3251 PROSPECT ST NW, #320, WASHINGTON, DC 20007

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
1/6/2020

A HEARING WILL BE  
1/21/2020

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

ENDORSEMENT(S): Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	7 am - 2 am	8 am - 2 am	7 am - 2 am
Monday:	7 am - 2 am	8 am - 2 am	7 am - 2 am
Tuesday:	7 am - 2 am	8 am - 2 am	7 am - 2 am
Wednesday:	7 am - 2 am	8 am - 2 am	7 am - 2 am
Thursday:	7 am - 2 am	8 am - 2 am	7 am - 2 am
Friday:	7 am - 3 am	8 am - 3 am	7 am - 3 am
Saturday:	7 am - 3 am	8 am - 3 am	7 am - 3 am

	Hours of Summer Garden	Hours of Sales Summer Garden
Sunday:	7 am - 1 am	8 am - 1 am
Monday:	7 am - 1 am	8 am - 1 am
Tuesday:	7 am - 1 am	8 am - 1 am
Wednesday:	7 am - 1 am	8 am - 1 am
Thursday:	7 am - 1 am	8 am - 1 am
Friday:	7 am - 2 am	8 am - 2 am
Saturday:	7 am - 2 am	8 am - 2 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 22, 2019
Protest Petition Deadline: January 6, 2020
Roll Call Hearing Date: January 21, 2020
Protest Hearing Date: March 11, 2020

License No.: ABRA-115707
Licensee: Actual Space, LLC
Trade Name: Buckaroos
License Class: Retailer's Class "C" Restaurant
Address: 5029 Connecticut Ave, N.W.
Contact: Sidon Yohannes: (202) 686-7600

WARD 3

ANC 3F

SMD 3F05

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 January 21, 2020 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 March 11, 2020 at 1:30 p.m.

NATURE OF OPERATION

Restaurant serving family-style Californian food with 49 interior seats and a Total Occupancy Load of 50.

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 22, 2019
Protest Petition Deadline: January 6, 2020
Roll Call Hearing Date: January 21, 2020

License No.: ABRA-111654
Licensee: J R Cigar (DC), Inc.
Trade Name: Casa de Montecristo
License Class: Retailer's Class "C" Tavern
Address: 1132 19th Street, N.W.
Contact: Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 2 ANC 2B SMD 2B06

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 January 21, 2020 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 to change Sidewalk Café hours of Operation and Alcoholic Beverage Sales, Service, and Consumption.

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

Sunday 11am – 11pm, Monday through Saturday 10am – 2am

CURRENT HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SIDEWALK CAFÉ)

Sunday 11am – 9pm, Monday through Saturday 11am – 12am

CURRENT HOURS OF LIVE ENTERTAINMENT (INSIDE PREMISES)

Sunday 11am – 9pm, Monday through Thursday 10am – 12am, Friday and Saturday 10am – 1am

PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (SIDEWALK CAFÉ)

Sunday 11am – 11pm, Monday through Thursday 10am – 12am, Friday and Saturday 10am – 1am



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

Placard Posting Date: November 22, 2019  
Protest Petition Deadline: January 6, 2020  
Roll Call Hearing Date: January 21, 2020  
Protest Hearing Date: March 11, 2020

License No.: ABRA-115592  
Licensee: 1726 20<sup>th</sup> St, LLC  
Trade Name: Emissary  
License Class: Retailer's Class "D" Restaurant  
Address: 1726 20<sup>th</sup> Street, N.W.  
Contact: Matthew Minora: (202) 625-7700

WARD 2

ANC 2B

SMD 2B01

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 January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **March 11, 2020 at 1:30 p.m.**

**NATURE OF OPERATION**

A community-centric coffeehouse serving tea, espresso drinks, pastries, baked goods, and pre-packaged food items in a casual setting. The licensee is also requesting an Entertainment Endorsement indoors only to provide live entertainment. Total Occupancy Load is 31 with seating for 10 inside the premises and 6 seats on the Summer Garden.

**HOURS OF OPERATION INSIDE PREMISES AND FOR THE SUMMER GARDEN**

Sunday through Saturday 7am – 11pm

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

Sunday through Saturday 10am – 11pm

**HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES ONLY**

Sunday through Saturday 10am – 9pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
 Protest Petition Deadline: January 6, 2020  
 Roll Call Hearing Date: January 21, 2020  
 Protest Hearing Date: March 11, 2020

License No.: ABRA-112153  
 Licensee: Menomale Noma, LLC  
 Trade Name: Menomale  
 License Class: Retailer’s Class “C” Restaurant  
 Address: 35 N Street, N.E.  
 Contact: Mariya Rusciano: (415) 425-3583

WARD 6

ANC 6C

SMD 6C06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **March 11, 2020 at 4:30 p.m.**

**NATURE OF OPERATION**

A new Retailer’s Class C Restaurant located inside a Class B Full-Service Grocery Store. Seating Capacity of 80, with a Total Occupancy Load of 80.

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

Sunday through Saturday 9am – 11pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
Protest Petition Deadline: January 6, 2020  
Roll Call Hearing Date: January 21, 2020

License No.: ABRA-111950  
Licensee: 9<sup>th</sup> Street Lounge, LLC  
Trade Name: Mirror Lounge  
License Class: Retailer’s Class “C” Tavern  
Address: 1920 9<sup>th</sup> Street, N.W.  
Contact: Bruno Casu: (301) 806-5320

WARD 1                      ANC 1B                      SMD 1B02

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 January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests a Summer Garden Endorsement with 13 Seats.

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

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

**CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES**

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

**PROPOSED HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDEN**

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
11/22/2019

Notice is hereby given that:

License Number: ABRA-071088

License Class/Type: C Nightclub

Applicant: M Street Management Group, LLC

Trade Name: MPIRE Club

ANC: 2B06

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

1819 M ST NW, WASHINGTON, DC 20036

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
1/6/2020

A HEARING WILL BE  
1/21/2020

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

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	4 pm - 2 am	4 pm - 2 am	-
Monday:	11:30 am - 2 am	11:30 am - 2 am	-
Tuesday:	11:30 am - 2 am	11:30 am - 2 am	-
Wednesday:	11:30 am - 2 am	11:30 - 2 am	-
Thursday:	11:30 am - 2 am	11:30 - 2 am	-
Friday:	11:30 am - 3 am	11:30 am - 3 am	-
Saturday:	11:30 am - 3 am	11:30 am - 3 am	-

FOR FURTHER INFORMATION CALL: (202) 442-4423

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
Protest Petition Deadline: January 6, 2020  
Roll Call Hearing Date: January 21, 2020  
Protest Hearing Date: March 11, 2020

License No.: ABRA-112154  
Licensee: Menomale Noma, LLC  
Trade Name: Salumeria  
License Class: Retailer’s Class “B” Full-Service Grocery Store  
Address: 35 N Street, N.E.  
Contact: Mariya Rusciano: (415) 425-3583

WARD 6

ANC 6C

SMD 6C06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **March 11, 2020 at 4:30 p.m.**

**NATURE OF OPERATION**

A new Retailer’s Class B Full-Service Grocery store.

**HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES**

Sunday through Saturday 9am – 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 22, 2019
Protest Petition Deadline: January 6, 2020
Roll Call Hearing Date: January 21, 2020

License No.: ABRA-106366
Licensee: Salumeria 2703, LLC
Trade Name: Salumeria 2703
License Class: Retailer's Class "B"
Address: 2703 12th Street, N.E.
Contact: Ettore Rusciano: (202) 413-6916

WARD 5

ANC 5B

SMD 5B04

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 January 21, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Class Change from Retailer's Class "B" to Retailer's Class "B" Full-Service Grocery Store.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 10am - 9pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
11/8/2019

**\*\*CORRECTION**

Notice is hereby given that:

License Number: ABRA-092423

License Class/Type: C Tavern

Applicant: Simple Bar and Grill, LLC

Trade Name: Simple Bar and Grill

ANC: 4C01

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

**\*\*5802 GEORGIA AVE NW, WASHINGTON, DC 20011**

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
12/23/2019

A HEARING WILL BE  
1/6/2020

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 12 am	9 am - 12 am	9 am - 12 am
Monday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Tuesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Wednesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Thursday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Friday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am
Saturday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
11/8/2019

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-092423

License Class/Type: C Tavern

Applicant: Simple Bar and Grill, LLC

Trade Name: Simple Bar and Grill

ANC: 4C01

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

**\*\*5828 GEORGIA AVE NW, WASHINGTON, DC 20011**

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
12/23/2019

A HEARING WILL BE  
1/6/2020

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 12 am	9 am - 12 am	9 am - 12 am
Monday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Tuesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Wednesday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Thursday:	9 am - 2 am	9 am - 2 am	6 pm - 2 am
Friday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am
Saturday:	9 am - 3 am	9 am - 3 am	6 pm - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423



**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
Protest Petition Deadline: January 6, 2020  
Roll Call Hearing Date: January 21, 2020  
Protest Hearing Date: March 11, 2020

License No.: ABRA-114799  
Licensee: Swahili Village M Street, LLC  
Trade Name: Swahili Village/The Consulate  
License Class: Retailer’s Class “C” Restaurant  
Address: 1990 M Street, N.W.  
Contact: Sean T. Morris, Esq.: (301) 654-6570

WARD 2

ANC 2B

SMD 2B06

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **March 11, 2020 at 1:30 p.m.**

**NATURE OF OPERATION**

New Retailer’s Class “C” Restaurant serving authentic African cuisine. Total Occupancy Load of 200 with seating for 175 patrons.

**HOURS OF OPERATION**

Sunday 11am – 3am  
Tuesday through Thursday 11am – 1am  
Friday and Saturday 11 am – 3am

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

Sunday 11am – 2am  
Tuesday through Thursday 11am – 1am  
Friday and Saturday 11 am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 22, 2019
Protest Petition Deadline: January 6, 2020
Roll Call Hearing Date: January 21, 2020
Protest Hearing Date: March 11, 2020

License No.: ABRA-115604
Licensee: The Lane Hecht Warehouse, LLC
Trade Name: The Lane
License Class: Retailer's Class "C" Restaurant
Address: 1408 Okie Street, N.E.
Contact: Sean Morris: (301) 654-6570

WARD 5

ANC 5D

SMD 5D01

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 January 21, 2020 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 March 11, 2020 at 1:30 p.m.

NATURE OF OPERATION

A new Retailer's Class C Restaurant with a seating capacity of 80 and a Total Occupancy Load of 302. Requesting a Summer Garden with 40 seats.

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

Sunday 9am - 6pm, Monday through Thursday 10am - 8pm, Friday and Saturday 10am - 9pm

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
 Protest Petition Deadline: January 6, 2020  
 Roll Call Hearing Date: January 21, 2020  
 Protest Hearing Date: March 11, 2020

License No.: ABRA-109902  
 Licensee: Wal-Mart Stores East, LP  
 Trade Name: Wal-Mart #5968  
 License Class: Retailer’s Class “B” Full-Service Grocery Store  
 Address: 5929 Georgia Avenue, N.W.  
 Contact: Amanda Mann: (919) 835-4176

WARD 4

ANC 4B

SMD 4B04

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 January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **March 11, 2020 at 4:30 p.m.**

**NATURE OF OPERATION**

A new Retailer’s Class B Full-Service Grocery store with a Tasting Permit.

**HOURS OF OPERATION**

Sunday through Saturday 6am – 12am

**HOURS OF ALCOHOLIC BEVERAGE SALES**

Sunday through Saturday 7am – 12am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

Placard Posting Date: November 22, 2019  
Protest Petition Deadline: January 6, 2020  
Roll Call Hearing Date: January 21, 2020

License No.: ABRA-102006  
Licensee: 1875 K Street NW Tenant LLC  
Trade Name: WeWork  
License Class: Retailer’s Class “C” Tavern  
Address: 1875 K Street, N.W.  
Contact: Matt Minora, Esq.: (202) 625-7700

WARD 2                      ANC 2B                      SMD 2B06

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 January 21, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests to expand the capacity on the existing fourth and fifth floors and to add the third floor to its licensed premises. The capacity of the Third Floor will be 325. The capacity of the Fourth Floor will be 315. The capacity of the Fifth Floor will be 335. Total Occupancy Load of the entire premises will increase from 100 to 975.

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

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

**HOURS OF LIVE ENTERTAINMENT**

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

**MAYOR'S AGENT ON HISTORIC PRESERVATION  
NOTICE OF PUBLIC HEARING**

Public notice is hereby given that the Mayor's Agent will hold a public hearing on an application affecting property subject to the Historic Landmark and Historic District Protection Act of 1978. Interested parties may appear and testify on behalf of, or in opposition to, the application. The hearing will be held at 1100 4th Street SW, Suite E200.

Hearing Date: **Friday, January 10, 2020 at 10:00 a.m.**  
Case Number: H.P.A. 19-497  
Square/Lot: Square 192, Lot 108  
Type of Work: Subdivision

Affected Historic Property: Scottish Rite Temple  
Affected ANC: 2B

The hearing will be conducted in accordance with the Rules of Procedure pursuant to the Historic Landmark and Historic District Protection Act (Title 10C DCMR Chapters 4 and 30), which are on file with the D.C. Historic Preservation Office and posted on the Office website under "Regulations."

Interested persons or parties are invited to participate in and offer testimony at this hearing. Any person wishing to testify in support of or opposition to the application may appear at the hearing and give evidence without filing in advance. However, any affected person who wishes to be recognized as a party to the case is required to file a request with the Mayor's Agent at least fifteen (15) days prior to the hearing. This request shall include the following information: 1) requesting party's name and address; 2) whether the party will appear as a proponent or opponent of the application; 3) if the party will appear through legal counsel, and if so, the name and address of legal counsel; and 4) a written statement setting forth the manner in which the party may be affected or aggrieved by action upon the application and the grounds upon which the party supports or opposes the application. Any requests for party status should be sent to the Mayor's Agent at [historic.preservation@dc.gov](mailto:historic.preservation@dc.gov) or 1100 4th Street SW, Suite E650, Washington, D.C. 20024. For further information, contact the Historic Preservation Office, at [historic.preservation@dc.gov](mailto:historic.preservation@dc.gov) or (202) 442-7600.

**BOARD OF ZONING ADJUSTMENT  
(REVISED) PUBLIC HEARING NOTICE  
WEDNESDAY, JANUARY 15, 2020**

**441 4<sup>TH</sup> STREET, N.W.**

**JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

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

**WARD TWO**

18744A            **Application of Patterson SPE LLC**, pursuant to 11 DCMR Subtitle Y  
ANC 2B            § 704, for a modification of significance to the relief approved by BZA  
                         Order No. 18744 to include a special exception under the use  
                         permissions of Subtitle U § 504.1(f), to permit the conversion of 31  
                         units to a lodging use in the MU-15 Zone at premises 15 Dupont  
                         Circle, N.W. (Square 136, Lot 34).

**WARD ONE**

20136            **Application of Andrew Christopher Hall**, pursuant to 11 DCMR  
ANC 1A            Subtitle X, Chapter 9, for a special exception under E §§ 205.5 and  
                         5201 from the rear addition requirements of Subtitle E § 205.4, to  
                         construct a rear one-story and basement addition to an existing, two-  
                         story principal dwelling unit in the RF-1 Zone at premises 3549  
                         Holmead Place N.W. (Square 2828, Lot 130).

**WARD SIX**

20163            **Application of 719 SIXTH ST LLC**, pursuant to 11 DCMR Subtitle  
ANC 6C            X, Chapter 9, for a special exception under Subtitle E § 205.5 and 5201  
                         from the rear addition requirements of Subtitle E § 205.4, to construct a  
                         three-story rear addition to an existing attached principal dwelling unit  
                         in the RF-1 Zone at premises 719 6th Street, N.E. (Square 859, Lot  
                         121).

BZA PUBLIC HEARING NOTICE  
JANUARY 15, 2020  
PAGE NO. 2

**WARD TWO**

20165  
ANC 2E      **Application of Andrew Dunnaville**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D §§ 1206.4 and 5201 from the rear addition requirements of Subtitle D § 1206.3, to construct a two-story rear addition to an existing, attached principal dwelling unit in the R-20 Zone at premises 3626 T Street N.W. (Square 1306, Lot 46).

**WARD FIVE**

20175  
ANC 5D      **Application of 57th Street Mews Inc.**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the minimum lot width and minimum lot area requirements of Subtitle E § 201.1, to permit the construction of a three-story attached building containing two dwelling units on a vacant lot in the RF-1 Zone at premises 1611 Levis Street N.E. (Square 4074, Lot 805).

**WARD TWO**

20176  
ANC 2E      **Application of M Street Five, LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse use provisions of Subtitle C § 1500.3(c), to construct a roof deck for a bar and restaurant use above an existing attached building in the MU-4 Zone at premises 3219-3221 M Street N.W. (Square 1207, Lot 114).

**WARD FIVE**

20177  
ANC 5E      **Application of Aulona Alia**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the minimum alley width requirements of Subtitle C § 303.3(a), to create a new record lot in the RF-1 Zone at premises 2017 Rear 2nd Street N.E. (Square 3564, Lot 810).

**WARD SIX**

20179  
ANC 6E      **Application of Eli Richman Kaplan NMP Revocable Trust**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201, from the lot occupancy requirements of Subtitle D § 304.1, to permit an existing rear deck addition to an attached principal building in the RF-1 Zone at premises 1407 5th Street N.W. (Square 511, Lot 99).

BZA PUBLIC HEARING NOTICE  
JANUARY 15, 2020  
PAGE NO. 3

**WARD ONE**

20181            **Application of Medici Road**, pursuant to 11 DCMR Subtitle X,  
ANC 1A           Chapter 9, for special exceptions under the residential conversion  
                     regulations of Subtitle U § 320.2, and under Subtitle C § 703.2, from  
                     the minimum parking requirement of Subtitle C § 701.5, and pursuant  
                     to Subtitle X, Chapter 10, for an area variance from the minimum land  
                     area requirements of U § 320.2(d), to convert an existing one-family  
                     dwelling into a four-unit apartment house in the RF-1 Zone at premises  
                     1315 Harvard Street NW. (Square 2854, Lot 86).

**WARD FIVE**

20184            **Application of Fort Lincoln-Eastern Avenue LLC**, pursuant to 11  
ANC 5C           DCMR Subtitle X, Chapter 9, for special exceptions under the  
                     theoretical lot subdivision requirements of Subtitle C § 305.1, under  
                     the new residential developments requirements of Subtitle U § 421, and  
                     under the penthouse requirements of Subtitle C § 1500.4, and pursuant  
                     to Subtitle X, Chapter 10, for a variance from the vehicular access  
                     requirements of Subtitle C § 305.3(b), to allow a new residential  
                     development project of 51 townhouses in the RA-1 and RA-4 Zones at  
                     premises bounded between Eastern Avenue N.E., Bladensburg Road  
                     N.E., and Fort Lincoln Drive N.E. (Square 4325, Lots 802 and 44, and  
                     Parcel 174/15).

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**



BZA PUBLIC HEARING NOTICE

JANUARY 15, 2020

PAGE NO. 4

**Form.\*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning’s website at: [www.dcoz.dc.gov](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

**Do you need assistance to participate?**

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

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

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

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

Chinese

您需要有人帮助参加活动吗?

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](mailto: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](mailto: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](mailto:Zelalem.Hill@dc.gov) 로 이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

¿Necesita ayuda para participar?

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

BZA PUBLIC HEARING NOTICE  
JANUARY 15, 2020  
PAGE NO. 5

Vietnamese

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

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

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

**FREDERICK L. HILL, CHAIRPERSON**  
**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**

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, JANUARY 29, 2020  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

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

**WARD TWO**

20178            **Application of Murat Kayali**, pursuant to 11 DCMR Subtitle X, ANC 2B            Chapter 9, for a special exception under the penthouse requirements of Subtitles C § 1504.1 from the setback requirements of Subtitle C § 1502.1 (a), C § 1502.1 (b), and C § 1502.1 (c)(1)(A), and pursuant to Subtitle X, Chapter 10, for a variance from the maximum lot occupancy requirements of Subtitle F § 604.1, to construct a rear deck addition and an accessory structure in the RA-8 Zone at premises 1738 Church Street N.W. (Square 156, Lot 313).

**WARD ONE**

20183            **Appeal of The Residences of Columbia Heights, a Condominium**, ANC 1B            pursuant to 11 DCMR Subtitle Y § 302, from the decision made on September 30, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1908601, to permit a new building with 50 residential apartments for the Short Term Family Housing (STFH), in the MU-5A Zone at premises 2500 14th Street N.W. (Square 2662, Lot 205).

**WARD SIX**

20185            **Application of David Baillat and Marc Knobbe**, pursuant to 11 ANC 6C            DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201, from the non-conforming structure requirements of Subtitle C § 202.2, and pursuant to Subtitle X, Chapter 10, for a variance from the lot occupancy requirements of Subtitle E § 304.1, to construct rear addition to an existing semi-detached principal dwelling unit in the RF-1 Zone at premises 727 7th Street N.E. (Square 890, Lot 22).

BZA PUBLIC HEARING NOTICE  
JANUARY 29, 2020  
PAGE NO. 2

WARD SIX

20187  
ANC 6C

**Application of Jon-Joseph Russo**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RA-use requirements of Subtitle U § 420.1(b), and pursuant to Subtitle X, Chapter 10, for area variances from the floor area ratio requirements of Subtitle F § 302.1, and from the lot occupancy requirements of Subtitle F § 304.1, to permit an art gallery use in the first floor and a residential second story addition to an existing semi-detached principal dwelling unit in the RA-2 Zone at premises 1101 5th Street N.W. (Square 514, Lot 849).

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](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441 4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

**Do you need assistance to participate?**

Amharic

ለሙከራ ቦርዱ ላይ ለመገኘት ይህን ደብዳቤ ይላኩኝ?

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

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

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

BZA PUBLIC HEARING NOTICE  
JANUARY 29, 2020  
PAGE NO. 3

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](mailto:Zelalem.Hill@dc.gov)。这些是免费提供的服务。

French

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Korean

참여하시는데 도움이 필요하세요?

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

Spanish

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Vietnamese

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

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

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

**FREDERICK L. HILL, CHAIRPERSON  
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**

## DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF FINAL 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 adopts amendments to Chapter 30 (Campaign Finance Operations: Committees, Candidates, Constituent Service Programs, Statehood Funds), Chapter 37 (Investigations and Hearings), Chapter 38 (Legal Defense Committees), Chapter 39 (Campaign Finance Operations: Inaugural Committees), Chapter 40 (Campaign Finance Operations: Transition Committees), Chapter 41 (Campaign Finance Operations: Exploratory Committees) and Chapter 99 (Definitions) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

These amendments place the Board's regulations into conformity with the Campaign Finance Reform and Conflict of Interest Public Disclosure Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124, 59 DCR 1862 (March 9, 2012)); as amended by the Fiscal Year 2020 Budget Support Act of 2019, effective September 11, 2019 (D.C. Act 23-92; 66 DCR 8621 (July 26, 2019 – Part 1)). This rulemaking is necessary because the provisions of the aforementioned Act are in effect and require supporting regulations.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on October 11, 2019 at 66 DCR 13413-13453. No written comments on the proposed rules were received during the public comment period, and no substantive changes have been made to the regulations as proposed.

The Board adopted these amendments as final at a regular meeting on Thursday, November 14, 2019. These final rules will become effective upon publication of this notice in the *D.C. Register*.

**Chapter 30, CAMPAIGN FINANCE OPERATIONS: COMMITTEES, CANDIDATES, CONSTITUENT SERVICE PROGRAMS, STATEHOOD FUNDS, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:**

**Section 3000, ORGANIZATION OF POLITICAL COMMITTEES, POLITICAL ACTION COMMITTEES, AND INDEPENDENT EXPENDITURE COMMITTEES, is amended as follows:**

**Subsection 3000.28 is amended to read as follows:**

3000.28        The funds of each political committee, political action committee, or independent expenditure committee shall be segregated from, and may not be commingled with, personal funds of officers, directors, members or associates of the committee.

**New Subsections 3000.30 and 3000.31 are added to read as follows:**

3000.30 Every political action committee and independent expenditure committee shall certify, in each report filed with the Director of Campaign Finance, that the contribution it has received and the expenditures it has made have not been controlled by or coordinated with any public official, political committee affiliated with a public official, or an agent of a public official or political committee affiliate with a public official.

3000.31 Every independent expenditure committee shall further certify, in each report filed with the Director of Campaign Finance, that it has not made any contributions or transfers of funds to any public official, political committee, or political action committee.

**Section 3001, MANDATORY TRAINING, is amended by amending Subsection 3001.7 to read as follows:**

3001.7 The Director shall prominently display on the website of the Office of Campaign Finance, the names of the participants and those participants who have not completed the training.

**Section 3002, CANDIDATE STATUS, is amended by amending Subsection 3002.5 to read as follows:**

3002.5 Each candidate who files the R&E Report shall by oath or affirmation, subject to penalties of perjury, verify the following statements:

- (a) The candidate has used all reasonable diligence in the preparation of the report and the report is true and complete to the best of the candidate's knowledge; and
- (b) The candidate has used all reasonable due diligence to ensure that the candidate and the candidate's committees are in compliance with the Campaign Finance Act, and the committees have advised their contributors of the obligations imposed on those contributors by the Campaign Finance Act.

**Section 3005, PRINCIPAL CAMPAIGN COMMITTEE, is amended by amending Subsections 3005.2 and 3005.3 to read as follows:**

3005.2 Each candidate shall designate in writing one (1) political committee as the candidate's principal campaign committee. No political committee may be designated as the principal campaign committee of more than one (1) candidate; provided, that a principal campaign committee supporting the election of a candidate as an official of a political party may support the election of more than one (1) candidate, but may not support the election of a candidate for any public office.

- 3005.3 The principal campaign committee shall receive all reports made by any other political committee accepting contributions or making expenditures for the purpose of influencing the election of a candidate who designated it as the candidate's principal campaign committee. The principal campaign committee may require additional reports to be made to it by any political committee and may designate the time and number of reports.

**Section 3008, FINANCIAL REPORTS AND STATEMENTS, is amended in its entirety to read as follows:**

**3008 FINANCIAL REPORTS AND STATEMENTS**

- 3008.1 Candidates, committees, constituent-service programs and Statehood Funds and their treasurers shall make best efforts to obtain, report, and maintain the information required under Chapter 34 of this title.
- 3008.2 With the exception of candidates for the office of ANC member, all contributions, expenditures, debts, contracts, and agreements shall be reported on separate schedules in the following manner:
- (a) On the R&E Report form prescribed by the Director; or
  - (b) In a format consistent with the R&E Report form.
- 3008.3 Each contribution, rebate, refund, or any other receipt of fifteen dollars (\$15) or more shall be reported.
- 3008.4 Each contribution, receipt, transfer from other authorized committees, dividend or interest receipt, offset to operating expenditures, including rebates and refunds, and in the case of the constituent-service programs, personal property, shall be itemized and reported on the appropriate sub-schedule of Schedule A in accordance with the instructions for preparing the R&E Report.
- 3008.5 Each receipt for a loan made or guaranteed by the candidate or the committee, or owed by the candidate or the committee, and each loan repayment made by the candidate or the committee, shall be itemized and reported on the appropriate sub-schedule of Schedule E.
- 3008.6 Partnership contributions, under § 3011.23, shall be itemized and reported on Schedule A, in accordance with the instructions for preparing the R&E Report, in the following manner:
- (a) In the name of the partnership; and
  - (b) In the name of each contributing partner.
- 3008.7 Each operating expenditure, transfer to other authorized committees, refund of a contribution, independent expenditure, offset to receipts, and in the case of a



constituent-service program, personal property, shall be itemized and reported on the appropriate sub-schedule of Schedule B in accordance with the instructions for preparing the R&E Report.

- 3008.8 Each in-kind contribution, under §§ 3008.5 and 3008.8, shall be assessed at the current local fair market value at the time of the contribution, and shall be itemized and reported on the appropriate sub-schedules of Schedules A and B.
- 3008.9 Each Bitcoin contribution shall be reported on the R&E report in the following manner:
- (a) Bitcoin contributions shall be reported as in-kind contributions in accordance with § 3008.9;
  - (b) Bitcoin contributions shall be reported received as of the date the contribution is liquidated into U.S. dollars;
  - (c) The full amount liquidated shall be reported as the contributor's total contribution;
  - (d) A refund check for any liquidated amount exceeding the contribution limit shall be issued to the contributor; and
  - (e) Each service charge incurred or discounted from the public Bitcoin exchange website shall be reported in the same manner as credit card transactions under §§ 3008.15(c) and (d).
- 3008.10 The net proceeds of each mass sale and collection shall be itemized and reported on Schedule C in accordance with the instructions for preparing the R&E Report, and the supporting documentation for each itemization maintained under § 3401.3 (b).
- 3008.11 Each debt and obligation, excluding loans, shall be itemized and reported on Schedule D in accordance with the instructions for preparing the R&E Report.
- 3008.12 Each loan shall be itemized and reported on the appropriate sub-schedule of Schedule E in accordance with the instructions for preparing the R&E Report.
- 3008.13 The R&E Report shall be complete, under § 3017, as of ten (10) days prior to the date of any filing; provided, that any contribution of two hundred dollars (\$200) or more received after any deadline for the filing of the last R&E Report required to be filed prior to an election shall be reported within twenty-four (24) hours after its receipt.
- 3008.14 Financial transactions undertaken by credit card shall be reported on the R&E Report in the following manner:

- (a) Contributions shall be reported for the date upon which the authorized transaction is received;
- (b) The full amount authorized by the contributor as a contribution shall be reported by the candidate or committee;
- (c) Each service charge deducted by the credit card issuer shall be reported as an expenditure made by the candidate or the committee on the date when notified of the deduction; and
- (d) Each discount from the normal service charge authorized by the credit card issuer shall constitute an in-kind contribution, under § 3008.5, from the issuer, and shall be reported as an in-kind contribution.

3008.15 Any person other than a political committee, political action committee or independent expenditure committee that make one or more independent expenditures in an aggregate amount of one thousand (\$1,000) dollars or more within a calendar year shall, in a report filed with the Director of Campaign Finance, identify:

- (a) The name and address of the person;
- (b) The name and address of any of the person's affiliated entities that have also made an independent expenditure;
- (c) The amount and purpose of the expenditures;
- (d) The names of any candidates, initiative, referenda, or recalls in support of or opposition to which the expenditures are directed; and
- (e) A certification that, to the best of the person's knowledge, the independent expenditures were not controlled by or coordinated with any public official, political committee affiliated with a public official, or an agent of any person described in § 3008.16.

3008.16 If a person under § 3008.16 is not an individual, any report filed under this chapter shall also include:

- (a) The person's principal place of business;
- (b) The name and address of each person whose total contributions, made for the purpose of making an independent expenditure, to the person report during the period covered by the report exceeded five hundred (\$500) dollars.

3008.17 The report shall be filed on the dates which report by committees are filed, unless the value of the independent expenditure totals one thousand (\$1,000) dollars or

more in a two (2)-week period, in which case the report shall be filed within fourteen (14) days after the independent expenditure.

- 3008.18 In the case of R&E Reports filed by a political committee or political action committee on behalf of initiative, referendum, or recall under § 3009, as applicable, the reports shall be filed on the dates that the Office of Campaign Finance prescribed under § 3017.
- 3008.19 The Summary Financial Statement of Candidate for the Office of Member of an Advisory Neighborhood Commission (ANC), filed under § 3002.6, shall include:
- (a) Total receipts collected and expenditures made by the candidate for the campaign;
  - (b) Certification that the candidate did not receive contributions from any person, other than the candidate, in excess of twenty-five dollars (\$25);
  - (c) Certification that the candidate did not receive any contributions from any person or make any expenditures, including from or by the candidate, to support the candidate's election to office; and
  - (d) The disposal of surplus contributions, if any.
- 3008.20 The Summary Financial Statement of an ANC candidate shall be filed in an electronic format at the OCF website, pursuant to § 3002.7, and the contents of the statement electronically certified through the use of a PIN number assigned by the Office of Campaign Finance.
- 3008.21 Each person who files reports and statements with the Director of Campaign Finance has a continuing obligation to provide the Director with correct and up-to-date information.
- 3008.22 Contributions from business contributors, under § 3011.27, shall be itemized and reported on Schedule A in accordance with the instructions for preparing the R&E Report, and shall be accompanied by the name and address of each affiliated entity of the business contributor who has made a contribution or expenditure to the filer.
- 3008.23 Each political committee, political action committee and independent expenditure committee shall, in a separate schedule of its report to be filed, disclose:
- (a) Name, address, employer, and occupation of each person reasonably known by the committee to have bundled in excess of five thousand dollars (\$5,000) during the reporting period; and
  - (b) For each person, the total of the bundling.

**New Subsections 3008.24 – 3008.31 are added to read as follows:**

- 3008.24 The filer of the R&E Report must obtain a certification by each business contributor for each contribution that it made to the filer that none of its affiliate entities have contributed an amount that when aggregated with the contributions of the business contributor, would exceed the contribution limits.
- 3008.25 Every political action committee and independent expenditure committee shall certify, in each report filed with the Director of Campaign Finance, that the contribution it has received and the expenditures if has made have not been controlled by or coordinated with any public official, political committee affiliated with a public official, or an agent of a public official or political committee affiliate with a public official.
- 3008.26 Every independent expenditure committee shall further certify, in each report filed with the Director of Campaign Finance, that it has not made any contributions or transfers of funds to any public official, political committee, or political action committee.
- 3008.27 A business contributor shall comply with all requests from the Office of Campaign Finance to provide information about its individual owners, the identity of affiliated entities, the individual owners of affiliated entities, the contributions or expenditures made by such entities, and any other information the Director of Campaign Finance deems relevant to enforcing the provisions of this Act.
- 3008.28 No person shall sell or utilize information copied from reports and statements filed with the Office of Campaign Finance for the purpose of commercial use or soliciting contributions.
- 3008.29 Except for §§ 3008.1 and 3008.2, the provisions under § 3008 shall not apply to the R&E Report filed by candidates seeking certification and participating in the Fair Elections Program.
- 3008.30 The Director of Campaign Finance shall make any reports prepared under this chapter available online, including a biennial report summarizing the receipts and expenditures of candidate, political committees, political action committees and independent expenditure committees, during the prior two (2)-year period.
- 3008.31 The Director of Campaign Finance shall publish a biennial report by December 31st of each odd-numbered year. The report shall describe the receipts and expenditures of candidate for Mayor, Attorney General, Chairman and members of the Council, members of the State Board of Education, shadow Senator, and shadow Representative, but not to include candidates for Advisory Neighborhood Commissioner. The reports shall provide, at a minimum, the following:
- (a) A summary of each candidate's receipts, in dollar amount and percentage terms, by categories of contributors that the Director considers

appropriate, such as the candidate, individuals, political committees, corporations, partnerships, and labor organization:

- (b) A summary of each candidate's receipts, in dollar amount and percentage terms, by the size of the contribution, including contributions of:
  - (1) Five Hundred Dollars (\$500) or more;
  - (2) Two Hundred Fifty Dollars (\$250) or more but less than \$500;
  - (3) One Hundred Dollars (\$100) or more but less than \$250; and
  - (4) Less than \$100;
- (c) The total amount of a candidate's receipts and expenditures for primary and general elections, respectively, when applicable;
- (d) A Summary of each candidate's expenditures, in dollar amount and percentage terms, by operating expenditures, transfers to other authorized committees, loan repayments, and refunds of contributions;
- (e) A summary of the receipts and expenditures of political committees, political action committees and independent expenditure committees using categories considered appropriate by the Director of Campaign Finance; and
- (f) Include content on the Fair Elections Program and the requirements under § 3011 pertaining to business contributors and their affiliated entities, and covered contractors.

**Section 3011, LIMITATIONS ON CONTRIBUTIONS, is amended as follows:**

**Subsections 3011.3 and 3011.18 is amended to read as follows:**

3011.3 No person may make contributions to any one political committee or political action committee in any one (1) election that in the aggregate exceed five thousand dollars (\$5,000).

3011.18 Each political committee shall disclose in a separate sub-schedule of Schedule A, to be prescribed by the Director, of the R&E Report, where two (2) or more contributions are forwarded from one or more persons, by a person who is not acting with actual authority as an agent or principal of a committee, the following information:

- (a) The name, address, occupation and employer of each person reasonably known by the committee to have bundled in excess of five thousand dollars (\$5,000) in contributions during the reporting period;

- (b) The identity of each instance in which multiple checks or money orders dated on or around the same date were received from contributors who share the same employer; and
- (c) For each person, the total amount of the bundling.

**New Subsections 3011.35 and 3011.36 are added to read as follows:**

- 3011.35 Limitations on contributions under this section shall apply to political action committees during nonelection years.
- 3011.36 The contribution limits in this section shall not apply to independent expenditure committees.

**Section 3013, LIMITATIONS ON THE USE OF CAMPAIGN FUNDS, is amended as follows:**

**Subsection 3013.2 is amended to read as follows:**

- 3013.2 Limitations on the use of campaign funds shall include the following:
- (a) Payment or reimbursement for a candidate or staff of a campaign committee for travel expenses and necessary accommodations, except when directly related to a campaign purpose;
  - (b) Payment or reimbursement for the cost of professional services unless those services are directly related to a campaign purpose;
  - (c) Payment for medical expenses of a candidate; provided, that campaign funds may be used to pay employer costs of health care benefits for employees of a principal campaign committee;
  - (d) Payment or reimbursement for fines and penalties, unless litigation arises directly out of a candidate's or principal campaign committee's campaign activities;
  - (e) Payment or reimbursement for judgments or settlements, unless litigation or agency administrative action arises directly out of the campaign activities of a candidate or principal campaign committee;
  - (f) Attorney's fees, unless legal expenses arise directly out of a candidate's or a principal campaign committee's campaign activity;
  - (g) Payment or reimbursement for the purchase or lease of personal property, unless the legal title resides in, or the lessee is, the principal campaign committee, and the use of the property is directly related to a campaign purpose;

- (h) Clothing, except for specialty clothing which is not suitable for everyday use, including, but not limited to, formal wear, if the attire is used in the campaign and is directly related to a campaign purpose;
- (i) The purchase or lease of a vehicle, unless the title or lease to the vehicle is held by the campaign committee and not the candidate, and the use of the vehicle is directly related to a campaign purpose; and
- (j) Compensation to a candidate for the performance of campaign activities, except for reimbursement of out-of-pocket expenses incurred for campaign purposes.

**Section 3015, USE OF SURPLUS FUNDS, is amended as follows:**

**Subsections 3015.5 and 3015.6 are amended to read as follows:**

- 3015.5 Surplus funds of a candidate or candidate-elect shall be disbursed to the donors within six (6) months of one (1) of the following events:
- (a) Used to retire the debts of the committee that received the funds;
  - (b) Returned to donors;
  - (c) Contributed to a political party for political purposes; and/or
  - (d) Transferred to a political committee, a charitable organization that meets the requirements of the tax laws of the District of Columbia, or in the case of an elected official, an established constituent-services fund.
- 3015.6 Surplus campaign funds of a principal campaign committee received by or on behalf of a candidate shall be:
- (a) Contributed to a political party for political purposes;
  - (b) Use funds to retire the proper debts of the candidate's political committee that received funds, within twelve (12) months after an election; otherwise, the candidate shall be personally liable for any remaining debts; provided, that:
    - (1) Personal liability shall not attach until the Office of Campaign Finance is no longer auditing the principal campaign committee; and
    - (2) Any loans made by a candidate to support his or her campaign may only be repaid up to the amount of twenty-five thousand (\$25,000) dollars;
  - (c) Transferred to:

- (1) A political committee;
  - (2) A nonprofit organization within the meaning of section 501 (c) of the Internal Revenue Code, operating in good standing in the District for a minimum of one (1) calendar year before the date of any transfer; or
  - (3) An established constituent service program for the office of Mayor or a Councilmember: or
- (d) Returned to the donors as follows:
- (1) Within six (6) months after the election in which an individual was defeated in an election;
  - (2) Within six (6) months after the election in which an individual as elected to public office; and
  - (3) Within six (6) months after an individual cease to be a candidate.

**New Subsection 3015.12 is added to read as follows:**

3015.12 No public official elected to office shall fundraise after six (6) months after the election to retire the proper debts of the public official's political committee.

**Section 3017, FILINGS AND DEADLINES, is amended as follows:**

**Subsections 3017.9 and 3017.10 are amended to read as follows:**

3017.9 Each R&E Report shall be completed as of the closing date prescribed by the Director of Campaign Finance, which shall not be more than ten (10) days before the filing date, except that any contribution of two hundred dollars (\$200) or more received after the closing date prescribed by the Director of Campaign Finance for the last report required to be filed before the election shall be reported within twenty-four (24) hours after its receipt.

3017.10 [REPEALED].

**Section 3018, IDENTIFICATION OF CAMPAIGN LITERATURE, is amended in its entirety to read as follows:**

3018.1 A candidate, political committee, or political action committee shall identify its political advertising by the words:

- (a) "PAID FOR BY";
- (b) Followed by the name and address of the candidate or committee; and



(c) The name of the committee's treasurer, as applicable.

3018.2 An individual or an independent expenditure committee making an independent expenditure shall identify its political advertising by:

(a) The words:

(1) "Pay for by";

(2) Followed by the name and address of the independent expenditure; and

(3) The name of the committee's treasurer or the name and address of the person making the independent expenditure;

(b) The political advertising shall also include a written or oral statement of the words:

(1) "Top Five Contributors";

(2) Followed by a list of the 5 largest contributors over the amount of five thousand (\$5,000) dollars, whose contributions were made for the purpose of making an independent expenditure, if applicable during the 12-month period before the date of the political advertising.

3018.3 A political committee, political action committee, independent expenditure committee, or person making an independent expenditure shall include a statement on the face or front page, if printed, or an oral statement, if audiovisual, of all political advertising soliciting contributions as the following notice: "A copy of our report is filed with the Director of Campaign Finance of the Office of Campaign Finance."

3018.4 The identification requirements of this section need not be included on items the size of which makes the inclusion of such identification impractical.

3018.5 For the purpose of this section, the term "political advertising" includes newspaper and magazines advertising; poster; circulator and mailer; billboards; handbills; bumper stickers; sample ballots; initiative, referendum, or recall petitions; radio or television advertisements; paid telephone call and text messaging, digital media advertisements; and other printed and digital material produced by the persons intended to support or oppose:

(a) A candidate or group of candidates; or

(b) Any initiative, referendum, or recall measure.

**Chapter 37, INVESTIGATIONS AND HEARINGS, is amended as follows:****Section 3700, INVESTIGATIONS IN GENERAL, is amended as follows:****Subsection 3700.1 is amended to read as follows:**

3700.1 The provisions of this chapter shall establish the procedures for the conduct of all investigations by the Director of Campaign Finance (Director), and/or his or her designee, of alleged violations of Title III of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code §§ 1-1161.01 *et seq.*), and Chapters 30 - 42 of this title.

**Section 3701, INITIATION OF INVESTIGATION, is amended as follows:****Subsections 3701.1 and 3701.2 are amended to read as follows:**

3701.1 An investigation may commence upon referral by the Board of Elections (Board) or the filing of a complaint in writing with the Director.

3701.2 Each complaint shall include:

- (a) The full name and address of the complainant and the respondent;
- (b) A clear and concise statement of facts that alleged to constitute a violation of the Act, or of Chapters 30-42 of this title;

**Section 3704, FULL INVESTIGATIONS, is amended as follows:****Subsections 3704.1, 3704.3 and 3704.7 are amended to read as follows:**

3704.1 A full investigation regarding any alleged violation of the Act or Chapters 30-42 of this title shall commence upon a finding of reasonable cause by the Director and notice to the respondent that a full investigation has commenced.

3704.3 The Director may require any person to submit in writing certain reports and answers to questions, as prescribed by the Director, relating to the administration and enforcement of the Act, and Chapters 30-42 of this title.

3704.7 Within ninety (90) days of receipt of any complaint, the Director shall:

- (a) Cause evidence to be presented to the Board, if sufficient evidence exists constituting an apparent violation, pursuant to § 3706;
- (b) Dismiss the complaint, if insufficient evidence exists to present the matter, pursuant to § 3705; or

- (c) Impose civil penalties, pursuant to § 3711, upon a determination that a violation of the reporting and disclosure requirements prescribed by the Act and/or Chapters 30-42 of this title has occurred.

**Section 3706, INSTITUTION OF A CHARGE AND FORMAL HEARING, is amended as follows:**

**Subsection 3706.1 is amended to read as follows:**

- 3706.1 Upon belief that sufficient evidence exists constituting an apparent violation of the Act and/or of Chapters 30-42 of this title, the Director shall institute a formal charge or complaint against the alleged violator pursuant to Chapter 37 of this title.

**Section 3709, INFORMAL HEARING FOR ALLEGED VIOLATIONS OF REPORTING AND DISCLOSURE REQUIREMENTS, is amended as follows:**

**Subsection 3709.1 is amended to read as follows:**

- 3709.1 The Director may institute or conduct an informal hearing, including an order to show cause, on alleged violations of the reporting and disclosure requirements, prescribed by the Act and Chapters 30-42 of this title.

**Section 3711, SCHEDULE OF FINES, is amended as follows:**

**Subsections 3711.3, 3711.11 and 3711.12 are amended to read as follows:**

- 3711.3 Fines for violations of the regulations and statutory provisions governing Constituent Services Programs shall be imposed, as follows:
- (a) Failure to designate a constituent-service program depository: fifty dollars (\$50) per day;
  - (b) Failure to file a Statement of Acceptance of Position of Chairperson: fifty dollars (\$50) per day;
  - (c) Failure to file a Statement of Acceptance of Position of Treasurer: fifty dollars (\$50) per day;
  - (d) Accepting a contribution or making an expenditure while office of treasurer is vacant: fifty dollars (\$50) per day;
  - (e) Failure to file additional information requested by the Director: fifty dollars (\$50) per day;
  - (f) Failure to disclose required information on reports and statements: fifty dollars (\$50) per day;
  - (g) Accepting a contribution made by one person in the name of another person: four thousand dollars (\$4,000);
  - (h) Making a contribution in the name of another person: four thousand dollars (\$4,000);
  - (i) Accepting a contribution in excess of the constituent-services program contribution limitation: four thousand dollars (\$4,000);

- (j) Making a contribution in excess of the constituent-services program contribution limitation: four thousand dollars (\$4,000);
- (k) Conducting campaign activities in the constituent-services program: four thousand dollars (\$4,000);
- (l) Making an expenditure in excess of expenditure limitations: four thousand dollars (\$4,000);
- (m) Accepting a contribution in excess of aggregate limitations: four thousand dollars (\$4,000);
- (n) Failure to maintain records required under § 3400.2: four thousand dollars (\$4,000);
- (o) Promoting or opposing, as a primary purpose, a political party, committee, candidate, or issue: four thousand dollars (\$4,000);
- (p) Making any expenditure for the payment of penalties and fines inured to the District of Columbia: four thousand dollars (\$4,000);
- (q) Making any expenditures of cash from constituent service program funds: four thousand dollars (\$4,000);
- (r) Making expenditures for sponsorships for political organizations: four thousand dollars (\$4,000);
- (s) Conducting mass mailings within the ninety (90)-day period immediately preceding a primary, special, or general election by a member of the Council, or the Mayor, who is a candidate for office: four thousand dollars (\$4,000).
- (t) Failure to disclose affiliated entities of a business contributor who have also made contributions to the same committee: one thousand dollars (\$1,000); and
- (u) Failure to timely liquidate a Bitcoin contribution: fifty dollars (\$50) per day.

3711.11 Except as provided in §§ 3015.5(b)(1), 3906.2 and 4006.2, no provision of this chapter shall be construed as creating a liability on the part of any candidate for any financial obligation incurred by a committee.

3711.12 For the purposes of this chapter, action of an agent of a candidate shall be imputed to the candidate; provided, that the actions of the agent may not be imputed to the candidate in the presence of a provision of law requiring a willful and knowing violation of Chapters 30-42, unless the agency relationship to engage in the act is shown by clear and convincing evidence.

**Section 3714, REPORTS AND STATEMENTS UNDER OATH, is amended in its entirety to read as follows:**

3714.1 All reports and statements filed pursuant to the Act shall be verified by the oath or affirmation of the person filing such reports or statements in accordance with Chapter 30 of this title.

3714.2 Notwithstanding any other provisions of this title, neither the Director of Campaign Finance, or any of the Director's officers or employees may require that a document be sworn under oath or affirmed, unless the Director of

Campaign Finance maintain at the place of receipt of such documents, and during the regular business days and hours, a notary public to administer such oaths and affirmations.

- 3714.3 If no such notary public is available, person wishing to file documents for which an oath or affirmation is requested, may in lieu thereof, affirm by their signature on an Affirmation Statement that their statements are true under penalty of D.C. Official Code § 1-1163.35, as prescribed by the Director of Campaign Finance.

**Chapter 38, LEGAL DEFENSE COMMITTEES, is amended as follows:**

**Section 3800, LEGAL DEFENSE COMMITTEES, GENERALLY, is amended as follows:**

**Subsection 3800.1 is amended to read as follows:**

- 3800.1 A legal defense committee is a person, or group of persons, organized for the purpose of soliciting, accepting, or expending funds to defray the professional fees and costs for a public official's legal defense to one or more civil, criminal, or administrative proceeding arising directly out of the conduct of a campaign, the election process, or the performance of the public official's governmental activities and duties.

**Section 3801, ORGANIZATION OF LEGAL DEFENSE COMMITTEES, is amended as follows:**

**Subsection 3801.18 is amended to read as follows:**

- 3801.18 The detailed account submitted pursuant to § 3801.17 shall include:
- (a) The amount of the contribution or expenditure;
  - (b) The name and address (including the occupation, employer and principal place of business, if any) of the contributor or the person (including a business entity) to whom the expenditure was made;

**Section 3802, FILING AND REPORTING REQUIREMENTS, is amended as follows:**

**Subsections 3802.3 and 3802.5 are amended to read as follows:**

- 3802.3 R&E Reports must disclose:
- (a) The amount of cash on hand at the beginning of the reporting period;
  - (b) The full name and mailing address, including occupation and principal place of business, if any, of each person, including a business contributor, who has made one or more contributions to or for the committee within the calendar year in an aggregate amount or value in excess of fifty dollars (\$50) or more, together with the amount and date of the contributions;

- (c) The name and address of each affiliated entity of a business contributor which has also made a contribution to the committee;
- (d) The name, address, and employer of each person reasonably known by the committee to have submitted a bundled contribution in excess of two thousand dollars (\$2,000) to the committee during the reporting period, and the total amount of the bundling;
- (e) The total sum of individual contributions made to or for the committee during the reporting period that is not reported under § 3802.2(b);
- (f) Each loan to or from any person within the calendar year in an aggregate amount or value of fifty (\$50) or more, together with the full names and mailing addresses (including the occupation and the principal place of business, if any) of the lender and endorsers, if any, and the date and amount of the loans;
- (g) The total sum of all receipts by or for the committee during the reporting period;
- (h) The full name and mailing address, including the occupation, employer and the principal place of business, if any, of each person to whom expenditures have been made by or on behalf of the committee within the calendar year in an aggregate amount or value of ten dollars (\$10) or more;
- (i) The total sum of expenditures made by the committee during the calendar year;
- (j) The amount and nature of debts and obligations owed by or to the committee, in a form as the Director of Campaign Finance may prescribe; and
- (k) Other information as may be required by the Director of Campaign Finance.

3802.5 The treasurer of a legal defense fund, and each beneficiary of such a fund, shall keep a detailed and exact account of:

- (a) Each contribution made by any person, including a business contributor, to or for the legal defense committee;
- (b) The full name and address (including the occupation, employer and principal place of business, if any) of each person, including a business contributor, that made a contribution of at least fifty dollars (\$50) or more, and the date and amount of such contribution;

- (c) The name and address of any affiliated entity of each business contributor which made a contribution to the committee, and the date and the amount of the contribution;
- (d) The name, address, and employer of each person reasonably known by the committee to have submitted a bundled contribution in excess of two thousand dollars (\$2,000) to the committee during the reporting period, and the total amount of the bundling;
- (e) Each expenditure made by or on behalf of the legal defense committee; and
- (f) The full name and address (including the occupation and principal place of business, if any) of each person to whom an expenditure was made, and the name, address, and the office held or sought, or the position held, by the public official, whichever is applicable.

**Section 3803, LEGAL DEFENSE COMMITTEE CONTRIBUTION LIMITATIONS, is amended as follows:**

**Subsection 3803.1 is amended to read as follows:**

3803.1 Contributions in support of a legal defense committee shall be received or made in accordance with § 3011 of Chapter 30 of this title, except that no person, including a business contributor, shall make any contribution to or for a legal defense committee which, when aggregated with all other contributions received from such person, exceeds two thousand dollars (\$2,000) in an aggregate amount.

**Chapter 39, CAMPAIGN FINANCE OPERATIONS: INAUGURAL COMMITTEES, is amended as follows:**

**Section 3902, FILING AND RECORDKEEPING REQUIREMENTS, is amended as follows:**

**Subsection 3902.4 is amended to read as follows:**

3902.4 R&E Reports must disclose:

- (a) The amount of cash on hand at the beginning of the reporting period;
- (b) The full name and mailing address, including occupation and principal place of business, if any, of each person, including a business contributor, who has made one or more contributions to or for the inaugural committee, including the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events, within the calendar year in an aggregate amount or value in excess of fifty dollars (\$50) or more, together with the amount and date of the contributions;

- (c) The name and address of each affiliated entity of a business contributor which has also made a contribution to the committee;
- (d) The name, address, and employer of each person reasonably known by the committee to have bundled and forwarded two (2) or more contributions in excess of four thousand dollars (\$4,000) during the reporting period to the committee without actual authority as an agent or principal of the committee, and the total of the bundling;

**Section 3904, INAUGURAL COMMITTEE CONTRIBUTION LIMITATIONS, is amended as follows:**

**Subsections 3904.1 and 3904.2 to read as follows:**

- 3904.1 Contributions in support of an inaugural committee shall be received or made in accordance with § 3011 of Chapter 30 of this title, except that no person, including a business contributor, shall make any contribution to an inaugural committee, and the Mayor shall not receive any contribution from any person, including a business contributor, which, when aggregated with all other contributions received from such person, exceeds four thousand dollars (\$4,000) in an aggregate amount.
- 3904.2 Notwithstanding § 3904.1, the four thousand dollar (\$4,000) inaugural committee contribution limitation shall not apply to contributions made by the Mayor-elect for the purpose of funding his or her own inaugural committee.

**Section 3906, DURATION OF INAUGURAL COMMITTEES, is amended as follows:**

**Subsections 3906.1 – 3906.4 are amended to read as follows:**

- 3906.1 An inaugural committee shall terminate no later than six (6) months after the beginning of the term of the new Mayor.
- 3906.2 An inaugural committee may accept contributions necessary to retire the debts of the committee for six (6) months after the beginning of the term of the new Mayor, after which the Mayor shall be personally liable for any remaining debts; provided, that personal liability shall not attach until the Office of Campaign Finance is no longer auditing the inaugural committee.
- 3906.3 The Mayor shall not fundraise to retire the proper debts of his or her inaugural committee, for which he or she is not personally liable, after six (6) months after the beginning of his or her term.
- 3906.4 When terminating, inaugural committees shall adhere to the applicable provisions under § 3016 of Chapter 30 of this title.



**Chapter 40, CAMPAIGN FINANCE OPERATIONS: TRANSITION COMMITTEES, is amended as follows:**

**Section 4004, TRANSITION COMMITTEE CONTRIBUTION LIMITATIONS, is amended as follows:**

**Subsections 4004.1 and 4004.3 are amended to read as follows:**

4004.1 Contributions in support of a transition committee shall be received or made in accordance with § 3011 of Chapter 30 of this title, except that:

- (a) No person, including a business contributor, shall make any contribution to a Mayoral transition committee, and the Mayor shall not receive any contribution from any person which, when aggregated with all other contributions received from such person, exceeds two thousand dollars (\$2,000) in an aggregate amount; and
- (b) No person, including a business contributor, may make any contribution to or for a transition committee, and the Chairman of the Council or Chairman-elect, or Attorney General or Attorney General-elect, may not receive any contribution to or for a transition committee from any person, that when aggregated with all other contributions to the transition committee received from the person, exceed one thousand five hundred dollars (\$1,500), in aggregate; provided, that the \$1,500 limitation shall not apply to contributions made by the Chairman of the Council or Chairman-elect, or the Attorney General or Attorney General-elect, for the purpose of funding his or her own transition committee within the District.

4004.3 No person, including a business contributor, shall make or facilitate the making of a bundled contribution directly or indirectly to a Mayoral or Council Chairman transition committee.

**Section 4006, DURATION OF TRANSITION COMMITTEES, is amended as follows:**

**Subsections 4006.1 – 4006.4 are amended to read as follows:**

4006.1 A transition committee shall terminate no later than six (6) months after the beginning of the term of the new Mayor, Chairman of the Council, or Attorney General.

4006.2 A transition committee may continue to accept contributions necessary to retire the debts of the committee for six (6) months after the beginning of the new term, after which the Mayor, Chairman or the Council, or Attorney General shall be personally liable for any remaining debts of their respective committee; provided, that personal liability shall not attach until the Campaign Finance Board is no longer auditing the respective transition committee.

4006.3 The Mayor, Chairman, or Attorney General shall not fundraise to retire the proper debts of his or her respective transition committee, for which he or she is now personally liable, after six (6) months after the beginning of her or her new term.

4006.4 When terminating, transition committees shall adhere to the applicable provisions under § 3016 of Chapter 30 of this title.

**Chapter 41, CAMPAIGN FINANCE OPERATIONS: EXPLORATORY COMMITTEES, is amended as follows:**

**Section 4100, EXPLORATORY COMMITTEES, GENERALLY, is amended as follows:**

**Subsection 4100.1 is amended to read as follows:**

4100.1 An exploratory committee is a person, or group of persons, organized for the purpose of examining or exploring, with the consent of the prospective candidate, the feasibility of a qualified individual becoming a candidate for a public office in the District of Columbia.

**Section 4102, ORGANIZATION OF EXPLORATORY COMMITTEES, is amended as follows:**

**Subsection 4102.1 is amended to read as follows:**

4102.1 An exploratory committee shall be deemed "organized" when any person, or group of persons, formally agree, orally or in writing, and with the consent of the prospective candidate, to examine or explore the feasibility of becoming a candidate for a public office in the District of Columbia.

**Section 4106, LIMITATIONS ON THE USE OF EXPLORATORY COMMITTEE FUNDS, is amended as follows:**

**Subsection 4106.1 is amended to read as follows:**

4106.1 Exploratory committee funds shall be used solely for the purpose of financing, directly or indirectly, an examination of the feasibility of becoming a candidate for a public office in the District of Columbia.

**Section 4108, USE OF SURPLUS FUNDS, is amended as follows:**

**Subsection 4108.1 is amended to read as follows:**

4108.1 Any balance in the exploratory committee fund shall be transferred only to an established political committee or nonprofit organization, within the meaning of Section 501(c) of the Internal Revenue Code, operation in good standing in the District for a minimum of one (1) year before the date of any transfer.

Chapter 99, DEFINITIONS, is amended in its entirety to read as follows:

**CHAPTER 99        DEFINITIONS**

**9900        DEFINITIONS**

9900.1        The terms and phrases used in this title shall have the meanings set forth in the Election Act, the Ethics Act, and this section unless the text or context of the particular chapter, section, subsection, or paragraph provides otherwise.

**Activity** - acts or functions of an agency or its authorized agent and the methods of performing them.

**Address** - personal residence, principal place of business, campaign office, political committee office, and constituent-service program office.

**Administrative action** – the execution of policies relating to persons or things as previously authorized, or required by official action of the agency, adopted at an open meeting of the agency. The term does not include the deliberation of agency business or taking official action. Examples of administrative action include the review of an agenda, setting witness testimony time limitations, and other such procedural discussions.

**Adversely affected** – harm caused by an administrative action for which redress is necessary or required.

**Affidavit** – a written statement sworn to by the affiant before a notary or officer authorized to administer oaths, which attests to the truth of the stated written matter.

**Aggrieved party** – one who has been directly and detrimentally harmed by the outcome of an administrative decision or action.

**Anything of value** - related to the monetary worth of something.

**Authorized committee** – a principal campaign committee or any other political committee designated and authorized by a candidate, on the Statement of Candidacy Form, to support the candidate for election, receive contributions, or make expenditures on behalf of such candidate.

**Authorized officer or agent** - one who has the actual or apparent authority to bind the principal.

**Ballot** - a sheet of paper, or electronic card, filmstrip, or other device on which votes are recorded and stored. See also, “official ballot.”

**Ballot card** – see “ballot.”

**Ballot measure** – a specific category of ballot question, including initiatives, referenda, and recalls.

**Ballot question** – a direct vote in which the electorate is asked to either accept or reject a particular proposal, including ballot measures (initiatives, referenda, and recalls) and Charter Amendments.

**Base amount** - means the amount a participating candidate in the Fair Elections Program is eligible to receive as a lump-sum payment.

**Board** - the District of Columbia Board of Elections, under Title III of the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011.”

**Board Employee** - as distinguished from a "polling place official," an individual who is employed by the District of Columbia Board of Elections to perform personal services for the Board either as a permanent, temporary, intermittent, or trainee employee and includes employees on leave, leave without pay, or on furlough or leave of absence for educational purposes.

**Board's office** – the Board's principal place of business, and for purposes of registration only, any voter registration agency (VRA) or early voting center location that the Board shall designate.

**Bundling** – the combining of one or more contributions by different donors to make a single contribution to a candidate for public office or to support an initiative, referendum, or recall measure in the District of Columbia.

**Business** - any corporation, partnership, sole proprietorship, firm, nonprofit corporation, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock, trust, or any legal entity through which business is conducted, whether for profit or not.

**Campaign Finance Act** – the Campaign Finance Act of 2011 under Title III of the “Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011,” as amended.

**Candidate** - an individual who seeks election to public office, whether or not the individual is nominated or elected:

- (a) Obtained or authorized any other person to obtain election to public office;
- (b) Received contributions or made expenditures, or has given consent to any other person to receive contributions or make expenditures, with a view to bringing about the individual's election to public office; or
- (c) Knows, or has reason to know, that any other person has received contributions or made expenditures for that purpose, and has not notified

that person in writing to cease receiving contributions or making expenditures for that purpose; provided, that an individual shall not be deemed a candidate if the individual notifies each person who has received contributions or made expenditures that the individual is only testing the waters, has not yet made any decision whether to seek election to public office.

**Candidate for election** - an individual who has won a party primary; or who has survived the challenge period (D.C. Official Code §§ 1-1001.08(o) and 1-1101.01(2) (2016 Repl. & 2019 Supp.)) after filing a petition to have his or her name printed directly on the general election ballot.

**Candidate for nomination** - an individual who is seeking to win a party primary; or an individual who is seeking ballot access in a general or special election by having registered voters sign a nominating petition to have the candidate's name printed directly on the ballot.

**Chairman** – the Chairman of the District of Columbia Board of Elections.

**Close of business** - 4:45 p.m. Monday through Friday, excluding District of Columbia legal holidays, unless otherwise indicated in this title.

**Commingling** - the improper mixing of personal and campaign or other funds donated for a specific or limited purpose.

**Committee** – an organized group consisting of a chairman and treasurer engaged for one of the following purposes:

- (a) to nominate, elect, or defeat a candidate for public office;
- (b) to solicit, accept, and expend funds to defray the costs of attorney fees, on behalf of a public officer;
- (c) to solicit, accept and expend funds for the transition of the Mayor or Chairman of the Council;
- (d) to explore or test the feasibility of an individual's viability as a candidate for public office in the District of Columbia;
- (e) to plan, raise, and expend funds for inaugural celebration for a new Mayor; or
- (f) to qualify an initiative, referendum, or recall measure for ballot access.

**Complainant** – one who alleges a violation of District of Columbia campaign finance law or regulation.

**Constituent Service Fund** – monetary resources authorized by law for use by the Mayor, Chairman and members of the DC Council to provide certain services to benefit the citizens of the District of Columbia.

**Contest** - the aggregate of candidates who run against each other among themselves for a particular nomination or number of nominations, or a particular office or number of offices. The write-in options for each of the positions to be filled by the election are also part of the contest.

**Contested election** – an election for a seat for a covered office for which there are at least two (2) candidates, at least one of whom is a participating candidate in the Fair Elections Program.

**Contribution** – means:

- (a) A gift, subscription (including any assessment, fee, or membership dues), loan (except a loan made in the regular course of business by a business engaged in the business of making loans), advance, or deposit of money or anything of value (including contributions in cash or in kind), made for the purpose of financing, directly or indirectly:
  - (1) The election of a candidate;
  - (2) Any operations of a political committee, political action committee or independent expenditure committee; or
  - (3) The campaign to obtain signatures on any initiative, referendum, or recall measure, or to bring about the ratification or defeat of any initiative, referendum, or recall measure:
- (b) A transfer of funds between:
  - (1) Political committees and political action committees;
  - (2) A political committee and a political action committee; or
  - (3) Candidates;
- (c) The payment, by any person other than a candidate, a political committee, political action committee, or independent expenditure committee of compensation for the personal; and
- (d) An expenditure that is coordinated with a public official, a political committee affiliated with a public official or an agent of any person described in this subparagraph.

**Coordinate or coordination:**

- (a) Means to take an action, including making a contribution or an expenditure:

- (1) At the explicit or implicit direction, request, or suggestion of a public official, a political committee affiliated with a public official, or an agent of a public official or a political committee affiliated with a public official; or
  - (2) In cooperation, consultation, or concert with, or with other material involvement of a public official, a political committee affiliated with a public official, or an agent of a public official or a political committee affiliated with a public official.
- (b) There shall be a rebuttable presumption that a contribution or an expenditure is coordinated with a public official, a political committee affiliated with a public official, or an agent of a public official or the official's political committee, if:
- (1) The contribution or expenditure is made based on information that the public official, the official's political committee, or the official's agent, provided to the particular person making the contribution or expenditure about its needs or plans, including information about campaign messaging or planned expenditures;
  - (2) The person making the contribution or expenditure retains the professional services of a person who also provides the public official, the official's political committee or agent with professional services related to campaign or fundraising strategy;
  - (3) The person making the contribution or expenditure is a political committee, political action committee, or independent expenditure committee that was established or is or was staffed in a leadership role by an individual who:
    - (A) Works or previously worked in a senior position or in an advisory capacity on the public official's staff or on the public official's principal campaign committee; or
    - (B) Who is a member of the public official's immediate family; or
    - (C) The contribution or expenditure is made for the purpose of financing, directly or indirectly, the election of a candidate or the candidate's political committee and that candidate has fundraised for the person making the expenditure.

**Coordinated expenditure** – made in cooperation, consultation, or concert with a candidate or party based on certain conduct or interactions occurring between the candidate or political committee and spender. An expenditure is deemed coordinated if it meets at least one “conduct” standard and one “content” standard.

**Council** – the Council of the District of Columbia.

**Covered office** - the office of Mayor, Attorney General, Chairman of the Council, member of the Council, and member of the State Board of Education.

**Days** - calendar days, unless stated otherwise.

**Debate** - the public, moderated, reciprocal discussion of issues conducted by the Director of Campaign Finance.

**Director** – the Director of Campaign Finance of the Board of Elections.

**D.C. Official Code** - the 2001 Edition of the Code, as amended.

**Directly related** - immediately or approximately connected to, allied to, or affiliated with.

**Domestic partner** – the same meaning as provided in D.C. Official Code § 32-701(3).

**Duly registered voter** - a registered voter who resides at the address listed on the Board’s records.

**Effective date (of registration)** – the date from which a registered voter’s information is valid.

**Elected officials** - the following local public officials:

- (a) The Delegate to the United States House of Representatives from the District of Columbia, as provided for in the District of Columbia Delegate Act of 1970, effective September 22, 1970, as amended (84 Stat. 848, Pub. L. 91-405; D.C. Official Code §§ 1-401, *et seq.* (2016 Repl.));
- (b) The Mayor of the District of Columbia, as provided for in D.C. Official Code §§ 1-204.21 and 1-204.22 (2016 Repl.);
- (c) The Chairperson and Members of the Council of the District of Columbia, as provided for in D.C. Official Code § 1-204.01 (2016 Repl.);
- (d) The Members of the State Board of Education, as provided for in D.C. Official Code § 38-2651 (2019 Repl.);
- (e) Electors of President and Vice President of the United States and the officials of political parties as provided for in D.C. Official Code § 1-1001.01 (2016 Repl.); and
- (f) Members of Advisory Neighborhood Commissions, as provided for in D.C. Official Code § 1-309.06 (2016 Repl. & 2019 Supp.) and § 1-1001.02(13) (2016 Repl. & 2019 Supp.).

**Election** – means a primary, general, or special election held in the District of Columbia to nominate an individual as candidate for election to office, to



elect a candidate for office, or to decide an initiative, referendum, or recall measure, including a convention or caucus of a political party held to nominate such candidate.

**Election Act** - the District of Columbia Election Act, effective August 12, 1955, as amended (69 Stat. 699; D.C. Official Code §§ 1-1001.01, *et seq.* (2016 Repl.)), which governs the administration of all elections in the District of Columbia.

**Election cycle** - means:

- (a) The period beginning on the day after the date of the most recent general election for a seat for a covered office and ending on the date of the next general election for that seat for the covered office; or
- (b) In the case of a special election for a seat for a covered office, the period beginning on the day the special election is called and ending on the date of the special election for that seat for the covered office.

**Election Day worker** – see “polling place official.”

**Election observer** – an individual who has received proper credentials from the Board to witness the administration of elections, including members of nonpartisan or bipartisan, domestic or international organizations, who are not affiliated with a candidate or ballot measure.

**Election official** – any employees of the Board and polling place officials, excluding poll watchers and election observers.

**Election year** - the calendar year in which there is held an election, where a political committee is engaged in promoting or opposing a political party, nomination or election of an individual to office, or any initiative, referendum, or recall measure.

**Electronic filing** - as provided by the Office of Campaign Finance in Chapters 30-40, the procedure by which filers may process required forms online through the world wide web at [www.ocf.dc.gov](http://www.ocf.dc.gov).

**Eligible candidate** - an individual who is not ineligible to be a candidate pursuant to D.C. Official Code § 1-1001.15(b) (2016 Repl.) and who meets or is capable of meeting those statutory requirements necessary to serve in a particular office by the date of the election in which he or she seeks the office.

**Employee** - unless otherwise apparent from the context, a person who performs a function of the District of Columbia government and who receives compensation for the performance of such services, or a member of a

District of Columbia government board or commission, whether or not for compensation.

**Entrusted position** - an elective and public office which is a public trust in which the citizenry reposes special confidence in the officeholder for the execution of duties or services which inure to the benefit of the citizenry.

**Executive agency** - includes:

- (a) A department, agency, or office in the executive branch of the District of Columbia government under the direct administrative control of the Mayor;
- (b) The State Board of Education or any of its constituent elements;
- (c) The University of the District of Columbia or any of its constituent elements;
- (d) The Board of Elections; and
- (e) Any District of Columbia professional licensing and examining board under the administrative control of the executive branch.

**Expenditure** – is made in cooperation, consultation, or concert with a candidate or committee that includes:

- (a) A purchase, payment, distribution, loan, advance, deposit, or gift or money or anything of value, made for the purpose of financing, directly, or indirectly:
  - (1) The election campaign of a candidate;
  - (2) Any operations of a political, exploratory, inaugural, transition, or legal defense committee; or
  - (3) The election campaign to obtain signatures in any initiative, referendum, or recall petition, or to bring about the ratification or defeat of any initiative, referendum, or recall measure, or any operations of a political committee involved in such a campaign.
- (b) A contract, promise, or agreement, whether legally enforceable, to make an expenditure; and
- (c) A transfer of funds between political committees or between an exploratory committee and a political committee.

**Exploratory Committee** – any person, or group of persons, organized for the purpose of exploring the feasibility of an individual becoming a candidate for public office in the District of Columbia.

**Fair Elections Committee** – a political committee that only accepts contributions from:

- (a) Individuals who are District residents, which shall not exceed two hundred fifty dollars (\$250) per individual per calendar year; or
- (b) A membership organization, if the contribution consists of membership dues paid by individuals who are District residents that do not exceed;
  - (1) The amount of membership dues actually paid per member per calendar year; and
  - (2) \$250 per member per calendar year.

**Fair Election Fund** – the fund established by D.C. Official Code § 1-1163.32i.

**Fair Elections Program** – the program to provide for publicly funded campaigns.

**Fair market value** - the fair and reasonable cash price for which the property can be sold in the market at the time of alleged violation, or at the time of filing of the financial statement.

**Fictitious ballot** – a ballot which shows the design and layout of a ballot in an upcoming election, and does not contain the names of nominees or candidates actually seeking office or ballot questions actually to appear on an official ballot.

**File, filed, and filing** – delivery in person, electronically or by mail to the OCF by 5:30 p.m. of the prescribed date.

**FOIA** - the District of Columbia Freedom of Information Act, which ensures disclosure of certain information relative to the conduct of the District of Columbia Government and its employees.

**Gift** - a payment, subscription, advance, forbearance, rendering, or deposit of money, services, or anything of value, unless consideration of equal or greater value is received.

**Government photo identification** – a card issued by the District of Columbia government that bears a photograph of the face of the voter and the voter's current, District of Columbia residential address.

**Household** - a public official or employee and any member of his or her immediate family with whom the public official or employee resides.

**Identification** - in the case of an individual, the full name, including first name, middle name or initial, if available, last name of an individual, and full address of the principal place of residence; and in the case of partnership,

committee, corporation, labor organization, and any other organization, full name and mailing address.

**Immediate family** - the spouse or domestic partner of a public official or employee and any parent, grandparent, brother, sister, or child of the public official or employee, and the spouse or domestic partner of any such parent, grandparent, brother, sister, or child.

**Inaugural Committee** – any person, or group of persons, organized for the purpose of soliciting, accepting, and expending funds and coordinating activities to celebrate the election of a new Mayor.

**Incidental expenses** - any unreimbursed payment from a volunteer’s personal funds for usual and normal local travel and subsistence expenses incident to volunteer activity.

**Income** - gross income as defined in Section 61 of the Internal Revenue Code (26 USC § 61).

**Independent expenditures** - an expenditure that is made for the purpose of promoting or opposing the nomination or election of a candidate; a political party, or any initiative, referendum, or recall that is not controlled by or coordinated with any public official, or any agent of a public official, including a political committee; and not a contribution to a political committee, political action committee, or candidate.

**Independent Expenditure Committee** – any committee, club, association, organization, or other group of individuals that is organized for the purpose of making independent expenditures that is not controlled or coordinated with any public official or an agent of a public official, including a political action committee; and does not transfer or contribute to a political committee, political action committee, or a candidate.

**Individual** – a natural person.

**In-kind contribution** - a contribution of goods, services, or property by the contributor to a campaign finance committee, candidate, constituent-service program, or Statehood Fund.

**Interpretative Opinion** – a legal opinion issued by the Director of Campaign Finance concerning a proposed transaction relative to District of Columbia campaign finance law or regulation.

**Legal Defense Committee** – a person or group of person organized for the purpose of soliciting, accepting, and expending funds to defray the professional fees and costs for a public official’s legal defense to one or civil, criminal, or administrative proceedings arising directly out of the conduct of a

campaign, the election process, or the performance of the public official's governmental activities and duties.

**Legal tender** - currency and coins of the United States; ready money.

**Legislative action** - includes any activity conducted by an official in the legislative branch in the course of carrying out his or her duties as such an official, and relating to the introduction, passage, or defeat of any legislation in the Council.

**Limited Liability Company (LLC)** – is an unincorporated association established pursuant to District of Columbia Code (2001 edition), Title 29, Chapter 8, with one or more members who have limited personal liability for the debts and actions of the LLC.

**Logic and accuracy testing (“L&A testing”)** – validation of the mathematical accuracy of vote recording and tabulation equipment for internal and external consistencies.

**Made with cooperation or consultation with any candidate** - any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is as follows:

- (a) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by candidate's agent, with a view toward having an expenditure made; and
- (b) Made by or through any person who is, or has been, authorized to raise or expend funds; who is, or has been, an officer of an authorized committee; or who is, or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent.

**Mass collections** - the receipt of contributions by a committee, candidate, or individual, at dinners, luncheons, rallies, and other fundraising events organized by a committee, candidate, or individual.

**Mass sales** - to make available for purchase by a committee, candidate, or individual, at dinners, luncheons, rallies, and other fundraising events organized by such committee, candidate, or individual, items in bulk such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, and similar materials.

**Matching payments** – payments provided to a participating candidate in the Fair Elections Program for qualified small-dollar contributions.

**Material involvement** – means, with respect to a contribution or expenditure, any communication to or from a public official, a public official's affiliated

political committee, or any agent of a public official or the public official's affiliated political committee, related to the contribution or expenditure. Material involvement includes devising or helping to devise the strategy, content, means of dissemination, or timing of the contribution or expenditure, or making any express or implied solicitation of the contribution or expenditures.

**Membership organization** – an organization that:

- (a) Is tax-exempt under Section 501(c) of the Internal Revenue Code;
- (b) Is comprised of members who are individuals, whether or not the organization also has affiliated organizations; provided that all of the members are required as a condition of membership to pay dues at least annually in amounts predetermined by the membership organization;
- (c) Expressly solicits individuals to become members and expressly acknowledges acceptance of membership; and
- (d) Is neither a political committee nor otherwise organized for the principal purpose of promoting or opposing the nomination or election of a person to local, state, or federal public office.

**Non-postmarked** – not bearing the postal cancellation imprint on letters flats and parcels that shows the date, name, state, and ZIP Code of the post office or sectional center facility that accepted the mail.

**Non-support year** - any calendar year in which a political committee is not engaged in promoting or opposing a political party, the nomination or election of an individual to office, or any initiative, referendum, or recall measure.

**Occupation** - the principal job title or position, and type of business, or whether self-employed for the purposes of the Campaign Finance Act.

**Office** – the Office of Mayor, Attorney General, Chairman or member of the Council, President or member of the Board of Education, or an official of a political party in the District of Columbia.

**Official ballot** – a sheet of paper, or electronic card, filmstrip, or other device that has been approved by the Board for use during an election on which votes are recorded and stored. For direct-recording electronic (“DRE”) machines, the official ballot shall be the electronic card that records and stores the elector's votes, except that the voter-verified paper audit trail (“VVPAT”) shall be the official ballot of record during all occurrences of manual tabulation, including audits and recounts.

**Official in the executive branch** - includes:

- (a) The Mayor;
- (b) Any officer or employee in the Executive Service;
- (c) Persons employed under the authority of D.C. Official Code §§ 1-609.01 through 1-609.03 (except § 1-609.03(a)(3)) paid at a rate of DS-13 or above in the General Schedule or equivalent compensation under the provisions of Subchapter XI of Chapter 6 of this title designated in § 1-609.08 (except paragraphs (9) and (10) of that section; or
- (d) Members of boards and commissions designated in § 1-523.01(e).

**Official in the legislative branch** - any candidate for Chairman or member of the Council in a primary, special, or general election, the Chairman or Chairman-elect or any member or member-elect of the Council, officers, and employees of the Council appointed under the authority of §§ 1-609.01 through 1-609.03 or designated in § 1-609.08.

**Official of a political party** – national committeemen and committeewomen and their alternates; delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States and their alternates, where permitted by party rules; such members and officials of local committees of political parties as designated by duly authorized local committees of such parties for election, by public ballot, at large or by ward in the District of Columbia.

**Ordinary course of business** - transacting business according to customary and reasonable business practices.

**Overvote** – instance in which a voter casts a vote for a greater number of candidates or positions than the number for which he or she was lawfully entitled to vote and no vote shall be counted with respect to that office or question.

**Participating candidate** – a candidate for a seat for a covered office who is certified under § 4206.

**Particular matter** - a deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.

**Partnership** – an association of two (2) or more persons acting as co-owners of a business for profit.

**Party** – a person or group of persons directly involved in, or having an interest at stake in the outcome of a transaction, which is the subject of a legal proceeding as a litigant.

**Party affiliation status** – for registration and registration update purposes, the elector’s choice of “Democratic Party,” “Republican Party,” “D.C. Statehood Green Party,” “Libertarian Party”, “no party (independent),” or any other minor party.

**Person** – an individual, partnership, committee, corporation, limited liability company, labor organization, or any other organization.

**Political Committee** – any proposer, individual, committee (including a principal campaign committee), club, organization, association, or other group of individuals organized for the purpose of, or engaged in promoting or opposing, the nomination or election of an individual to office, a political party, or any initiative, referendum, or recall measure.

**Political Party** – an association, committee, or other organized group of individuals who share a similar ideology concerning government policy, and which nominates a candidate for election to office in the District of Columbia.

**Political Action Committee (PAC)** – any committee, organization, or other group of individuals organized for the purpose to promote or oppose the election of a person to public office, a political party; or any initiative, referendum, or recall that is not controlled by or coordinated with any public official or any agent of a public official, including a political action committee.

**Poll watcher** – a qualified elector who has received proper credentials from the Board to monitor voting or ballot counting activity on behalf of a qualified candidate, or proponent or opponent of a proposed initiative, referendum, recall measure, or Charter amendment.

**Polling place official** - an individual who is employed by the District of Columbia Board of Elections on those dates when elections and early voting are conducted in the District of Columbia or any subsequent dates upon which the counting or recounting of ballots occurs and includes, but is not limited to, precinct captains, precinct workers, counters, or area representatives.

**Postmarked** – bearing the postal cancellation imprint on letters flats and parcels that shows the date, name, state, and ZIP Code of the post office or sectional center facility that accepted the mail.

**Principal** – of a business means senior officers of that business, such as president, executive director, chief executive officer, chief operating officer, or chief financial officer. If a business is an educational institution, the term “principal” shall not include deans of that business.



**Principal Campaign Committee (PCC)** – an organized group of individuals, whose name includes the name of a clearly identified candidate, which is authorized by a candidate to cause his or her nomination or election to office in the District of Columbia.

**Principal place of business** - full name under which the business is conducted and the addresses, city, and state in which the person is employed or conducts business.

**Prohibited source** - any person that:

- (a) Has or is seeking to obtain contractual or other business or financial relations with the District of Columbia government;
- (b) Conducts operations or activities that are subject to regulation by the District of Columbia government; or
- (c) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

**Public official** - includes:

- (a) A candidate for election to public office;
- (b) Mayor, Attorney General, or Chairman of the Council;
- (c) A Representative or Senator elected pursuant to D.C. Official Code § 1-123;
- (d) An Advisory Neighborhood Commissioner;
- (e) A member of the State Board of Education;
- (f) A person serving as a subordinate agency head in a position designated as within the Executive Service;
- (g) A member of a board or commission listed in D.C. Official Code § 1-523.01(e); and
- (h) A District of Columbia Excepted Service employee paid at a rate of Excepted Service 9 or above, or its equivalent, who makes decisions or participates substantially in areas of contracting, procurement, administration of grants or subsidies, developing policies, land use planning, inspecting, licensing, regulating, or auditing, or acts in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest; and any additional employees designated by rule by the Ethics Board who make decisions or participate substantially in areas of contracting, procurement, administration of grants or subsidies,

developing policies, land use planning, inspecting, licensing, regulating, or auditing, or act in areas of responsibility that may create a conflict of interest or appearance of a conflict of interest.

**Qualified elector** – a registered voter who resides at the address listed on the Board’s records.

**Qualified registered elector** – a registered voter who resides at the address listed on the Board’s records.

**Qualified small-dollar contribution** – a deposit of money that:

- (a) Is made for the purpose of financing the nomination or election of a candidate or any operations of a political committee;
- (b) Meets the requirements of § 4205; and
- (c) Is contributed by a small-dollar contributor to a candidate seeking certification or a participating candidate in the Fair Elections Program.

**Qualifying period** – means:

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

**Registered qualified elector** - a registered voter who resides at the address listed on the Board’s records

**Respondent** – a party to a contested matter in an administrative proceeding.

**Sample/specimen ballot** – a representation of an original official ballot used for demonstration purposes only.

**Small-dollar contributor** – an individual who:

- (a) Is a District resident; and

- (b) Contributes a qualified small-dollar contribution to a candidate seeking certification or a participating candidate in the Fair Elections Program.

**Statement of Candidacy** - a written statement, filed with the Director, declaring one's intention of becoming a candidate for election, made "under penalty of perjury" and signed by the candidate.

**Statement of Organization** – a prescribed form that identifies the name of any group of individuals, proposer, individual, club, organization, or association organized for the purpose of promoting or opposing the nomination or election of an individual to office, or promoting or opposing a political party or any initiative, referendum or recall measure, made "under penalty of perjury" and signed by the Treasurer or a designated agent.

**Submission** – the voter's act of returning a voted ballot to the Board.

**Surplus funds** - residual or unexpended monies remaining in a candidate, constituent-service program, Statehood Fund, or political committee account in excess of the amount necessary to defray expenses.

**Testimonial committee** - any committee, association, or organization organized and operated exclusively for the purpose of publicly acknowledging an official's services, character, attainments, conduct, qualifications, or contributions while holding office. A testimonial committee is not a political committee.

**Timely completed** – the information given and signature made on or prior to the date required pursuant to the D.C. Official Code and the D.C. Municipal Regulations, Title 3.

**To cause to be undertaken** - an actual writing, drawn up by an executive agency, intended to initiate a rulemaking proceeding. The phrase is not intended to include discussion among members of the agency or the public prior to their submission of the writing.

**Transition Committee** – any person or group of persons organized for the purpose of soliciting, accepting or expending funds for office and personnel transition on behalf of the Mayor, Attorney General, or the Chairman of the Council.

**Transmission** – the Board's act of sending a ballot to the voter.

**To propose legislation** - an actual written proposal signed by the head of a proposing agency and submitted to the Mayor, Council, President of the United States, or the United States Congress. It does not refer to discussion among members of the proposing agency before submission of the written request, nor does it refer to oral communications between the

proposing agency and the Mayor, President, or members of the Council or the U. S. Congress.

**Treasurer** – an official of a political campaign or other committee, who is required to file a Statement of Acceptance of Treasurer with the Director of Campaign Finance, and authorized to receive contributions, to make expenditures and to file financial reports on behalf of a candidate or other committee.

**Unauthorized committee** – any organized political committee that has not been designated by a candidate for election.

**Uncontested election** – an election for a seat for a covered office for which there is only one participating candidate.

**Undervote** – an instance in which a voter casts a vote for a lesser number of candidates or positions than the number for which he was lawfully entitled to vote.

**Voter registration application** – a Board-approved form that meets federal requirements pursuant to the National Voter Registration Act (“NVRA”) (42 USC §§ 1973gg, *et seq.*) and the Help America Vote Act (“HAVA”) (42 USC §§ 15301 – 15545) that a qualified elector uses to register to vote or to update voter registration information.

**Voting system** – any equipment or software used to tabulate ballots.

**Write-in nominee** - an individual whose name is written on or imprinted upon the ballot by a voter, in a primary, general, or special election and whose eligibility as a candidate in the election has not been determined by the Executive Director.

**Write-in candidate (“qualified write-in candidate”)** – as distinguished from a “write-in nominee,” an individual who is seeking nomination or election by the electorate and whose eligibility as a candidate in the election has been determined by the Executive Director.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health (Department), pursuant to § 302(4) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the adoption of the following amendment to Chapter 51 (Anesthesiologist Assistants) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking is necessary to update Sections 5108 (Continuing Education Requirements) and 5199 (Definitions) of the District of Columbia Municipal Regulations regarding the Board of Medicine in order to amend the requirement for Continuing Education for anesthesiologist assistants. Consistent with the aim of the Act, this rulemaking will enhance professionalism within the community and operate in support of the health and welfare of the public.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on July 12, 2019 at 66 DCR 008183. No comments were received on the proposed rulemaking and no changes have been made to the proposed rule. The amendment was adopted as final on September 11, 2019, and shall become effective upon publication this Notice of Final Rulemaking in the *D.C. Register*.

**Chapter 51, ANESTHESIOLOGIST ASSISTANTS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 5108, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:**

**Subsection 5108.2 is amended to read as follows:**

- 5108.2 A licensee applying for renewal shall meet continuing education requirements by demonstrating that he or she has:
- (a) Been recertified by the National Commission for Certification of Anesthesiologist Assistants (NCCAA), or its successor organization;
  - (b) Completed two (2) continuing medical education hours in cultural competence or appropriate clinical treatment specifically for individuals who are lesbian, gay, bisexual, transgender, gender nonconforming, queer, or questioning their sexual orientation or gender identity and expression (LGBTQ) which meet the requirements of §§ 5108.5 and 5108.6; and
  - (c) At least ten percent (10%) of the total required continuing medical education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently as deemed appropriate by the Director with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified

subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

**Section 5199, DEFINITIONS, is amended as follows:**

**Subsection 5199.1 is amended as follows:**

**The following definition is added before the definition of “Immediately Available”:**

**Director** – The Director of the Department of Health, or his or her designee.

## DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the final action to amend Chapter 73 (Occupational Therapy Assistants) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to require occupational therapy assistants seeking to renew, reactivate, or reinstate the license to complete continuing education in public health priorities as determined and amended from time to time by the Director.

The rulemaking was published as a proposed rulemaking in the *D.C. Register* on June 7, 2019 at 66 DCR 6969. No comments were received and there has been no change to the rule as proposed. This rule was adopted as final on August 21, 2019 and will be effective upon publication in the *D.C. Register*.

**Chapter 73, OCCUPATIONAL THERAPY ASSISTANTS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 7304, CONTINUING EDUCATION REQUIREMENTS, is amended as follows:**

**Subsection 7304.1 is amended to read as follows:**

7304.1 This section applies to all renewal applicants but shall not apply to applicants for the first renewal of a license granted by examination. This section shall not apply to applicants for an initial license by examination, reciprocity, or endorsement.

**Subsection 7304.2 is amended to read as follows:**

7304.2 To qualify for the renewal of a licensee, an applicant shall have completed a minimum of twelve (12) contact hours of approved continuing education in accordance with §§ 7305 and 7306 during the two (2)-year period preceding the date the license expires; ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Beginning with the licensure term starting on October 1, 2017, the continuing education required in this section shall include two (2) hours of LGBTQ continuing education.

**Section 7309, REACTIVATION, is amended as follows:****Subsection 7309.3 is amended to read as follows:**

7309.3 A reactivation applicant whose license has been inactive five (5) years or less who does not hold a license in any other jurisdiction shall submit proof in accordance with § 7304.5, of having completed six (6) contact hours of approved continuing education for each year that the applicant was in inactive status. Two (2) of the total contact hours of continuing education required under this section shall be LGBTQ continuing education Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate.

**Subsection 7309.4 is amended to read as follows:**

7309.4 A reactivation applicant whose license has been inactive for more than five (5) years who does not hold an active license in any other jurisdiction shall submit proof pursuant to § 7304.5 of having completed the following:

- (a) Thirty (30) contact hours of approved continuing education in accordance with §§ 7305 and 7306, three of the thirty (30) hours shall be in public health priorities and at least twelve (12) of the thirty (30) hours shall be completed within two (2) years prior to the date the application is submitted and two (2) of the total hours required shall be LGBTQ continuing education; and
- (b) One hundred sixty (160) hours of supervised practice in accordance with § 7316 within the two (2) months prior to the date the application is submitted.

**Section 7310, REINSTATEMENT, is amended as follows:****Subsection 7310.3 is amended to read as follows:**

7310.3 A reinstatement applicant who holds an active license in any other jurisdiction shall submit proof pursuant to § 7304.5 of having completed six (6) contact hours of approved continuing education for each year that the applicant was not licensed in the District up to a maximum of thirty (30) hours. Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Twelve (12) contact hours shall have been completed within two (2) years prior to the date the application is submitted and two (2) contact hours shall be LGBTQ continuing education.

**Subsection 7310.4 is amended to read as follows:**



7310.4 A reinstatement applicant who does not hold an active license in any other jurisdiction shall submit proof:

- (a) Pursuant to § 7304.5, of having completed six (6) contact hours of approved continuing education for each year that the reinstatement applicant was not licensed. Ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District, which shall be duly published every five (5) years or as deemed appropriate. Twelve (12) contact hours shall have been completed within two (2) years prior to the date the application is submitted and two (2) contact hours shall be LGBTQ continuing education; and
- (b) Of having completed one hundred sixty (160) hours of supervised practice in accordance with § 7316 within the two (2) months prior to the date the application is submitted.

## PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING**RM37-2017-01- NATURAL GAS QUALITY OF SERVICE STANDARDS AND RELIABILITY PERFORMANCE;****AND****FORMAL CASE NO. 977, IN THE MATTER OF THE INVESTIGATION INTO THE QUALITY OF SERVICE OF WASHINGTON GAS LIGHT COMPANY, DISTRICT OF COLUMBIA DIVISION, IN THE DISTRICT OF COLUMBIA**

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Sections 2-505 and 34-802 of the District of Columbia Official Code,<sup>1</sup> of its final rulemaking action adopting amendments to Chapter 37 (Natural Gas Quality of Service Standards and Reliability Performance), of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the Natural Gas Quality of Service Standards (NGQSS). This chapter sets forth standards for ensuring that the natural gas utility and natural gas service providers operating in the District of Columbia meet an adequate level of quality, reliability, and safety in the provision of natural gas service to District of Columbia residents.

2. Previous notices of proposed rulemakings were published on August 11, 2017,<sup>2</sup> March 9, 2018,<sup>3</sup> and November 30, 2018.<sup>4</sup> After full consideration of the matters discussed at technical conferences that were held as well as a review of all filed comments, the Commission made substantive and non-substantive revisions to the: (1) Reporting Requirements for Reportable and Limited Service Outage and Gas Incidents (Section 3701); (2) Reporting and Repairing Requirements for Gas Leaks and Odor Complaints (Section 3702); (3) Reporting and Responding Requirements for Gas Emergencies (3703); (4) Customer Service Standards, Customer Surveys, Service Provisioning (3704); (5) Reliability Standards, Low Pressure Water Infiltration, Underground Damage Prevention, Lost Time Accidents OSHA 300 Log (Section 3705); (6) Billing Error Notification (3706); (7) Compliance Reporting (Section 3707); (8) Penalties (Section 3708); (9) Waiver (Section 3709); and (10) Definitions (Section 3799).

3. After fully considering the comments and reply comments filed, the Commission by Order No. 20254 adopted the revised rules as final on November 6, 2019, with the exception of Section 3706, and the rules shall become effective upon publication in the *D.C. Register*. The Natural Gas Utility shall have until April 30, 2020, to comply fully with the reporting requirements of Sections 3701, 3702 and 3703 of Title 15 DCMR, and the Natural Gas Utility

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<sup>1</sup> D. C. Official Code § 2-505 (2016 Repl.) and D. C. Official Code § 34-802 (2019 Repl.).

<sup>2</sup> 64 DCR 7960-7983 (August 11, 2017).

<sup>3</sup> 65 DCR 2483-2507 (March 9, 2018).

<sup>4</sup> 65 DCR 13227-13255 (November 30, 2018).

and the Natural Gas Suppliers are to continue to file Compliance Reports consistent with Section 3707.

**Chapter 37, NATURAL GAS QUALITY OF SERVICE STANDARDS AND RELIABILITY PERFORMANCE, of Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:**

**Sections 3700 – 3705 are amended to read as follows:**

**3700 PURPOSE AND APPLICABILITY**

3700.1 The purpose of this chapter is to establish standards and requirements for ensuring that a Natural Gas Utility and Natural Gas Service Providers operating in the District of Columbia meet an adequate level of quality, reliability, and safety in the provision of natural gas service to District of Columbia customers.

3700.2 This chapter shall apply to all Natural Gas Utility and Natural Gas Service providers operating in the District of Columbia, subject to the authority of the Public Service Commission of the District of Columbia (“Commission”).

3700.3 All written Natural Gas Quality of Service Standards (“NGQSS”) reports, studies, surveys, or filings required shall be filed with the Commission.

**3701 REPORTING REQUIREMENTS FOR REPORTABLE AND LIMITED SERVICE OUTAGES AND GAS INCIDENTS**

3701.1 The Natural Gas Utility shall report to the Commission and the Office of the People’s Counsel (“OPC”) of the District of Columbia all Reportable, Limited Service Outages and gas Incidents.

3701.2 The Natural Gas Utility shall report Reportable Service Outages by telephone and e-mail to the Commission’s Office of Compliance and Enforcement (“OCE”) and OPC, at the earliest practicable time, but not later than one (1) hour after the Natural Gas Utility’s dispatch has been informed of a Reportable Service Outage, with as much detailed information as possible. To the extent that all information required by Subsection 3701.3 is not available at the time of the initial communication, the Natural Gas Utility shall within two (2) hours of the dispatch, supplement its initial report with the additional information. This reporting requirement applies to business and non-business hours.

3701.3 During the course of each Reportable Service Outage, the Natural Gas Utility shall report periodically to OCE and OPC regarding the status of the service outage and the Natural Gas Utility’s progress in restoration efforts. The frequency of such periodic updates to OCE shall be jointly determined by the Natural Gas Utility and OCE at the start of the service outage and/or as modified

during the course of the service outage. The Natural Gas Utility shall update OCE and OPC if the originally estimated restoration time needs to be extended.

3701.4 Updated estimated restoration information, if available, shall be continuously provided to District of Columbia customers by the Natural Gas Utility's customer service representatives and by the Natural Gas Utility's automated voice response unit.

3701.5 The reporting requirements for Reportable Service Outage(s) are as follows:

- (a) The Natural Gas Utility shall report Reportable Service Outage(s) affecting more than one hundred (100) customers and lasting more than eight (8) hours on the Natural Gas Utility's side of the gas pipeline or occurring at a Master-Metered Apartment Building affecting more than one hundred (100) residential units;
- (b) No report is required if the service outage is the result of the Natural Gas Utility's planned maintenance activities, provided that the customers were informed prior to the implementation of the maintenance activities;
- (c) Each telephone, text messaging, or email report concerning Reportable Service Outages shall state clearly, at a minimum the following information:
  - (1) A description of the service outage(s);
  - (2) The dates when the service outage(s) began and ended;
  - (3) The location(s) of the service outage(s), including street addresses and intersections; the ward(s) and/or quadrant(s) where the service outage(s) occurred;
  - (4) Pipe size, material, pressure and type of gas pipeline involved;
  - (5) The estimated number of customers out of service, if known;
  - (6) A preliminary assessment as to the cause(s) of the service outage(s), if known; and
  - (7) The estimated repair and/or restoration time, if known.
- (d) The Natural Gas Utility shall file a written report concerning all Reportable Service Outages with the Commission and a copy to OPC within twenty-one (21) days following the end of a Reportable Service Outage.

- (e) Each written report concerning a Reportable Service Outage shall state clearly at a minimum, the following information:
- (1) The date(s) and times when the Reportable Service Outage began and ended;
  - (2) The location(s) of the service outage(s), including street addresses and intersections, the ward(s) or quadrant(s) where the service outage occurred;
  - (3) Pipe size, material, pressure and type of gas pipeline involved, if applicable;
  - (4) The date(s) and time(s) the Natural Gas Utility received the first call regarding the outage(s) or became aware of the outage(s);
  - (5) The dates and times when the restoration effort began and ended;
  - (6) The date and time when the maximum number of customers experienced an outage and the total number of customers affected at that time for both the District of Columbia and system-wide;
  - (7) The total number of customers that experienced an outage given in one-hour intervals throughout the outage for both the District of Columbia and system-wide;
  - (8) The total number of customer interruption durations (converted into hours) during the outage for both the District of Columbia and system-wide;
  - (9) Any information concerning requests made for outside assistance, including the organization(s) to which such requests were made, the date and time of the requests, and the resources requested;
  - (10) Any information concerning outside assistance received through mutual aid agreements, including the organization(s) that provided personnel, the date(s) and time(s) of personnel arrivals and departures, all crew personnel with names, identification (ID) numbers and the type of work (covered tasks) performed with complete Operator Qualifications (OQ) records;
  - (11) Any information on the Natural Gas Utility and its contractor's personnel and resources used in the restoration efforts with names, ID numbers and the type of work (covered tasks) performed with complete OQ records;

- (12) Any system-wide information concerning customer communications including the hourly call volumes (specifically identifying the total number of customer calls received and the total number of customer calls answered by the Natural Gas Utility during each hour of the service outage), the hourly staffing numbers (specifically identifying the total number of customer service representatives logged into the call center and supporting phone systems actively taking or waiting to take customer calls), and the telephone service factor provided on an hourly basis during the entire duration of the service outage (specifically identifying the percentage of answered calls that were answered within a 30-second timeframe);
- (13) The total number of customers interrupted and the customer interruption durations (converted into hours) along with the causes of the outages for both the District of Columbia and system-wide;
- (14) The detailed explanation of the work (covered tasks) performed as part of the emergency restoration efforts by mutual aid agreements and the Natural Gas Utility and its contractor's personnel and the resources used with names, ID numbers and the type of work (covered tasks) performed with complete OQ records for both the District of Columbia and system-wide;
- (15) Restoration efforts affected by the unavailability of materials and a description of the emergency measures taken to resolve such issues;
- (16) The total number of customers, and percent of all affected customers, restored, given in one-hour intervals throughout the Reportable Service Outage restoration effort for both the District of Columbia and system-wide;
- (17) An analysis, based upon the availability of the data and all other surrounding circumstances, of the Natural Gas Utility's performance in its current restoration efforts as compared to its past restoration efforts, taking into account all relevant factors, such as the severity of the current outage in terms of the number of

customers affected for both the District of Columbia and system-wide;

- (18) A description of the service outage and provide a root cause analysis of the of the cause of the outage(s) and the steps the Natural Gas Utility will implement to prevent such an occurrence in the future;
- (19) Whether there were any safety issues associated with the natural gas service outage, if so, provide information on what actions the natural gas company took to address the safety issues and indicate if any customers were in danger at any time during the restoration; and
- (20) A self-assessment of the Natural Gas Utility's restoration efforts in the District of Columbia.

3701.6 The Natural Gas Utility shall report Limited Service Outage(s) by telephone and e-mail to OCE and OPC at the earliest practicable time, but not more than one (1) hour after the Natural Gas Utility's dispatch has been informed of a Service Outage, with as much detailed information as possible. To the extent that all information required by Subsection 3701.9 is not available at the time of the initial communication, the Natural Gas Utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. This reporting requirement applies to business and non-business hours.

3701.7 The reporting requirements for Limited Service Outage(s) are as follows:

- (a) The Natural Gas Utility shall report Limited Service Outage(s) affecting twenty-five (25) to one hundred (100) customers and lasting more than eight (8) hours on the Natural Gas Utility's Pipeline distribution system prior to the meter;
- (b) No report needs to be filed if the customer service outage was caused by an event on the customer's side of the meter; and
- (c) No report is required if the service outage is the result of the Natural Gas Utility's planned maintenance activities, provided that the customer was informed prior to the implementation of the maintenance activities.
- (d) Each telephone and e-mail report concerning Limited Service Outage(s) shall state clearly, at a minimum, the following information:

- (1) A description of the service outage(s);
  - (2) The dates when the service outage(s) began and ended;
  - (3) The location(s) of the service outage(s), including street addresses and intersections, the ward(s) and/or quadrant(s) where the service outage(s) occurred;
  - (4) Pipe size, material, pressure and type of gas pipeline involved;
  - (5) The estimated number of customers out of service, if known;
  - (6) A preliminary assessment as to the cause(s) of the service outage(s), if known; and
  - (7) The estimated repair and/or restoration time, if known.
- (e) The Natural Gas Utility shall file a written report concerning all Limited Service Outage(s) with the Commission, and a copy to OPC, within ten (10) calendar days from the date of repair/restoration completion or within two (2) weeks of the event occurrence whichever comes first.
- (f) Each written report concerning Limited Service Outage(s) shall state clearly, at a minimum, the following information as applicable to the given outage(s):
- (1) The dates and times when the Limited Service Outage began and ended;
  - (2) The location(s) of the service outage(s), including street addresses and intersections, the ward(s) and/or quadrants where the service outage occurred;
  - (3) Pipe size, material, pressure, and type of gas pipeline involved, if applicable;
  - (4) The date(s) and time(s) the Natural Gas Utility received the first call regarding the outage(s) or became aware of the outage(s);
  - (5) The dates and times when the restoration effort began and ended;
  - (6) The total number of customer interruption durations (converted into hours) during the outage(s);
  - (7) The estimated number of customers affected by the service outage(s);



- (8) The steps taken to minimize and/or control the service outage(s);
- (9) Any information on the Natural Gas Utility and its contractor's personnel and resources used in the restoration efforts with names, ID numbers and the type of work (covered tasks) performed with complete OQ; and
- (10) A description of the service outage(s) and provide a root cause analysis of the cause of the outage(s) and the steps the Natural Gas Utility will implement to prevent such an occurrence in the future, if any.

3701.8 The Natural Gas Utility shall report by telephone and e-mail all Incidents to OCE and OPC at the earliest practicable time, but not later than one (1) hour after the Natural Gas Utility's dispatch has been informed of the Incident, with as much detailed information as possible. To the extent that all information required by Subsection 3701.11 is not available at the time of the initial communication, the Natural Gas Utility shall, within two (2) hours of the dispatch, supplement its initial report with the additional information. The Natural Gas Utility shall continue providing updates to the Commission and OPC on all Incidents as information becomes available or is requested by the pipeline safety inspector. This reporting requirement applies to business and non-business hours.

3701.9 The reporting requirements for gas Incidents are as follows:

- (a) Each telephone and e-mail report concerning, all Incident(s) shall state clearly, at a minimum, the following information:
  - (1) A description of the Incident(s);
  - (2) The date(s) and time(s) when the Incident began and ended;
  - (3) The location(s) of the Incident(s), including street addresses and intersections, the ward(s) and/or quadrant(s);
  - (4) Pipe size, material, pressure and type of gas pipeline involved;
  - (5) A preliminary assessment as to the cause(s) of the Incident(s), if known; and
  - (6) The estimated number of customers and/or persons affected, if known.

- 3701.10 The Natural Gas Utility shall file an initial written report concerning all Incidents with the Commission, and a copy to OPC, within five (5) days of the event occurrence.
- 3701.11 Each written report concerning all Incidents shall state clearly, at a minimum, the following information:
- (a) The date(s) and time(s) when the Incident(s) began and ended;
  - (b) The location(s) of the incident(s), including street addresses and intersections, the ward(s) and/or quadrant(s);
  - (c) Pipe size, material, pressure and type of gas pipeline involved;
  - (d) The date(s) and time(s) the Natural Gas Utility received the first call regarding the incident(s) or became aware of the incident(s);
  - (e) The date(s) and time(s) when the Incident began and ended;
  - (f) The estimated number of customers and/or persons affected, and street shutdowns;
  - (g) The steps the Natural Gas Utility took to provide assistance;
  - (h) The amount of time it took for assistance to arrive;
  - (i) The date(s) and time(s) of arrival of the first Natural Gas Utility responder to the scene of the incident;
  - (j) The date and time the area was made safe;
  - (k) The total number of injuries, hospitalizations, and fatalities;
  - (l) An estimated total dollar amount of damage and loss to the Natural Gas Utility caused by the incident(s) if known; and
  - (m) A description of the Incident(s) and provide a root causes analysis of the Incident(s) and steps the Natural Gas Utility will implement to prevent such an occurrence in the future.
- 3701.12 The Natural Gas Utility shall update the initial written report and shall file same with the Commission, and a copy to OPC, within thirty (30) days of the event occurrence.

**3702 REPORTING AND REPAIRING REQUIREMENTS FOR GAS LEAKS AND ODOR COMPLAINTS**

3702.1 The Natural Gas Utility's leak detection, classification, and repair personnel shall meet the federal training requirements for natural gas operations, maintenance, and emergencies (49 Code of Federal Regulations, Part 192). The reporting and repair requirements for gas leaks and odor complaints shall follow four steps:

- (a) Respond to all leaks and odor complaints within the timeframes established for the appropriate Code Orders and categorize any gas leak by grade;
- (b) Notify OCE and OPC by e-mail and telephone of each Grade 1, Grade 2, and Grade 3 gas leaks;
- (c) Provide periodic updates to the initial notification; and
- (d) Submit written reports on the results of the leak detection and repair, and odor complaints. The leak detection, classification, and repair personnel shall meet the federal training requirements for natural gas operations, maintenance, and emergencies (49 Code of Federal Regulations, Part 192).

3702.2 The Natural Gas Utility shall:

- (a) Respond to (be at the site of) all Code 1 Orders within thirty (30) minutes after the Natural Gas Utility's dispatch has been informed about the leak and/or odor complaint during business or non-business hours, on a monthly average basis; with no more than three (3) percent of the overall monthly response times over fifty (50) minutes and no single event response time exceeding two (2) hours;
- (b) Respond to (be at the site of) all Code 2 Orders within sixty (60) minutes after the Natural Gas Utility's dispatch has been informed about the leak and/or odor complaint during business or non-business hours, on a monthly average basis; with no more than ten percent (10%) of the overall monthly response times over seventy-five (75) minutes and no single event response time exceeding four (4) hours;
- (c) Respond to all Code 3 Orders, by making a determination as to the severity of the gas leaks and/or reported odor complaints and indicate to the customer/caller when a representative will be at the site, provided that on a monthly average basis, a representative will be at the site not later than ninety (90) minutes after the Natural Gas Utility's dispatch has been

informed about the leak and/or odor complaint during business and non-business hours; with no more than twenty percent (20%) of the overall monthly response times over ninety (90) minutes and no single event response time exceeding six (6) hours; and

- (d) Notify OCE and OPC within on the first business day after the end of each month, for those Code 1 response times that do not meet the requirements of these rules and that exceeded the fifty (50) minutes allowable response time and the single event maximum response time, and provide to OCE, on a monthly basis, the following additional information:
  - (1) Full root cause analysis;
  - (2) Location from which the technician was dispatched;
  - (3) Time of dispatch;
  - (4) Time of arrival;
  - (5) Length of time of the response;
  - (6) Whether the Natural Gas Utility's standard processes for dispatch and response were followed and if not, a description of any deviation and the reason why;
  - (7) Reason for any response in excess of the average allowable response time and in excess of two hours;
  - (8) Number of in-progress Code Orders (any Code) at the time of dispatch in the District of Columbia;
  - (9) Number of in-progress gas leaks (any Grade) at the time of dispatch in the District of Columbia;
  - (10) Number of service technicians (qualified per Pipeline Hazardous Material Safety Administration OQ requirements to respond to Code 1 Orders) on-the-clock at the time of dispatch; and
  - (11) Proposed remedy to prevent a similar circumstance, if any;
- (e) Categorize the gas leak by grade pursuant to Subsection 3702.4 if the Natural Gas Utility determines, upon responding to a Code 1, Code 2, or Code 3 Order, that a gas leak is in need of repair; and

- (f) Provide to OCMS and OPC on a quarterly basis the compliance reporting required by Subsection 3707.2. The Natural Gas Utility shall provide explanations if these time limits are exceeded, pursuant to Subsection 3708.3.

3702.3 The Natural Gas Utility shall report to OCE and OPC by telephone and e-mail all natural gas leaks, except gas leaks found inside residential and/or commercial customers' properties, at the earliest practicable time, but not later than one (1) hour after the Natural Gas Utility's dispatch has been informed about and determined that the gas odor complaint resulted from a leak and/or the dispatch has determined that a leak has occurred on the Natural Gas Utility's gas system, with as much detailed information as possible. To the extent all information required by Subsection 3702.5 is not available at the time of the initial communication, the Natural Gas Utility shall within two (2) hours of the dispatch supplement its initial report with the additional information. Gas odor complaints reported inside customers' facilities and odor complaints where no leaks are found shall not be reported. This reporting requirement applies to gas leaks that are found during business and non-business hours.

3702.4 Each gas leak shall be categorized as Grade 1, 2, or 3 as follows:

- (a) Grade 1: A leak that presents an immediate or probable hazard to person(s) or property, and requires immediate repair or continuous action until the conditions are no longer hazardous;
- (b) Grade 2: A leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair based on probable future hazard; and
- (c) Grade 3: A leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.

3702.5 Each telephone and e-mail report to OCE and OPC of Grade 1, Grade 2, and Grade 3 leak(s) due to a gas-related odor complaint shall state clearly, at a minimum, the following information:

- (a) A description of the type of leak(s);
- (b) The dates when the leak began and ended;
- (c) The location of the leak(s), including street addresses and intersections, the ward(s) and/or quadrant(s);
- (d) Pipe size, material, pressure and type of gas pipeline involved.

- (e) The estimated number of customers and/or persons whose services were disrupted, if any;
- (f) A preliminary assessment as to the cause of the leak(s), if known.
- (g) The estimated time to repair the leak, if known; and
- (h) The Natural Gas Utility shall provide OCE and OPC with regular updates to the initial report as it receives more information.

3702.6 All Grade 1 leaks shall be promptly repaired. If not repaired immediately, upon detection, because of downgrading of the Grade 1 leak to a Grade 2 leak, the Natural Gas Utility shall recheck the location within forty-eight (48) hours to determine if a Grade 1 leak returns. The location shall be continuously observed until completion of the repair or downgrade of the Grade 1 leak to a Grade 2 leak. If the Grade 1 leak returns, the leak must be repaired under current Grade 1 standards. The Natural Gas Utility shall submit a written report after one (1) week from the initial grading of the leak to OCE and OPC regarding the status of the downgraded leak and the Natural Gas Utility's progress in completing repairs and follow Subsections 3702.11 and 3702.12 for Grade 2 and Grade 3 leaks, respectively until completion of the leak repair. Within eight (8) hours after a Grade 1 leak is downgraded to a Grade 2 leak, the Natural Gas Utility shall report by telephone and e-mail to OCE and OPC and shall state clearly the leak downgrading information, Subsection 3702.5 information and the name, telephone number, and identification of the technician downgrading the leak.

3702.7 Each written report to OCE and OPC concerning Grade 1 leaks shall state clearly, at a minimum, the following information as applicable to the incident:

- (a) The street address, the ward(s) and/or quadrant(s) location of the leak or odor;
- (b) A description of the type of leak;
- (c) Pipe size, material, pressure, and type of the gas pipeline involved;
- (d) The time the Natural Gas Utility received the first call regarding a gas leak or leak detection;
- (e) The time the Natural Gas Utility's technician reached the site;
- (f) The cause of the leak, if known;
- (g) The time the area was made safe; and

- (h) The actual repair time; the time and date when the job was completed with actual repair duration.
- 3702.8 Grade 2 leaks shall be monitored and reevaluated at least once every six months until cleared with no further signs of leak. Depending upon the location of the leak, reevaluation may be made earlier than six months. If reevaluation of a Grade 2 leak indicates a probable hazard, *i.e.*, reclassified as a Grade 1 leak, it shall be repaired immediately. For Grade 2 leaks that are non-hazardous, the Natural Gas Utility shall schedule repairs within thirty (30) days. Otherwise, Grade 2 leaks shall be repaired within one calendar year, but no later than fifteen (15) months from the date the leak was first reported.
- 3702.9 Grade 3 leaks shall be monitored and reevaluated during the next scheduled leak survey, or within fifteen (15) months of the date reported, whichever occurs first, until the leak is repaired with no further signs of leak.
- 3702.10 Written reports for leaks classified as Grade 2 and Grade 3 shall be filed semi-annually with OCE and OPC. The reports shall be submitted by July 31st and January 31st of each year.
- 3702.11 Each semi-annual written report concerning Grades 2 and 3 leaks shall state clearly, at a minimum, the following information as applicable:
- (a) The street address, the ward(s) and/or quadrant(s) location of the leak or odor;
  - (b) A description of the type and cause of leak;
  - (c) Pipe size, material, pressure, and type of the gas pipeline involved; and
  - (d) The schedule and the status of repair of all Grade 2 leaks consistent with the standard provided in Subsections 3702.10 or 3702.11.
- 3702.12 The Natural Gas Utility shall create and maintain database(s) for all gas leaks and customer reported gas-related odor complaints. The database(s) shall be referred to as the Leak Identification, Detection and Repair, and Odor Complaints (“LIDAROC”). The database(s) shall contain, at a minimum:
- (a) The origination date;
  - (b) The work completion date;
  - (c) The grade of the leak;
  - (d) The type of leak;

- (e) The location (address or intersection including the ward and/or quadrant where the leak occurred);
- (f) The ward;
- (g) The Number of customers whose services were disrupted because of the leak, if any;
- (h) The cause of the leak;
- (i) The response time in minutes;
- (j) The actions taken;
- (k) The leak ID number;
- (l) The work request Order number;
- (m) The work request type code;
- (n) The Code Number;
- (o) The actual repair time in days; and
- (p) The actual repair time in minutes.

3702.13 The Natural Gas Utility shall incorporate all natural gas leaks and customer reported odor complaint calls into the database(s) within five (5) days of receipt of the gas-related odor complaint and/or determination that a leak has occurred on its gas system.

3702.14 The Natural Gas Utility shall update the database(s) after it has repaired and/or resolved the leak and customer reported odor complaints and shall submit an electronic and a hard copy of the database(s) to the Commission and OPC on a quarterly basis.

**3703 REPORTING AND RESPONDING REQUIREMENTS FOR GAS EMERGENCIES**

3703.1 The Natural Gas Utility shall immediately dispatch personnel to the site of the Gas Emergency and shall arrive at the site within fifty (50) minutes of receiving an emergency call during normal business and non-business hours.

3703.2 A Gas Emergency shall be reported by telephone and e-mail to OCE and OPC with as much detailed information as possible at the earliest practicable time, but not later than thirty (30) minutes after the Natural Gas Utility's dispatch has been



informed that a Gas Emergency has occurred. The Natural Gas Utility shall provide updates to the initial report as it receives more information. This reporting requirement applies to business and non-business hours.

3703.3 Each telephone and e-mail report of a Gas Emergency shall state clearly, at a minimum, the following information:

- (a) A description of the Gas Emergency;
- (b) The dates when the Gas Emergency began and ended;
- (c) The location of the Gas Emergency, including street address and intersection, the ward(s) and/or quadrant(s) where the Gas Emergency occurred and the name of the person making the report and contact information;
- (d) Pipe size, material, pressure and type of gas pipeline involved;
- (e) The estimated number of customers impacted by the Gas Emergency, and street shutdowns, if known;
- (f) A preliminary assessment as to the cause of the Gas Emergency, if known;
- (g) The time between becoming aware of the Gas Emergency and responding (arriving at the emergency site) to the Gas Emergency, if known;
- (h) The estimated time to clear the Gas Emergency, if known;
- (i) The estimated time to repair Pipeline Facilities affected by the Gas Emergency, and/or restore service, if known; and
- (j) A preliminary assessment as to any injuries, deaths, or personal property damage, if known.

3703.4 During the course of a Gas Emergency on the Natural Gas Utility's system, the Natural Gas Utility shall report periodically by telephone and e-mail to OCE and OPC, regarding the status of the Gas Emergency and the utility's progress in clearing the Gas Emergency and making the site safe. The Natural Gas Utility shall provide updates or progress on the Gas Emergency every hour until the Gas Emergency is resolved.

3703.5 Written reports concerning all Gas Emergencies shall be filed with the Commission and OPC within five (5) days of the event occurrence. The Natural Gas Utility shall provide updates to its written report as it receives more information.

- 3703.6 Each written report concerning a Gas Emergency shall state clearly, at a minimum, the following information:
- (a) The date and time when the Gas Emergency began and ended;
  - (b) The location(s) of the Gas Emergency, including street addresses and intersections, the ward(s) and/or quadrants where the service outage occurred;
  - (c) Pipe size, material, pressure, and type of gas pipeline involved, if applicable;
  - (d) The date and time when the emergency crew arrived at the scene;
  - (e) The estimated number of customers affected by the Gas Emergency;
  - (f) The steps taken to minimize and/or control the Gas Emergency;
  - (g) An assessment as to any injuries, deaths, or personal property damage; and
  - (h) A description of the Gas Emergency and provide a root cause analysis of the cause of the Gas Emergency and the steps the Natural Gas Utility will implement to prevent such an occurrence in the future, if any.

**3704 CUSTOMER SERVICE STANDARDS, CUSTOMER SURVEYS, SERVICE PROVISIONING**

- 3704.1 The Natural Gas Utility shall maintain a customer service (walk-in) office physically located in the District of Columbia.
- 3704.2 The Natural Gas Utility shall conduct annual customer surveys to assess customer satisfaction with the quality of customer service provided by the company to its District of Columbia customers. The Natural Gas Utility shall provide the results of the surveys to the Commission and OPC. The customer satisfaction surveys shall be conducted from: (1) a statistically representative sample of residential customers; and (2) customers randomly selected from those customers who have contacted the company's customer service department within the year in which service is being measured. The representative sample shall be drawn from customers contacting the company's customer service department in the previous year and shall be conducted with a sample of customers who contacted the Natural Gas Utility by walk-in, telephone, or e-mail. The survey instrument and the method shall be pre-approved by OCE. The Natural Gas Utility shall include the results from all available previous years of the survey up to a maximum of ten years in the Quality of Service Standard Performance Report (QSSPR).

- 3704.3 The Natural Gas Utility shall gather data and report statistics regarding the number of service calls met on the same day requested or scheduled, excluding instances where a customer misses a mutually agreed upon time to the Commission and OPC. The Natural Gas Utility shall report the percentage of scheduled service appointments met by the Natural Gas Utility on the same day requested. Service appointment data shall be compiled and aggregated monthly. A minimum performance standard of ninety-five (95) percent on a quarterly basis will apply. The Natural Gas Utility shall record the delay, in hours and/or days, in responding to requested or scheduled service calls. The Natural Gas Utility shall provide the results on service calls met and delayed to the Commission and OPC on an annual basis in the QSSPR.
- 3704.4 The Natural Gas Utility shall gather data on the percentage of meters that are actually read by the company on a monthly basis. Eligible meters include both residential and commercial accounts. On-cycle meter reads performance standard of ninety-five percent (95%) on a quarterly basis will apply. The Natural Gas Utility shall provide the results to the Commission and OPC on an annual basis in the QSSPR.
- 3704.5 The Natural Gas Utility shall perform the customer requested meter testing on a timely basis, but at a minimum shall test ninety-seven percent (97%) of customer requested meter tests. The Natural Gas Utility shall report the results on a quarterly basis on pre-scheduled customer requested meter testing. The Natural Gas Utility shall also submit its results to the Commission and OPC on an annual basis in the QSSPR.
- 3704.6 The Natural Gas Utility shall answer at least seventy percent (70%) of all customers' phone calls within thirty (30) seconds and shall maintain records delineating customer phone calls answered by a Natural Gas Utility representative or an automated operator system. The Natural Gas Utility shall measure and report on an annual basis to the Commission and OPC the average customer wait time before being transferred from an automated operator system to a Natural Gas Utility representative.
- 3704.7 The Natural Gas Utility's Call Answering statistics shall exclude calls made during periods of major telecommunications failures, and periods of labor disruption.
- 3704.8 The Natural Gas Utility shall maintain a Call Abandonment Rate below ten percent (10%) on a quarterly basis and shall report the information to the Commission and OPC on an annual basis in the QSSPR.

- 3704.9 The Natural Gas Utility's Call Abandonment Rate statistics shall exclude Abandoned Calls, and calls made during periods of major telecommunications failures, and periods of labor disruption.
- 3704.10 If the Natural Gas Utility fails to meet the standards set forth in Subsections 3704.3, 3704.4, 3704.5, 3704.6 or 3704.8, for two (2) consecutive quarters, it shall be required to develop a corrective action plan.
- 3704.11 The corrective action plan shall describe the cause(s) of the Natural Gas Utility's non-compliance with Subsections 3704.3, 3704.4, 3704.5, 3704.6 or 3704.8, describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future, and set a target date for completion of the corrective measure(s).
- 3704.12 Progress on current corrective action plans shall be included in the Natural Gas Utility's annual QSSPR, filed with OCE and OPC by April 30 of each year.
- 3704.13 On a quarterly basis, the Natural Gas Utility shall complete installation of ninety-five percent (95%) of new residential service requests within ten (10) business days of the start date for the new installation.
- 3704.14 The start date of the installation shall be designated as the first business day after all of the following events have taken place:
- (a) The customer's valid billing information is received;
  - (b) The site is ready for service (cleared, graded, staked, etc.);
  - (c) The service connection fee is paid, if applicable;
  - (d) The gas safety inspection report is received;
  - (e) The security deposit is paid, if applicable;
  - (f) All mains and regulating facilities are installed;
  - (g) Any required public space excavation is completed;
  - (h) Any delays due to weather emergencies do not intervene; and
  - (i) All rights-of-way permits are obtained, and all One-Call requirements have been met.
- 3704.15 The Natural Gas Utility shall submit a written report on its performance pursuant to Subsection 3704.13 every six (6) months. The report shall be submitted to OCE and OPC, forty-five (45) days after the six-month reporting period ends.

- 3704.16 After the submission of four (4) consecutive reports pursuant to Subsection 3704.15, the Commission may modify the frequency of the reporting.
- 3704.17 The reports pursuant to Subsection 3704.15 shall clearly state the total number of new residential service installation requests received during the relevant reporting period, and for the new residential installation service requests received, the percentage of new residential service connections that were completed in accordance with Subsection 3704.13.
- 3704.18 If the Natural Gas Utility fails to meet the standard set in Subsection 3704.13 in any two consecutive reports, it shall develop a corrective action plan.
- 3704.19 The corrective action plan shall describe the cause(s) of the Natural Gas Utility's non-compliance with Subsection 3704.13, describe the corrective measure(s) to be taken to ensure that the standard is met or exceeded in the future, and set a target date for completion of the corrective measure(s).
- 3704.20 Progress on any current corrective action plans shall be included in the Natural Gas Utility's annual QSSPR.
- 3704.21 The Natural Gas Utility shall report the actual performance obtained during the reporting period in the annual QSSPR of the following year.

**3705 RELIABILITY STANDARDS, LOW PRESSURE WATER INFILTRATION, UNDERGROUND DAMAGE PREVENTION, LOST TIME ACCIDENTS OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION (OSHA) 300 LOG**

- 3705.1 The Natural Gas Utility shall establish a Gas Main risk ranking index to determine its Gas Main Segments (including associated Service Lines) most in need of improvement or replacement. Factors associated with the main ranking index for making improvement and replacement decisions include, poor leak history, poor cathodic protection or poor gas main conditions determined from visual observations, poor pressure in the area, interruption of service due to water infiltration, and segment affected by city or state public improvement projects. At least once each calendar year, the Natural Gas Utility shall rank and identify areas of Pipeline Networks of its natural gas operating system requiring improvements to eliminate segments most susceptible to leakage, excavation damage, failure, supply interruptions or failure to meet its minimum design pressure and volume deliverability requirements. The Natural Gas Utility shall retain in its leak database the leak data/leak history in the main segments and service lines it has replaced. The Natural Gas Utility shall establish a performance ranking by area, on a scale of one to ten with one being the poorest performing segment. The

Natural Gas Utility shall file the results with the Commission and a copy with the OPC on a biennial basis.

- 3705.2 Each calendar year, the Natural Gas Utility shall perform the necessary analysis for the issues identified in Section 3705.1 and provide plans for eliminating the ten worst performing segments due to low pressure or interruption problems. The Natural Gas Utility shall file the results with the Commission and a copy to OPC on an annual basis.
- 3705.3 The Natural Gas Utility shall respond to all underground utility locate requests and locate their facilities in accordance with the damage prevention laws established within the District of Columbia and the U.S. Department of Transportation. The Natural Gas Utility shall maintain an accurate count of all locate requests, responses to locate requests, number of gas main and service lines inaccurately marked which resulted in damages (e.g., hits per 1,000 locates) or construction delays, number of locations which the Natural Gas Utility failed to mark as required by the damage prevention rules, number of calls not made for One Call ticket numbers by excavator(s), reports of incidents to underground utilities, damages caused by excavators or third party to gas underground facilities, third party responsible for the damage, and the root cause(s) of the damage. An annual report shall be filed with the Commission and a copy to OPC in the QSSPR no later than February 15 of the following year.
- 3705.4 The Natural Gas Utility shall monitor high volume condensate drips on its low-pressure distribution network to minimize service continuity disruption. In no case shall a natural gas customer outage caused by condensate accumulation affect more than five percent (5%) of the low-pressure customers during two consecutive winter periods. The Natural Gas Utility shall prepare a remediation plan within one hundred twenty (120) days of exceeding the five percent (5%) standard of service interruption, for the approval of the Commission, and provide a target date for completion of the recommended repair to the low-pressure piping network. The Natural Gas Utility shall file the results with the Commission and a copy to OPC on an annual basis in the QSSPR.
- 3705.5 The standard in Subsection 3705.4 may be changed or modified by the Commission, at a later date, based on a study of trends in service interruptions.
- 3705.6 The Natural Gas Utility shall measure annually its Lost Time Accident Rate as reported in the Occupational Safety and Health Administration (“OSHA”) 300 Log Summary of Occupational Injuries and Illnesses. The Natural Gas Utility shall file the results with the Commission and a copy to OPC on an annual basis in the QSSPR.

...

**Sections 3707 - 3799 are amended to read as follows:**

**3707 COMPLIANCE REPORTING**

3707.1 The Natural Gas Utility and all Natural Gas Suppliers shall collect and retain accurate data demonstrating compliance with the measures in this chapter. Data are to be collected on a monthly basis in a format established by the Commission.

3707.2 The Natural Gas Utility and all Natural Gas Suppliers shall file monthly compliance data, and aggregated data for the three (3) months in the quarter, with the Commission, with a copy provided to OPC, on a quarterly basis pursuant to the following schedule:

- (a) The report for the months of January, February, and March shall be filed on April 30;
- (b) The report for the months of April, May, and June, on July 30;
- (c) The report for the months of July, August, and September, on October 30; and
- (d) The report for the months of October, November, and December, on January 30 of the following year. A cumulative annual report for the current reporting year shall also be filed by January 30 of the following year.

3707.3 If the Natural Gas Utility fails to comply with any requirement stated in Subsection 3702.2, that is not already subjected to an approved action plan, for two consecutive months, the Natural Gas Utility shall provide the reason(s) for not meeting the requirement(s) (including the actual response time(s) and the dispatch location(s) for the technicians responding to the event(s), a proposed remedy to prevent a similar occurrence(s), and show cause as to why a penalty(s) shall not be imposed). The Natural Gas Utility shall file a report with the Commission, with a copy provided to OPC, within fifteen (15) days of the end of the month.

**3708 PENALTIES**

3708.1 The regulations in this chapter are natural gas quality of service standards, some of which affect the reliability of services provided to customers. Subsections 3701.2 to 3701.14 and 3705.1 to 3705.6 contain quality of service rules which are designated as reliability performance standards adopted by the Commission

within the meaning of D.C. Official Code § 34-706(e). If a utility fails to comply with Reporting Requirements for Reportable and Limited Service Outages and Gas Incidents noted in Subsections 3701.2 to 3701.14 and the Reliability Standards, Low Pressure Water Infiltration, Underground Damage Prevention, Lost Time Accidents OSHA 300 Log noted in Subsections 3705.1 to 3705.6, it may be subject to forfeiture or civil penalty in accordance with D.C. Official Code § 34-706.

3708.2 Failure to comply with the remaining Subsections of this chapter may result in the penalties set forth in D.C. Official Code § 34-706 (a) for failure to comply with Commission rules and regulations.

3708.3 Violations of the natural gas quality of service standards and of the reliability performance standards set forth in this chapter will be handled according to the rules established in 15 DCMR, Chapter 23 (Natural Gas). When determining the amount of the civil penalty for violations of this chapter, the Commission will consider the factors established in Chapter 23.

### **3709 WAIVER**

3709.1 The Commission may, in its discretion, waive any provisions of Chapter 37 of this title.

### **3799 DEFINITIONS**

3799.1 When used in this chapter, the following terms and phrases shall have the meaning ascribed:

**Abandoned Calls** – Calls to the Natural Gas Utility that are terminated by the customer after the customer selects the menu option and is placed in the queue and has been in queue at least thirty seconds, but has not yet reached a customer service representative or any other automated response system.

**Abnormal Operating Condition** – A condition that may indicate failure of gas piping integrity or a deviation from normal operation or a malfunction of a component on gas piping infra-structure that may result in a hazard(s) to persons, property or the environment.

**Call Abandonment Rate** – The annual number of Abandoned Calls divided by the total number of calls the Natural Gas Utility received.



**Call Answering** – A process whereby a Natural Gas Utility representative, voice response unit, or other automated operator system is ready to render assistance or ready to accept information necessary to process a customer’s call. An acknowledgement that the customer is waiting on the line does not constitute an answer.

**Code 1 Orders** – Gas leak or customer reported odor complaint calls involving a strong gas leak, carbon monoxide, illness, broken service main or gaslight, fire in progress, explosion, uncontrolled appliance heat, steam or noise, gas blowing or hissing, second call, or pressure alarm.

**Code 2 Orders** – Gas leak or customer reported odor complaint calls involving a “medium” gas leak, or noise.

**Code 3 Orders** – Gas leak or customer reported odor complaint calls involving a “slight” gas leak.

**Commission** – Public Service Commission of the District of Columbia.

**Condensate Drips** – Devices installed on low pressure natural gas distribution system at its lowest elevation to facilitate collection of condensates such as ground water or other liquids infiltrating the gas piping.

**Dispatch** – Unit of the Natural Gas Utility that receives calls, disseminates information and assigns service calls to technicians and field crews, and acknowledges their feedback during responses to gas leaks, incidents and emergencies.

**Distribution Line** – Gas pipelines that provide natural gas delivery service to customers.

**Gas Emergency** – Any sudden and unexpected situation where leakage, blowing gas, loss of gas pressure, an overpressure condition, or loss of telemetry or control-system has caused or may cause serious injury or damage to life and/or property. Examples of emergencies include gas-fed fires, explosions involving gas, escaping gas, unplanned supply interruptions, releases of hazardous material, carbon monoxide poisonings, and odorant releases.

**Gas Main** – A distribution line that serves as a common source of supply for more than one service line.

**Gas Main Segments** – Each part of a gas distribution line that serves as a common source of supply for more than one service line.

**Gas Pipeline Facility** – A pipeline, a right of way, a building, or equipment used in transporting natural gas or treating natural gas during its transportation.

**Grade 1** – A leak that presents an immediate or probable hazard to persons or property, and requires immediate repair or continuous action until the conditions are no longer hazardous;

**Grade 2** – A leak that is recognized as being non-hazardous at the time of detection, but requires scheduled repair based on probable future hazard; and

**Grade 3** – A leak that is non-hazardous at the time of detection and can be reasonably expected to remain non-hazardous.

**High Pressure (HP) System** – A gas pipeline in which the gas pressure is higher than the pressure provided to the customer. Typically, high pressure pipelines operate over sixty (60) pounds per square inch gauge (psig) and are not transmission pipes.

**Interruption Duration** – The period of time, truncated or rounded to the nearest minute, during which a Reportable Service Outage occurs.

**Incident** – An event involving the release of natural gas that interrupts normal operations. An incident is an event that involves the release of gas and a death or injury requiring in-patient hospitalization or property damage or costs of \$5,000 or more to the Natural Gas Utility, or an event receiving media attention or that requires closing a public street.

**Leak Survey** - A systematic inspection of a pipeline for the purpose of finding leaks on a gas piping system. Leakage surveys may be done with or without instruments, depending on the class location and type of system.

**Limited Service Outage(s) (LSO)** – Customer service outage(s) caused by failure of gas piping integrity or a deviation from normal operation or a malfunction of a component on gas piping infrastructure affecting twenty-five (25) to one hundred (100) customers and lasting more than eight (8) hours.

**Low Pressure (LP) System** – A gas pipeline in which the pressure is substantially the same as the pressure provided to the normal residential customer. Low pressure lines normally operate at 7.8 inches water column.

**Medium Pressure (MP) System** – A gas pipeline in which the gas pressure is higher than the pressure provided to the customer. Typically, medium pressure pipelines operate higher than the LP System (at 7.8 inches water column) up to sixty (60) pounds per square inch gauge (psig).

**Natural Gas** – Is a gaseous flammable fossil fuel consisting primarily of methane.

**Natural Gas Service Provider** – A natural gas supplier, including an Aggregator, Broker, or Marketer, who generates or produces natural gas, sells natural gas, or purchases, brokers, arranges, or markets natural gas for sale to customers.

**Natural Gas Supplier** – A licensed Person, broker, or marketer, who generates natural gas; sells natural gas; or purchases, brokers, arranges or markets natural gas for sale to customers.

**Natural Gas Utility** – The company that owns or controls the distribution facilities required for the transmission and delivery of natural gas to customers, provides sales service and delivery of distribution service of natural gas, and is regulated by the Public Service Commission of the District of Columbia.

**Normal Business Hours** – Monday through Friday, 8:00 a.m. to 9:00 p.m., and Saturday, 8:00 a.m. to 4:30 p.m. (except major holidays). The main office serves customers Monday through Friday (except holidays) from 8:30 a.m. to 4:30 p.m. The Anacostia office accepts bill payments by check or money order only, Monday through Friday (except holidays), 8:00 a.m. to 4:00 p.m. All other hours including, holidays and Sunday are designated as non-normal business hours.

**Occupational Safety and Health Administration (OSHA) 300 log (OSHA 300 Log)** – A log of all recordable occupational injuries and illnesses on forms approved by OSHA. This form is called OSHA 300 Log. It is regularly updated by OSHA. OSHA 300 Log shall be used to record each case within seven (7) calendar days after the employer received information that a recordable work-related injury or illness has occurred.

**Office of the Commission Secretary (OCMS)** – Secretary of the Public Service Commission of the District of Columbia.

**Office of Compliance and Enforcement (OCE)** – Office of Compliance and Enforcement of the Public Service Commission of the District of Columbia.

**Office of the People’s Counsel (OPC)** – Office of the People’s Counsel of the District of Columbia.

**On Cycle Meter Reads** – The service period that a customer’s bill is read during the course of each month.

**Outside Assistance** – Resources not routinely used by a Natural Gas Utility for service restoration. Natural Gas Utility resources transferred among utility operating areas are not considered outside assistance.

**Pipeline** – All parts of those physical facilities through which gas moves in transportation, including pipe, valves, and other appurtenance attached to pipe, compressor units, metering stations, regulator stations, delivery stations, holders, and fabricated assemblies.

**Pipeline Facility** – New and existing pipeline, rights-of-way, and any equipment, facility, or building used in the transportation of gas or in the treatment of gas during the course of transportation.

**Pipeline Network** – The group or system of interconnected gas transmission and distribution lines.

**PSIG** – Pounds per square inch gauge.

**Regulator Station** – A facility for controlling the pressure and flow of natural gas serving a distribution system.

**Reportable Service Outage(s)** – Customer service outages caused by failure of gas piping integrity or a deviation from normal operation or a malfunction of a component on gas piping infrastructure affecting more than one hundred (100) customers and lasting more than eight (8) hours; or any outage occurring at a Master-Metered Apartment Building (as defined in 15 DCMR § 499.1) affecting more than one hundred (100) residential units.

**Service Line** – A distribution line that transports gas from a common source of supply to an individual customer, to two adjacent or adjoining residential or small commercial customers, or to multiple residential or small commercial customers served through a meter header or manifold. A service line ends at the outlet of the customer meter or at the connection to a customer's piping, whichever is further downstream, or at the connection to customer piping if there is no meter.

**Telephone Service Factor** – The percentage of calls answered within a specified amount of time. For example, if the service level time is set at thirty (30) seconds and seventy (70) percent of calls are answered in less than thirty (30) seconds, then the telephone service factor is seventy (70).

**Transmission Line** – A pipeline, other than a gathering line, that: (1) transports gas from a gathering line or storage facility to a gas distribution center, storage facility, or large volume customer that is not down-stream from a gas distribution center; (2) operates at a hoop stress of twenty (20) percent or more of Specified Minimum Yield Strength (SMYS); or (3) transports gas within a storage field.

**CONTRACT APPEALS BOARD****NOTICE OF PROPOSED RULEMAKING**

The District of Columbia Contract Appeals Board, pursuant to the Contract Appeals Board Rulemaking Amendment Act of 2017, effective December 13, 2017 (D.C. Law 22-0033; D.C. Official Code § 2-361.06(a)(3) (2019 Supp.)), hereby gives notice of the intent to adopt the following amendments to Chapters 1 (General Rules of the Contract Appeals Board), 2 (Appeal Procedures of the Contract Board), 3 (Protest Procedures of the Contract Appeals Board), and 4 (Electronic Filing) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

These proposed rules will harmonize the Board's rules with existing District of Columbia procurement statutes, including The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code §§ 2-351.01 *et seq.* (2016 Repl.)), as amended, and The Procurement Integrity, Transparency, and Accountability Amendment Act of 2016, effective October 8, 2016 (D.C. Law 21-0158, D.C. Official Code §§ 2-221.01 *et seq.* (2016 Repl. & 2019 Supp.)), as well as to clarify the Board's existing practices and procedures.

**Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:**

**Chapter 1, GENERAL RULES OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

**100 GENERAL PROVISIONS**

- 100.1 Scope. These rules, consisting of Chapters 1, 2, 3 and 4 of Title 27 DCMR, govern all proceedings in all cases filed with the District of Columbia Contract Appeals Board (Board).
- 100.2 Codification. These rules shall amend Chapters 1, 2, 3, and 4 of Title 27 of the District of Columbia Municipal Regulations (DCMR) and shall be cited with the appropriate reference to the publication of these rules in the *D.C. Register*, indicating the volume number, page number and the date of publication.
- 100.3 Application. These rules shall apply to all appeals and protests filed with the Board on or after the date of the publication of the notice of final rulemaking in the *D.C. Register* and to all further proceedings in appeals and protests pending before the Board at that time.
- 100.4 Transition. If, however, the Board determines that the application of a rule in a particular case pending before the Board on the effective date of these rules would be impracticable or would work an injustice on a party, the Board may order that all or a portion of the former rules shall apply to further proceedings in the case.

100.5 Construction. These rules shall be construed to obtain the just, expeditious, and inexpensive resolution of every case. In addition to the Board's own precedent, the Board will be guided by (i) precedent of the District of Columbia courts in construing those Board rules that are analogous to the Rules of Civil Procedure of the DC Superior Court; and (ii) precedent of the United States Government Accountability Office in construing those Board rules that are analogous to protest rules of the Government Accountability Office.

## **101 BOARD**

101.1 The name of the Board is the District of Columbia Contract Appeals Board.

101.2 The Board's membership shall consist of a Chief Administrative Judge (Chairperson) and other administrative judges, as provided by law.

101.3 Cases before the Board are assigned to panels consisting of three administrative judges as appropriate for final disposition or decision, except as determined by the Chief Administrative Judge in accordance with Subsection 215.5, or otherwise.

101.4 The presiding administrative judge designated to manage a particular case pursuant to Subsection 102.5 shall have the authority to administer oaths and affirmations, issue subpoenas, rule on all interlocutory matters and nondispositive motions, schedule and conduct proceedings and hearings, and take other action as necessary to prepare the case for final disposition or decision.

101.5 Except for appeals processed under the small claims (expedited) procedure, as prescribed in Section 215, the final disposition of a case shall be made by majority vote of the administrative judges assigned to the panel.

101.6 The Board's final decision in a case shall be in writing and based solely on the record, including such matters as the Board may expressly take notice of. A copy of the decision shall be dated and forwarded to the parties by first class mail or electronically. All decisions which constitute a final adjudication of a case, except decisions issued on cases under the optional small claims procedures of Section 215, shall be published in the *District of Columbia Register*.

101.7 The Board shall hear and decide de novo all cases under its jurisdiction.

101.8 If any contracting agency, which is exempt from coverage of the Procurement Practices Reform Act, wishes to have the Board hear and decide appeals and/or protests, the Board shall do so only in accordance with a written agreement with the agency. The cost of processing cases involving such an agency shall be on a reimbursable basis agreed to by the Board and the agency.

101.9 Proceedings before the Board shall be conducted at its offices, unless otherwise ordered by the Board.

**102 CHIEF ADMINISTRATIVE JUDGE (CHAIRPERSON)**

- 102.1 The chairperson of the Board shall serve as the Chief Administrative Judge of the Board.
- 102.2 In addition to participating in the hearing of cases, the Chief Administrative Judge shall oversee the administrative activities of the Board and shall provide, within approved budgetary ceilings, for the staffing of the Board with nonmember personnel. These persons shall be responsible to and shall function under the direction, supervision, and control of the Chief Administrative Judge.
- 102.3 In the case of a vacancy in the position of the Chief Administrative Judge, or his or her absence or disability, the administrative judge who has the senior length of service shall serve as the Acting Chief Administrative Judge and exercise all of the authority, duties, and responsibilities of the Chief Administrative Judge.
- 102.4 When by reason of a vacancy, disability, or absence, neither the Chief Administrative Judge nor the member who has the senior length of service is available to exercise the duties of the Chief Administrative Judge, the administrative judge next in length of service shall serve as the Acting Chief Administrative Judge. Should there not be an administrative judge with a senior length of service, the Chief Administrative Judge shall designate a Board member to serve as Acting Chief Administrative Judge.
- 102.5 The Chief Administrative Judge shall assign and, as necessary, reassign cases and administrative judges to panels and shall designate one of the panel members as the presiding judge having the lead responsibility for the management of a particular case.
- 102.6 The Chief Administrative Judge may authorize the performance by another administrative judge or Board employee of any function of the Chief Administrative Judge, except that, as provided by law, only administrative judges may hear and decide cases. The attendance of at least two members of the Board shall constitute a quorum.

**103 BOARD OPERATIONS**

- 103.1 The Board's office shall be open for the transaction of business from 9:00 a.m. until 5:00 p.m. daily, except Saturdays, Sundays, and legal holidays.
- 103.2
- (a) Unless otherwise directed by an administrative judge, all paper pleadings, briefs, motions, and any other submissions to the Board shall be filed at the Board's office during business hours.



- (b) Subject to Chapter 4, documents can be filed electronically at any time. As stated in Chapter 4, electronic filing is the electronic submission of documents to the Board via the Board's designated electronic file and serve system. Sending an email to the Board is not a proper method of electronic filing.
- 103.3 Upon the receipt of a paper appeal or a protest, the Board shall stamp the date of filing next to the title of the case. Upon receipt of an electronic filing, the Board's designated vendor shall issue a confirmation showing the authorized date and time of filing. If a person filing requests a Board certification, a copy of the submission provided by the person shall be marked to show the time and date of the filing and it shall be initialed by the Board.
- 103.4 The Board shall keep and maintain: all incoming pleadings, motions, and other communications to the Board, and all outgoing notices, correspondence, and Board actions; a monthly docket of current cases under the Board's jurisdiction; copies of decisions and final orders of the Board; and copies of the Board's rules.
- 103.5 Subject to the provisions of Section 104, the case docket, and copies of decisions, final orders, and rules shall be available for inspection by the public at the Boards' office. Copies of Board decisions and final orders shall be available to the public at a reasonable cost. Consistent with the requirements of the District of Columbia Freedom of Information Act, the Board shall provide access to electronic records not subject to a Protective Order under Section 104 during normal business hours.
- 103.6 The Board shall maintain records that contain the date of mailing, or delivery, of all papers that are served or delivered.
- 103.7 Cases before the Board shall be assigned consecutive numbers in the appropriate docket books in order of their filing, one sequence for appeals bearing the letter "D" as a prefix, and another sequence for protests bearing the letter "P" as a prefix.
- 103.8 Upon request, the Board shall furnish to the public the names of its members, and the identity of the Board members comprising the panel to which a particular case has been assigned.
- 103.9 The Board shall maintain a case docket, updated monthly, which provides the names of the appellant or protester, the name of the contracting agency, the case number, the date the case was filed with the Board, the name of the presiding judge, the date of any scheduled hearing on the merits of the case, and an identification of accelerated and small claims appeals.
- 103.10 Active case files containing all pleadings and other records of the case, except as provided by Section 104, shall be available for inspection by the public at the Board's office. However, the public may not remove any pleadings or other

records from the case file nor remove the case file from the Board's office without the express written authorization of an administrative judge.

## 104 PROTECTIVE ORDERS; IN CAMERA REVIEW

### 104.1

- (a) At the request of a party to a protest or appeal or on its own initiative, the Board may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. For informational purposes only, a sample protective order, as well as sample applications for access to materials under a protective order, are available on the Board's website: [www.cab.dc.gov](http://www.cab.dc.gov).
- (b) If a party to a protest or appeal seeks to have its initial filing in a case sealed, it must submit with the filing a motion for a protective order pursuant to this Rule, or submit an explicit request for a protective order in the filing, as well as a redacted copy of the filing that would be accessible to the public. If, a party seeks to have a subsequent filing or specified exhibits sealed, it must first file a motion for a protective order pursuant to this rule. Redacted copies of the exhibits need not be submitted, however. Only the specific document or exhibit that is to be filed under seal shall be designated as sealed.
- (c) If no protective order has been issued, the agency may withhold from the parties those portions of a document submission which would ordinarily be subject to a protective order. The Board will review in camera all information not released to the parties.
- (d) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the protective order by submitting an application to the Board, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within two (2) days after receipt of the application, although the Board may consider objections raised after that time.

- (e) Any violation of the terms of a protective order may result in the imposition of sanctions as the Board deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the violator's practice before the Board.

104.2 At the request of a party or on its own initiative, the Board may order that specific documents or tangible articles be submitted for in camera review by the Board, and not be available for inspection, if they are asserted to contain privileged information. A party by motion may challenge another party's assertion of privilege.

104.3 Information subject to a protective order under this Rule may be used in any appellate matter filed with the Superior Court of the District of Columbia or the District of Columbia Court of Appeals (collectively, "Court"), without the Board's prior authorization, provided that the information is filed under seal with the Court, that the Court is informed by the Appellant(s) of the Board's protective order, and that the Appellant(s) request the Court to issue its own protective order to cover the protected material. Use of information protected under the Board's protective order in such appellate proceedings will be governed by the protective order issued by the Court.

## **105 EX PARTE COMMUNICATIONS**

105.1 Ex parte communications, as defined in Subsection 199.1, shall be prohibited.

105.2 Excluded from ex parte communications are those that:

- (a) Are specifically authorized by law to be made on an ex parte basis; or
- (b) Relate to the Board's administrative functions or procedures; or
- (c) Are matters of public record; or
- (d) Are communications among Board members, and/or communications among Board members and staff.

105.3 An administrative judge or a staff member of the Board who receives an ex parte communication prohibited by this section, shall immediately report its receipt to the Chief Administrative Judge and prepare a memorandum describing in detail the substance of the communication. The memorandum shall be placed in the case file, along with the actual communication if it is in written form. The Board shall provide a copy of the memorandum to all parties.

**106 APPEARANCE AND REPRESENTATION**

- 106.1 In a proceeding before the Board, an individual, receiver, or trustee may appear in his or her behalf; a general partner of a partnership may represent the partnership; and an officer of a corporation may represent the corporation. The Office of the Attorney General for the District of Columbia shall represent the District. Independent agencies of the District of Columbia may be represented by agency counsel.
- 106.2 A party may be represented in a proceeding by an attorney at law admitted to practice before the District of Columbia Court of Appeals or before the highest court of the state where he or she resides or maintains an office. An attorney at law employed by the District of Columbia government may represent an agency in accordance with the requirements of Rule 49(c)(4) of the Rules of the District of Columbia Court of Appeals.
- 106.3 An individual appearing before or transacting business with the Board in a representative capacity pursuant to the provisions of Subsection 106.1 may be required to establish his or her authority to act in that capacity.
- 106.4 Notice of Appearance. Each person, including an Assistant Attorney General, representing a party in a case pending before the Board shall file with the Board a written notice of appearance containing the following:
- (a) The signature of the representative;
  - (b) The typed or printed name of the representative;
  - (c) The business address and telephone number of the representative; and
  - (d) The name of the party for whom the appearance is made.
- 106.5 The notice of appearance shall become a part of the record.
- 106.6 Each person who has entered an appearance shall be deemed to continue as representative of the named party unless there is filed with the Board any of the following:
- (a) A notice of withdrawal of appearance signed by both the representative and the party; or
  - (b) A notice signed by the party stating that the representation has been concluded, together with proof of service upon the representative; or
  - (c) A notice of substitution of a representative that conforms to the requirements of Subsection 106.4.

106.7 If two or more persons have entered their appearance for a party, service on one representative shall be service on the party, unless one of the representatives has been designated for service.

**107 FORM AND FILING OF PLEADINGS, MOTIONS, AND OTHER SUBMISSIONS**

107.1 For documents, such as protests, agency reports, complaints, answers, motions, and responses thereto, filed on paper, an original and two (2) copies shall be filed with the Board. All paper filings shall contain proof of service, in accord with Section 109.

107.2 A filing may be made by mail, hand-delivery or electronically in accordance with Chapter 4, unless otherwise ordered by the Board. Irrespective of the method used for filing, a submission shall only be considered timely filed if it is actually received in the Board's office during business hours or received by the electronic filing vendor within the time established by law, regulation, or Board order.

107.3 Complaints, protests, and other pleadings shall, on the first page, contain a caption setting forth the name of the Board, title of the case, and contain a heading under the caption describing the nature of the pleading, motion, or matter being brought to the attention of the Board. The caption and heading shall be in the following format:

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
CONTRACT APPEALS BOARD [PROTEST] OR [APPEAL] OF: [NAME OF  
PROTESTER or APPELLANT] )  
([ADDRESS OF PROTESTER or APPELLANT]) CAB No.  
(Under [IFB or RFP] or [Contract] No.) [HEADING]

107.4 In addition to the requirements of Subsection 107.3, the initial filing by or on behalf of a party shall have in the caption the name and full business or residence address of the party. If the party is appearing pro se (without an attorney), the caption shall also include the party's business or personal email address, and a contact telephone number. In the initial filing by a non-governmental corporate body party, the party shall file a corporate disclosure statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public.

107.5 A submission signed by an attorney shall contain the name, office address, telephone number, and bar identification number of the attorney. Notice of a change in address or telephone number of the attorney, or a party not represented by an attorney, shall be filed within five (5) business days of the change.

- 107.6 Unless they are changed by a notice filed with the Board, the address and telephone number of a party or any attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.
- 107.7 The original of a submission that is filed with the Board shall be signed in ink by the party, its attorney, or its authorized representative.
- 107.8 All submissions filed shall be typed (double spaced), reproduced by any duplicating or copying process that produces a clear black image on white 8½ x 11 inch size paper, and fastened at the top.
- 107.9 A submission shall not include documents that are not relevant to the case. Irrelevant documents may be rejected by the Board.
- 107.10 Submissions that do not conform to the requirements of this Rule may be rejected either before or after filing. If the submission is rejected after filing, the effect shall be the same as if it had not been filed.

## **108 SERVICE OF PLEADINGS, MOTIONS, AND OTHER SUBMISSIONS**

- 108.1 Except as otherwise provided in the Board's rules or directed by an administrative judge, a pleading, motion, notice, appearance, or other submission filed with the Board subsequent to the filing of an appeal or a protest, shall be served by the filing party upon each party in the case.
- 108.2 Whenever, under this Rule or a Board order, service is required or permitted to be made upon a party who is represented by an attorney, the service shall be made upon the attorney.
- 108.3 Electronic service upon a party shall be as provided in Chapter 4. Non-electronic service upon a party, or an attorney representing a party, shall occur at the time of hand delivery; or, if by mail, to the address of record, by the postmark date plus three days as prescribed in Section 122.
- 108.4 The Board may waive the requirement of furnishing to other parties copies of bulky, lengthy, or out-of-size documents when the party, by written motion, has shown that service would impose an undue burden. The moving party shall notify the other parties that the documents are available for inspection at the office of the Board.
- 108.5 Notwithstanding the foregoing, any document may be served electronically pursuant to Chapter 4.

**109 PROOF OF SERVICE**

- 109.1 A party filing a document with the Board shall furnish written proof that a copy also has been sent to every other party.
- 109.2 The proof shall show the date and manner of service and may be written acknowledgment of service, affidavit of the person making service, certificate of an attorney of record, or by other proof satisfactory to the Board.
- 109.3 Proof of service shall not be required if the document has been served electronically pursuant to Chapter 4.

**110 MOTIONS PRACTICE**

- 110.1 Every application to the Board for an order or other relief shall be by motion. Before filing any motion, the moving party shall first ascertain whether other affected parties will consent to the relief sought. Only when the movant certifies in writing that despite diligent efforts consent could not be obtained, will the Board consider the motion as a contested matter. If the relief sought is consented to but requires Board approval, the moving party shall serve the other parties and file with the Board a motion which includes the word "Consent" in its title and states that all affected parties have consented to the relief sought.
- 110.2 With the exception of a motion made during a hearing or conference, all motions shall be in writing, unless otherwise directed by the Board. A motion shall be accompanied by a statement of its purpose, the grounds on which it is based, and the reasons for the order or relief sought.
- 110.3 A written motion shall include on separate page(s) following the signature page a proposed order for the Board's signature including, if paper filed, a list of all parties, and their current addresses.
- 110.4 A motion shall include within its body a statement setting forth specific points and authorities to support the motion, including a concise statement of facts material to the issues raised in the motion. No separate memorandum of points and authorities shall be required.
- 110.5 A memorandum of opposing points and authorities may be filed with the Board and served on a party no later than ten (10) days after service of the motion, unless another Board rule prescribes a larger or shorter time. The Board may also grant or order a larger or shorter time for such filing. If a statement of opposing points and authorities is not filed within the prescribed time, the Board may treat the motion as conceded.

- 110.6 A reply memorandum may be filed with the Board and served on a party no later than seven (7) days after service of the opposition described in Subsection 110.5, or within a larger or shorter time as the Board may grant or order.
- 110.7 The Board may decide a motion without a hearing. The Board may also or may order a hearing on a motion upon the application of either party, or on the Board's initiative.
- 110.8 Despite the provisions of Subsection 110.5, for good cause shown, the Board may act upon a motion at any time without waiting for a response to the motion by the opposing party.
- 110.9 If a moving party fails to appear at a hearing on its motion, the Board may treat the motion as withdrawn and the motion may be refiled only with the permission of the Board. If the opposing party fails to appear at the hearing, the Board may treat the motion as conceded.
- 110.10 In addition to the statement of points and authorities required by Subsection 110.4 to be included within the body of the motion, a motion for summary judgment shall also include within the motion a separate statement of the material facts as to which the moving party contends there is no genuine issue.

## **111 STIPULATIONS**

- 111.1 The parties may stipulate to facts, issues, admission of relevant documents, testimony, discovery procedures, and other matters which may aid in expediting the proceedings in a case, subject to acceptance by the Board. A stipulation, however, may not extend a time limit established by a rule or order of the Board without its approval.

## **112 DISCOVERY**

- 112.1 The Board encourages all parties to engage in voluntary discovery. Discovery documents shall not be filed with the Board unless the Board, on its own initiative or by granting the motion of a party, orders that they be filed.
- 112.2 After an appeal has been docketed, a party may obtain discovery regarding a matter which is not privileged and is relevant to the case. It shall not be a ground for objection to a discovery request that the information will be inadmissible in the record of the case, if the information appears reasonably calculated to lead to the discovery of admissible evidence.
- 112.3 A party to a protest or a small claims (expedited) appeal may engage in discovery only to the extent it is acceptable to and ordered by the Board. The Board shall not permit discovery unless it is necessary to advance a fair and expeditious resolution.



- 112.4 A party may obtain discovery by one or more of the following methods:
- (a) Depositions upon oral examination or written questions, but said deposition testimony may only be used at the hearing of an appeal if the witness is unavailable, or to contradict or impeach the testimony of the deponent given at the hearing;
  - (b) Written interrogatories;
  - (c) Requests for production of documents or other tangible things; and
  - (d) Requests for admissions.

112.5 Written interrogatories and requests for admission shall be answered separately in writing, signed under oath by the person making the answers, within thirty (30) days after service. Requests for production of documents or other tangible things shall be answered within 30 days after service. Unless otherwise ordered by the Board, any objection to a discovery request must be filed within fifteen (15) days after service. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests.

- 112.6 The use of the discovery methods set forth in Subsection 122.4 shall be limited by the Board if it determines that:
- (a) The discovery is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; and
  - (b) The discovery is unduly burdensome and expensive, taking into account the needs of the case, amount involved in the controversy, limitations on the parties' resources, and importance of the issues at stake in the case.

112.7 The parties are encouraged to utilize electronic transmission to the maximum extent practicable. When discovery material is transmitted electronically, the attorney or other person transmitting the material shall be deemed to have certified that the documents contained in the transmission are what they purport to be.

### **113 FAILURE TO MAKE OR COOPERATE IN DISCOVERY; SANCTIONS**

113.1 Before any motion to compel discovery is filed, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. The movant shall accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material

sought has not been provided. This certification shall set forth specific facts describing the good faith effort, including a statement of the date, time, and place of the meeting required by this rule.

- 113.2 If a party fails to obey an order to provide or permit discovery, the Board may make:
- (a) An order that certain facts shall be taken to be established in accordance with the claim of the moving party;
  - (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
  - (c) An order striking pleadings, staying further proceedings until the order is obeyed, dismissing the case or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; or
  - (d) An order imposing such other sanctions as the Board deems appropriate.
- 113.3 When the Board believes that the circumstances warrant either dismissing the case or rendering a default judgment against the disobedient party as a discovery sanction, it will issue an order to show cause pursuant to Subsection 121.3.

## **114 SUBPOENAS**

- 114.1 A party is expected to cooperate in good faith by making available witnesses and evidence under the party's control, when requested by another party, without issuance of a subpoena and by securing the voluntary attendance of third-party witnesses and the production of evidence by third parties.
- 114.2 The presiding judge may issue, on his or her initiative or upon written motion of a party, a subpoena that commands the person to whom it is directed to:
- (a) Attend and give testimony at a deposition;
  - (b) Attend and give testimony at a hearing; and
  - (c) Produce the books, papers, documents, and other tangible things designated in the subpoena.
- 114.3 A request for subpoena shall be filed at least fifteen (15) calendar days before the testimony of a witness or evidence is to be provided, and shall state the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, the identification of all documents desired and the facts to be proved by them in sufficient detail to indicate materiality and

relevancy. The Board may, in its discretion, honor requests for subpoenas not made within the time limit provided by this rule.

- 114.4 The party requesting a subpoena shall arrange for its service. The service shall be made as soon as practicable after the subpoena has been issued.
- 114.5 A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place consistent with the rules of the D.C. Superior Court. A subpoena may be served by registered or certified mail, by a United States Marshal or his or her deputy, or by any other person who is not a party and is not less than eighteen (18) years of age.
- 114.6 The service of a subpoena upon a person named in the subpoena shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage allowed by law. However, where the subpoena is issued on behalf of the District government, the fees and mileage allowance need not be tendered in advance of attendance.
- 114.7 The person serving the subpoena shall make proof of the service to the Board promptly, and, in any event, before the date on which the person served must respond to the subpoena. The proof of service shall be made by completing and executing the "Return on Service" portion of a duplicate copy of the subpoena issued by an administrative judge and returning it to the Board. If service is made by a person other than a United States Marshal or his or her deputy, that person shall make an affidavit as proof by executing the "Return on Service" in the presence of a notary.
- 114.8 Upon written motion by the person subpoenaed or by a party, made within ten (10) days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may:
- (a) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or
  - (b) Require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence.
- 114.9 In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of the D.C. Superior Court, the Board shall apply to the D.C. Superior Court for an order requiring the person to appear before the Board to give testimony, produce evidence, or both. If a person fails to obey the order, without adequate excuse, the Board may apply for an order that the person be held in contempt by the Court.

**115 JURISDICTION**

115.1 The Board at any time may consider the question of its jurisdiction to decide a case.

**116 SUSPENSION OF RULES**

116.1 In the interest of expediting a decision in a case or for other good cause shown, the Board may, except for the time requirements for filing a protest or an appeal, suspend or dispense with the filing requirements and procedural provisions of these rules on the motion of a party or on its own initiative and may order proceedings in accordance with its direction.

**117 RECONSIDERATION**

117.1 A party to an appeal or a protest may by motion request the Board to reconsider its decision or order for the reasons stated below:

- (a) To clarify the decision;
- (b) To present newly discovered evidence which by due diligence could not have been presented to the Board prior to the rendering of its decision;
- (c) If the decision contains typographical, numerical, technical or other clear errors that are evident on their face; or
- (d) If the decision contains errors of fact or law, except that parties shall not present arguments substantially identical to those already presented to the Board.

117.2 For appeals, a motion for reconsideration shall be filed within (30) thirty days after the Board's decision or order is transmitted to a party. For protests, a motion for reconsideration shall be filed within the time period set forth in Subsection 313.2.

117.3 A motion for reconsideration shall set forth the following:

- (a) The particular points of fact or law which the moving party believes the Board has overlooked or misapprehended;
- (b) Any argument the moving party wishes to make in support of the motion; and
- (c) The relief sought and the reasons for seeking the relief.

- 117.4 For appeals, a party may file an opposition to a motion for reconsideration no later than fifteen (15) days after the motion is served. For protests, a party may file an opposition no later than seven (7) days after the motion is served.
- 117.5 If a motion for reconsideration is granted, the Board may make a final disposition of the case without reargument, permit reargument, or issue an appropriate order regarding further proceedings.
- 117.6 A motion of reconsideration does not affect the finality of the Board's decision or suspend its operation except that the Board may stay its decision for good cause shown.

## **118 CONSOLIDATION OF CASES**

- 118.1 When cases involving a common question of law or facts are pending before the Board, consolidation may be ordered by the Board on its own initiative, or on the motion of a party in order to avoid unnecessary costs or delay.

## **119 SEPARATE DETERMINATION OF LIABILITY**

- 119.1 The Board may limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for another proceeding.

## **120 BURDEN OF PROOF**

- 120.1 Except as otherwise provided by law, the burden of persuasion by a party to establish a fact or facts in dispute shall be met by a preponderance of the evidence.

## **121 DISMISSAL OF CASES**

- 121.1 A case may be dismissed by an appellant or protester as a matter of right by filing a notice of dismissal at any time prior to the service of an answer or motion on the appellant or protester, or by filing a stipulation signed by each party.
- 121.2 A dismissal initiated by an appellant or protester not covered by Subsection 121.1 shall be approved by the Board upon terms and conditions as it deems proper.
- 121.3 Whenever either party fails to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicate an intention not to continue the prosecution or defense of a case, the Board may issue an order to show cause why the case should not be dismissed for failure to prosecute or defend.
- 121.4 The Board shall specify whether a dismissal is with or without prejudice.

**122 COMPUTATION OF TIME**

- 122.1 In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included.
- 122.2 The last day of each period computed pursuant to Subsection 122.1 shall be included unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper with the Board, a day or any part of a day in which the Board's office is closed, in which event the period shall run until the end of the next day which is not one of the aforementioned days.
- 122.3 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.
- 122.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party electronically in accordance with Chapter 4, the notice or document shall be considered as served when the transmission is completed ("authorized date and time"), provided, however, for the purpose of computing time for the served party to respond, any notice or document served on a day or at a time when the Board is not open for business shall be deemed to have been served on the day and at the time of the next opening of the Board for business.

**123 ENLARGEMENT OF TIME**

- 123.1 The Board, for good cause shown, may enlarge the time prescribed by the Board rules, or by its order, for doing any act, or may permit an act to be done after the expiration of the prescribed time. The Board, may not, however, enlarge the time for filing a protest or an appeal.

**124 CONTINUANCES**

- 124.1 Any party may move in writing to request a continuance of any scheduled hearing, or to extend the time to file a pleading, or for leave to amend a pleading if the motion is served on opposing parties and the Board at least five (5) business days before the hearing or the time limit.
- 124.2 Continuance shall be approved only for good cause shown.
- 124.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly.

**125 UNEXCUSED ABSENCE OF A PARTY**

125.1 The unexcused absence of a party at the time set for a motion or merits hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the motion or case will be regarded as submitted on the record by the absent party.

**126 EVIDENCE**

126.1 The Board shall follow the rules of evidence of the D.C. Superior Court. However, oral and documentary evidence not ordinarily admissible under those rules may be received in evidence at the discretion of the Board.

**127 SANCTIONS**

127.1 If a party or the party's representative fails or refuses to comply with a Board order or rule, or engages in unreasonable or vexatious conduct, the Board may, on its own initiative or on motion of a party, sanction the offending party or representative as it considers necessary to the just and expeditious conduct of the case.

127.2 The Board may deny any party's representative from appearing in a case currently before it if that individual is found by the Board, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct.

**128 CONFLICT OF INTEREST**

128.1 Board employees may not engage in outside employment, including the practice of law, that is incompatible with their duties and responsibilities on the Board or as District government employees, as provided in Title 6-B, Chapter 18, of the District of Columbia Municipal Regulations, as amended.

**129 SEAL OF THE BOARD**

129.1 The seal of the Board shall be a circular boss, the center portion of which shall depict the flag of the District of Columbia and flag of the United States. The outer margin of the seal shall bear the legend, "CONTRACT APPEALS BOARD, D.C."

**199 DEFINITIONS**

199.1 In addition to the terms defined in D.C. Official Code § 2-351.04, the following terms shall have the indicated definitions for purposes of Chapters 1, 2, 3, and 4 of these rules:

**Aggrieved person** means an actual or prospective bidder or offeror (i) whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or (ii) who is aggrieved in connection with the solicitation of a contract.

**Appeal** means a submission to the Board seeking administrative review of a claim by the District or a contractor arising under or related to a contract including those arising under the Public-Private Partnership Act of 2014, a claim for interest penalties pursuant to the District of Columbia Quick Payment Act, or a debarment or suspension action. Appellant means the party filing an appeal with the Board. For purposes of these rules, a "protest" is not an appeal.

**Business day** means any day other than a Saturday, Sunday, or legal holiday.

**Case** means an appeal, protest, debarment, or suspension.

**Contracting agency** means a department, agency, or instrumentality of the District government which employs the contracting officer who has the authority to enter into a contract which is the subject of the solicitation, contract, or agency action at issue before the Board.

**Days** refer to calendar days, unless otherwise provided. Subsections 122.1 - 122.4 govern computation of time.

**Director** means the Director of the Office of Contracting and Procurement who is the Chief Procurement Officer.

**Dispositive motion** means a motion which, if granted, would terminate part or all of a case on the merits or on procedural grounds.

**An *ex parte* communication** means any oral or written communication with the Board, which excludes one or more parties to the case, concerning the merits of the case pending before the Board, made by any persons directly or indirectly involved in the outcome of the case.

**In camera review** refers to the private review of documents or exhibits by an administrative judge without the presence of parties or attorneys.

**Interested party** has the same meaning as aggrieved person.

**Intervenor** means an awardee if the contract has been awarded, or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.



**Protected information** means information subject to a protective order, such as proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms.

**Protest** means a written objection by an aggrieved party to a solicitation for bids or proposals or a written objection to a proposed or actual contract award. **Protester** means an aggrieved party who files a protest with the Board.

**Respondent** means the contracting agency whose decision, action, or inaction is the subject of an appeal or protest.

**Chapter 2, APPEAL PROCEDURES OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

## **200 APPEALS BY CONTRACTORS**

200.1 An appeal by a contractor of a final decision by the contracting officer relating to a contract dispute, a claim for interest penalties, or a decision of the Director relating to a debarment or suspension action, shall commence by the contractor filing a complaint with the Board.

200.2 The complaint shall be filed:

- (a) In a contract dispute, no later than ninety (90) days after the contractor received the decision of the contracting officer; or, where the time period for the contracting officer to issue a decision has expired, the contractor shall file a complaint within a reasonable time;
- (b) In a dispute concerning suspension or debarment, no later than sixty (60) days after the contractor receives the decision of the Director to suspend or debar.

200.3 The appellant shall serve a copy of the complaint on the agencies specified in Subsections 202.3(a) and (b), and shall furnish the Board with proof of service.

## **201 COMPLAINT**

201.1 A complaint shall indicate that an appeal is being taken and shall identify the contract in dispute, or the suspension/debarment proceedings; the department or agency involved in the dispute; the decision from which the appeal is taken; the amount in dispute, if any; and shall state that the complaint is timely filed.

201.2 The complaint shall be signed by the contractor personally or by an authorized representative or attorney.

201.3 The complaint referred to herein does not require a particular form, but it shall fulfill the requirements of a complaint.

201.4 The appellant shall file a complaint setting forth simple, concise, and direct statements of each of its claims with the Board. If filed on paper, the appellant shall file an original and two (2) copies of the complaint with attachments.

201.5 The appellant shall set forth the basis, with appropriate reference to contract provisions and applicable law, of each claim to the extent known; the dollar amount claimed, to the extent known; and the relief sought from the Board.

201.6 If an appeal has been lawfully initiated by the filing of a complaint, the Board may thereafter order the District to file a complaint where an appellant has appealed an affirmative claim by the District asserted in a final decision by a contracting officer. In such cases, the Board may also order the appellant to file an answer as described in Section 205.

**202 DOCKETING OF APPEALS**

202.1 When a complaint has been received by the Board, it shall be docketed promptly.

202.2 The Board shall provide the appellant a written acknowledgment that the complaint has been docketed, the case docket number, and the citation of the publication containing the current rules of the Board. In addition, the Board shall advise the appellant of the identity of the persons furnished the acknowledgment as prescribed in Subsection 202.3.

202.3 The Board promptly shall send a copy of the acknowledgment to:

- (a) The Director in the case of an appeal of a debarment or suspension;
- (b) The contracting officer in the case of any other appeal; and
- (c) The Office of the Attorney General or the counsel for the contracting agency.

202.4 The Board shall notify the contracting agency to file the appeal file as prescribed in Section 203.

**203 THE APPEAL FILE**

203.1 Within thirty (30) days after receipt of the acknowledgement that a complaint has been docketed, the contracting agency shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

- (a) The decision from which the appeal is taken;

- (b) The contract, including specifications and pertinent amendments, plans, and drawings;
- (c) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
- (d) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the complaint with the Board; and
- (e) Any additional information considered relevant to the appeal.

203.2 Within the same thirty (30) day time period, the contracting agency shall furnish the appellant a copy of each document submitted to the Board, except those in Subsection 203.1 (b) above. As to the latter, a list furnished appellant indicating contractual documents submitted to the Board will suffice.

203.3 Within thirty (30) days after receipt of a copy of the appeal file assembled by the contracting agency, the appellant shall transmit to the Board any documents or other tangible things not contained therein which are considered relevant to the appeal, and shall furnish a copy of each document to the attorney representing the contracting agency.

203.4 The Board may, at any time during the pendency of the appeal, require either party to supplement the appeal file or record by filing other documents and tangible things.

203.5 All exhibits in the appeal file shall be considered, without further action by the parties, a part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document reasonably in advance of a hearing, or, if there is no hearing, of closing the record. If an objection is made, the Board shall remove the document from the appeal file and permit the party offering the document to move its admission as evidence.

203.6 Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

203.7 Original copies of documents may be withdrawn from the appeal file, with the Board's consent, if an acceptable copy is substituted.

**204 JUDICIAL NOTICE**

204.1 The record in each case may also include such matters as the Board may expressly take notice of.

**205 ANSWER**

205.1 Within thirty (30) days from receipt of the complaint, the contracting agency shall file an answer with the Board. If filed on paper, the contracting agency shall file an original and two (2) copies of the answer and attachments.

205.2 The contracting agency shall serve a copy of the answer on the appellant, or its attorney and, unless served electronically, provide proof of service to the Board.

205.3 The answer shall set forth simple, concise and direct statements of the contracting agency's defenses to each claim asserted by the appellant, and shall include any affirmative defenses or counterclaims available.

205.4 In lieu of answering, the contracting agency may file a dispositive motion. If the motion is filed and denied by the Board, in whole or in part, the answer shall be filed no later than thirty (30) days after the contracting agency receives the Board's ruling on the motion.

205.5 If no answer or motion is received from the contracting agency within thirty (30) days from receipt of the complaint, the Board may, in its discretion, enter a general denial to the appeal, and the appellant shall be so notified, or the Board may consider the failure to answer as an admission of the claims of the appellant.

**206 SUPPLEMENTAL PLEADINGS**

206.1 The Board, upon its own initiative, or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

**207 AMENDMENT OF PLEADINGS**

207.1 The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties.

207.2 When issues within the proper scope of the appeal have not been raised by the pleadings but are tried by express or implied consent of the parties or by permission of the Board, they shall be treated in all respects as if they had been raised in the pleadings. In these instances, motions to amend the pleadings to conform to the proof may be made but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that

the objecting party may be granted a continuance if necessary to enable it to meet the evidence.

## **208 ELECTION OF PROCEDURE**

208.1 After the complaint, answer, appeal file and any supplemental pleadings have been filed, each party shall inform the Board whether it desires a hearing, as prescribed by Section 211, or whether it desires to submit its case on the record without a hearing, as prescribed by Section 209.

## **209 SUBMISSION ON THE RECORD**

209.1 Both parties may elect to waive a fact-finding hearing and to submit the case on the record.

209.2 Submission of the case without a hearing shall not relieve the parties from providing the facts supporting their allegations and defenses.

209.3 Either party may apply to the Board to supplement the record by filing affidavits, depositions, admissions, answers to interrogatories, and stipulations.

209.4 The Board may permit the record to be supplemented by oral argument and briefs.

## **210 PREHEARING PROCEDURES**

210.1 The Board may, upon its own initiative, or upon application of either party, arrange for a telephone conference or direct the parties to appear before the Board at a specified time and place, prior to or during the course of a hearing, to consider the following:

- (a) Settlement of part or all of the dispute;
- (b) The simplification of issues;
- (c) The necessity or desirability of amending the pleadings;
- (d) The possibility of obtaining admission of fact and stipulations concerning the use of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The possibility of prior mutual exchange of prepared testimony and exhibits between the parties;
- (g) A schedule for the completion of discovery, if discovery is deemed necessary, and has not been completed; and

(h) Any other matters that may aid in shortening the hearing on the merits and in the disposition of the appeal.

210.2 The Board shall make an order or memorandum which shall recite the action taken at the conference. This order or memorandum, when filed, shall be a part of the record in the appeal and shall control the subsequent course of the appeal unless modified by the Board.

210.3 The Board may, on its initiative or upon application of either party, order the parties to file prehearing briefs explaining and analyzing the legal issues in any case.

210.4 Pleadings, discovery, and other prehearing activity shall be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or, if no hearing is scheduled, to close the record in a reasonable time. The Board, at its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules.

## **211 HEARINGS**

211.1 The Board shall provide the parties at least seven (7) business days' notice of the time and place of a hearing, but the notice may be waived by the parties.

211.2 All hearings on the merits shall be open to the public. The Board may limit access to testimony covered by a protective order entered in the case pursuant to Section 104.

211.3 Questions concerning the admissibility of evidence and other matters that may arise in the course of the hearing shall be ruled upon by the presiding administrative judge, or, if necessary, by a majority vote of the designated panel. A decision upon the merits, or a final disposition of any appeal or part thereof, shall be by majority vote of the designated panel, except as provided in Subsection 215.5.

211.4 Witnesses at hearings shall be examined orally under oath or affirmation, which shall be administered by the presiding administrative judge or any member of the assigned panel. Any member of the panel may question any witness at any time during or after examination or cross-examination by the parties.

211.5 An official reporter selected by the District shall make an official transcript of the proceedings at hearings on the merits. After the close of a hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the Board and become a part of the record. No other recordings of the proceedings will be made.

- 211.6 The official reporter shall transmit copies of the transcript to the Board and the contracting agency. Copies of the official transcript shall be supplied to other parties by the official reporter at rates determined between the official reporter and the parties.
- 211.7 Motions to correct an official transcript shall be filed with the Board within fifteen (15) days after the receipt of the last portion of the transcript, and shall certify the date when the last portion of the transcript was received by the maker of the motion.
- 211.8 Witnesses are to be excluded from the hearing room so they cannot hear the testimony of other witnesses, except a party who is an individual, the designated representative of a party which is an entity, someone authorized by statute to be present, or a person whose presence is essential to the presentation of the party's case.

## **212 POST HEARING BRIEFS**

- 212.1 Unless filed electronically in accordance with Chapter 4, an original and two (2) copies of post hearing briefs shall be submitted as directed by the Board at the conclusion of the hearing.
- 212.2 Briefs and any memoranda of law shall be filed electronically in accordance with Chapter 4, or be typewritten on white bond 8½ x 11 inch paper and shall be double spaced except for quotations.
- 212.3 Briefs shall contain, in the following order, a short procedural history of the case, a table of contents, a table of authorities cited, a concise summary of argument, proposed findings of fact with citations to those places in the record where supporting evidence can be found, proposed conclusions of law with citations to supporting legal authorities, and the relief desired by the party.

## **213 RECORD**

- 213.1 The record of the appeal shall include the complaint, answer, appeal file, all motions and other submissions filed by the parties with the Board pursuant to these rules; all correspondence exchanged between the Board and the parties or their attorney; transcripts made of hearings before the Board; all exhibits and other evidence admitted to the record; all findings, decisions, opinions, and orders of the Board; and such other matters as the Board may expressly take notice of.

## **214 DECISIONS**

- 214.1 All decisions shall be in writing and based solely on the record as prescribed in Subsection 213.1.

- 214.2 With each decision finally disposing of an appeal or any part thereof, the Board shall file separate findings of fact and conclusions of law unless the findings of fact and conclusions of law appear therein.
- 214.3 A copy of the decision shall be transmitted by the Board to each party or his or her attorney.
- 214.4 Judicial Review of Board Decisions on Appeals.
- (a) A contractor may appeal the Board decision to the District of Columbia Court of Appeals within one hundred twenty (120) days after the date of receipt of the Board's decision.
- (b) If the District determines that an appeal should be taken, the Director, with the prior approval of the Office of the Attorney General, may appeal the Board's decision to the District of Columbia Court of Appeals within one hundred twenty (120) days after the date of the receipt of the Board's decision.
- (c) When a Board decision is appealed, the appealing party must also provide a copy of the notice of appeal to the Board.

## **215 OPTIONAL SMALL CLAIMS (EXPEDITED) PROCEDURES**

- 215.1 In an appeal where the amount in dispute is ten thousand dollars (\$10,000) or less, the appellant may elect to have the appeal adjudicated under the small claims procedure set forth in this rule, or the accelerated procedure in Section 216.
- 215.2 Whenever possible, decisions under the small claims procedure will be rendered within ninety (90) days from the date on which the contractor files an appeal. The election shall be stated in the complaint, except that the Board for good cause may permit the election to be made after the complaint is filed. Once the election is made, it may not be withdrawn except with the permission of the Board for good cause shown.
- 215.3 The following time periods shall apply for cases proceeding as a small claims appeal unless otherwise ordered by the Board:
- (a) Within ten (10) business days of receipt of notice of the appellant's election, the respondent shall submit to the Board a copy of the contract, the contracting agency's final decision, and the appellant's claim letter or letters; other documents from the appeal file prescribed in Section 203 shall be submitted as the Board directs.



- (b) Within fifteen (15) days after the Board has received the appellant's election, the designated administrative judge shall take the following action in an informal meeting or a telephone conference with the parties:
- (1) Formulate and simplify the issues;
  - (2) Establish a simplified procedure appropriate to the appeal;
  - (3) Determine whether either party wants a hearing, and, if so, fix a time and place;
  - (4) Require the respondent to furnish any additional documents relevant to the appeal; and
  - (5) Establish an expedited schedule for resolution of the appeal.

215.4 Pleadings, discovery, and other prehearing activity shall be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or, if no hearing is scheduled, to close the record on a date that will allow decisions within the ninety (90)-day limit. The Board, at its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules as necessary to enable the Board to decide the appeal within the time limit.

215.5 Written decisions by the Board in cases adjudicated under the small claims (expedited) procedure shall be short and may contain abbreviated findings of fact and conclusions of law. The decisions may be rendered for the Board by a single administrative judge. A decision under the small claims procedure shall have no precedential value in future cases before the Board.

215.6 In a case where a small claims procedure has been elected and in which there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining any oral arguments as deemed appropriate, render on the record oral findings of fact, conclusions of law, and a decision of the appeal.

215.7 Whenever an oral decision is rendered pursuant to Subsection 215.6, the Board shall subsequently furnish the parties with a written copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration or a judicial appeal.

## **216 OPTIONAL ACCELERATED PROCEDURES**

216.1 In appeals where the amount in dispute is fifty thousand dollars (\$50,000) or less, the appellant may elect to have the appeal adjudicated under the accelerated procedure set forth in this rule. The appellant's election must be made within thirty (30) days after the answer is filed.

- 216.2 Decisions under the accelerated procedure shall be rendered within one hundred and eighty (180) days from the date the Board receives notice that the appellant has elected to utilize the accelerated procedure.
- 216.3 The appellant's election herein, once exercised, may not be withdrawn, except with the permission of the Board for good cause shown.
- 216.4 In a case proceeding as an accelerated appeal, the Board shall encourage the parties to waive or limit pleadings, discovery, and briefs to the maximum possible extent consistent with the adequate presentation of their factual and legal positions.
- 216.5 Within thirty (30) days of receiving appellant's election of the accelerated procedure, the respondent shall file the appeal file as prescribed by Section 203.
- 216.6 Within forty-five (45) days of receiving appellant's election of the accelerated procedure, the Board shall convene an informal meeting, or a telephone conference, with the parties and shall proceed with the case.
- 216.7 The Board shall permit discovery by the parties consistent with its requirement to decide their case under the time limit imposed by Subsection 216.2.

## **217 ALTERNATIVE DISPUTE RESOLUTION**

- 217.1 Availability of ADR procedures. The Board will make its services available for ADR proceedings in contract appeals and protest matters involving District agencies.
- (a) ADR subsequent to docketing of case at the Board. Parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. If, however, at any time during the course of a Board proceeding, the parties agree that their dispute may be resolved through the use of an ADR technique, the presiding judge may suspend proceedings for a reasonable period of time while the parties and the Board attempt to resolve the dispute in this manner. The use of an ADR technique will not toll any relevant statutory time limit for deciding the case.
- (b) Other ADR. Upon request, the Board will make a Board Neutral available for an ADR proceeding involving a District agency in any contract, protest, or procurement matter at any stage of a procurement, even if no contracting officer decision has been issued or is contemplated. To initiate an ADR proceeding, the parties shall jointly request the ADR in writing and direct such request to the Chief Administrative Judge. The Board will provide ADR services on a reimbursable basis.

## 217.2 Conduct of ADR.

- (a) Selection of Board Neutral. If ADR is agreed to by the parties and the Board, the parties may request the appointment of one or more Board judges to act as a Board Neutral or Neutrals. The parties shall request that the Chief Administrative Judge appoint a particular judge or judges as the Board Neutral, or to appoint any judge or judges as the Neutral. If, when ADR has been requested for a case that has already been docketed with the Board, as provided in Subsection 217.1(a), the parties may request that the presiding judge serve as the Board Neutral. In such situation, when the ADR is unsuccessful, (i) if the ADR has involved mediation, the presiding judge shall not retain the case, and (ii) if the ADR has not involved mediation, the presiding judge, after considering the parties' views, shall decide whether to retain the case.
- (b) Retention and confidentiality of materials. The Board will review materials submitted by a party for an ADR proceeding, but will not retain such materials after the proceeding is concluded or otherwise terminated. Material created by a party for the purpose of an ADR proceeding is to be used solely for that proceeding unless the parties agree otherwise. Parties may request a protective order in an ADR proceeding in the manner provided in Section 104.

## 217.3 Types of ADR. ADR is not defined by any single procedure or set of procedures. The Board will consider the use of any technique proposed by the parties which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of disputes. The following are examples of available techniques:

- (a) Mediation. The Board Neutral, as mediator, aids the parties in settling their case. The mediator engages in ex parte discussions with the parties and facilitates the transmission of settlement offers. Although not authorized to render a decision in the dispute, the mediator may discuss with the parties, on a confidential basis, the strengths and weaknesses of their positions. No judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful.
- (b) Neutral case evaluation. The parties agree to present to the Board Neutral information on which the Board Neutral bases a non-binding, oral, advisory opinion. The manner in which the information is presented will vary from case to case depending upon the agreement of the parties. Presentations generally fall between two extremes, ranging from an informal proffer of evidence together with limited argument from the parties to a more formal presentation of oral and documentary evidence and argument from counsel, such as through a mini-trial.

- (c) Binding decision. One or more Board judges render a decision which, by prior agreement of the parties, is to be binding and non-appealable. As in the non-binding evaluation of a case by a Board Neutral, the manner in which information is presented for a binding decision may vary depending on the circumstances of the particular case.
- (d) Other procedures. In addition to other ADR techniques, including modifications to those listed above, as agreed to by the Board and parties, the parties may use ADR techniques that do not require direct Board involvement.
- (e) Selective use of standard procedures. Parties considering the use of ADR are encouraged to adapt for their purposes any provisions in the Board's rules which they believe will be useful. This includes but is not limited to provisions concerning record submittal, prehearing discovery procedures, and hearings.

**Chapter 3, PROTEST PROCESURES OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

**300 PARTIES ENTITLED TO PROTEST**

- 300.1 An aggrieved person, as defined in Subsection 199.1, may protest to the Board a solicitation issued by or for a District contracting agency for the procurement of property or services, or a proposed award, or the award of such a contract.

**301 FORM AND CONTENT OF PROTEST**

- 301.1 All protests shall be in writing, addressed to the Board, and shall include the following:
- (a) The name, address, and telephone number of the protester;
  - (b) The identity of the contracting agency, the number and date of the solicitation, and if a contract has been awarded, the number and date of the contract and to whom the contract was awarded, if known;
  - (c) A clear and concise statement of the legal and factual grounds of the protest, including copies of relevant documents, and citations to statutes, regulations, or solicitation provisions claimed to be violated;
  - (d) Information establishing the timeliness of the protest (see Section 302);
  - (e) Information establishing that the protester is an aggrieved person for the purpose of filing the protest (see Subsection 199.1); and

- (f) The relief sought by the protester.

In addition, a protest may request a protective order, request specific documents relevant to the protest grounds, and request a hearing.

- 301.2 Protests shall be signed by the protester or by an authorized representative or attorney.
- 301.3 Protests are not required to be formal or technical but shall be logically arranged and legally sufficient.
- 301.4 A protest may be dismissed for failure to comply with any of the requirements of this Rule.

## **302 FILING THE PROTEST WITH THE BOARD; TIME LIMITATIONS**

- 302.1 Unless filed electronically in accordance with Chapter 4, the protester shall file an original and two (2) paper copies of its protest, including all attachments, with the Board by hand delivery, mail, or commercial carrier within the time limitations established by law and set forth below in Subsection 302.2. The protester shall also serve a copy of the protest, including all attachments, on the contracting agency and shall furnish the Board with proof of service.
- 302.2 Time Limitations. Filing occurs when the protest is received on paper by the Board or electronically by the Board's designated electronic filing system in accordance with Chapter 4. The following paragraphs specify the time limitations associated with the filing of a protest.
- (a) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.
- (b) Protests other than those covered in paragraph (a) shall be filed with the Board not later than ten (10) business days after the basis of the protest is known or should have been known, whichever is earlier.
- 302.3 A protest concerning a procurement conducted by an agency exempt from the Procurement Practices Reform Act, which has entered into an agreement with the Board under Subsection 101.8 to resolve protests, shall be filed with the Board

within the time prescribed by the agency's regulations. If the agency has no regulations placing limits on the time for filing protests, these rules shall govern.

### **303 BOARD DOCKETING OF PROTESTS**

303.1 Docketing of Protests. When a protest has been accepted for filing by the Board, it shall be docketed immediately.

- (a) The Board shall prepare an acknowledgment that the protest has been docketed, indicating the name of the protester, the solicitation at issue, the Board's protest docket number, and the District of Columbia Register citation to the current rules of the Board. In addition, the Board shall advise the protester of the identity of the persons furnished with the acknowledgment.
- (b) Within one (1) business day of receipt of the protest filing, the Board shall send a copy of the acknowledgment to:
  - (1) The contracting officer;
  - (2) The Office of the Attorney General or the counsel for an independent agency; and
  - (3) The protester.
- (c) The parties will also be notified that the acknowledgment is available at the Board for pickup.

303.2 The acknowledgment shall notify the contracting officer to file the Agency Report as prescribed in Section 305.

303.3 The contracting agency shall immediately give notice of the protest to:

- (a) In the case of a protest alleging solicitation improprieties, prospective bidders or offerors who can reasonably be ascertained;
- (b) In protests other than those covered in paragraph (a), (i) if a contract has not been awarded, to all bidders or offerors who appear to have a reasonable prospect of receiving an award; (ii) if a contract has been awarded, to the contract awardee and all other bidders or offerors who appear to have a reasonable prospect of receiving an award if the protest is sustained.

The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with the Board. All parties shall

furnish copies of all protest communications to the contracting agency and to other participating parties.

- 303.4 All protest communications shall be sent by means reasonably calculated to effect timely delivery.

**304 AUTOMATIC STAY; DIRECTOR DETERMINATION TO PROCEED**

- 304.1 Automatic Stay Procedures. Except as provided by law, no contract may be awarded in any procurement after the contracting officer has received the notice of protest pursuant to Subsection 303.1 (b) and while the protest is pending.

- 304.2 If an award has already been made but the contracting officer receives the notice of protest within eleven (11) business days after the date of award, the contracting officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the District under that contract. Except as provided by law, performance and related activities suspended pursuant to law may not be resumed while the protest is pending.

- 304.3 Director Determination to Proceed with Performance. Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the Director makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the District will not permit waiting for the decision of the Board concerning the protest. A copy of the determination shall be provided within one business day of issuance to both the Board and the protester.

- 304.4 Protester Challenge. If the protester wishes to challenge a determination made by the Director pursuant to Subsection 304.3, the protester may do so by filing a written motion with the Board (with same day service on the District) within five (5) business days of receipt of a copy of the Director's determination. The District shall file a written response with the Board (with same day service on the protester) within two (2) business days of receipt of the protester's motion. The protester may file a reply within one (1) business day of receipt of the District's response.

- 304.5 Board Decision on Protester Challenge. The Board shall issue a decision on the protester's motion within ten (10) business days after the date the written motion is filed by the protester.

**305 AGENCY REPORT**

- 305.1 As expeditiously as possible but no later than twenty (20) days after receipt of the Board acknowledgment specified in Subsection 303.1 (a), the contracting agency shall file an Agency Report with the Board which shall include, where relevant:

- (a) The procurement solicitation;
  - (b) The bid or proposal submitted by the protester;
  - (c) The bid or proposal which is being considered for award, or which has resulted in an award, if any;
  - (d) Bid tabulation sheets or proposal selection reports and evaluation reports, work papers, and scoring sheets;
  - (e) The contracting agency position and defense for each ground of the protest, including the facts, legal principles, and precedents supporting its position; and
  - (f) Any other documents and exhibits that are relevant to the protest.
- 305.2 The contracting agency shall simultaneously provide a copy of the Agency Report to the protester and all interested parties.
- 305.3 Copies of the Agency Report provided under Subsection 305.2 shall include all relevant documents including documents containing protected information. Copies of the Agency Report served on the protester or an intervenor shall be redacted to exclude protected information unless such parties have been admitted under a protective order.
- 305.4 The Board may require parties to supplement the Agency Report by filing other documents and tangible things. Any motion by a party to compel the District or another party to supplement the Agency Report must be filed within five (5) days after receipt of the Agency Report.
- 305.5 All exhibits in the Agency Report shall be considered, without further action by the parties, a part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document reasonably in advance of closing the record. If an objection is made, the Board shall remove the documents from the Agency Report and permit the party offering the document to move its admission as evidence.
- 305.6 Documents in the Agency Report may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.
- 305.7 Original copies of documents may be withdrawn from the Agency Report, with the Board's consent, if an acceptable copy is substituted.



305.8 The contracting agency may request, by motion, an extension of the deadline for filing the Agency Report and shall explain why an extension is needed. Extensions are to be considered exceptional and will be granted only for good cause.

305.9 When a contracting agency fails to submit an Agency Report, the Board may treat the factual allegations contained in the protest as conceded. When a contracting agency fails to challenge or rebut a factual allegation in the protest, the Board may treat the factual allegation as conceded.

### **306 DISPOSITIVE MOTION IN LIEU OF REPORT**

306.1 In lieu of filing the Agency Report, the contracting agency may file a dispositive motion with the Board and serve it on all parties. If the motion is filed and denied by the Board in whole or in part, the Agency Report shall be filed no later than ten (10) days after receipt of the Board's ruling or within a lesser period as the Board may order.

### **307 COMMENTS ON AGENCY REPORT OR MOTION**

307.1 Within seven (7) business days after receipt of the Agency Report, or the dispositive motion prescribed in Subsection 306.1, the protester and interested parties may file a reply or response to either which shall state the party's factual and legal agreement or opposition to the Agency Report or motion.

307.2 All parties shall be served with a copy of the comments and proof of service provided to the Board.

307.3 Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension of time for filing, shall result in closing the record of the case and may result in dismissal of the protest.

307.4 When a protester fails to file comments on an Agency Report, factual allegations in the Agency Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Board as conceded.

### **308 SUMMARY DISPOSITION OF PROTESTS**

308.1 When a protest is, on its face, invalid or untimely filed, or otherwise not for consideration, the Board shall summarily dismiss the protest without requiring submission of an Agency Report.

308.2 Frivolous Protests. The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it deems frivolous. In addition, the Board may require the protester to pay the agency attorney fees, at the rate of one hundred

dollars (\$100) per hour, for time counsel spent representing the agency in defending the frivolous protest or its frivolous part. If the entire protest is dismissed on frivolous grounds, the Board may also assess the protester damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract. The Board shall not determine damages, if liquidated damages are not specified in the contract. In addition, counsel for the protester may be suspended or barred from practicing before the Board.

- 308.3 A motion for assessment of agency attorney fees and/or damages on account of defending against a frivolous protest shall be submitted by the contracting agency during protest proceedings or within twenty (20) days of receipt of a Board decision determining that a protest in whole or in part was frivolous.
- 308.4 The motion shall be accompanied by sufficient documentation supporting the requested costs and/or damages.
- 308.5 The protester may, within fifteen (15) days after its receipt of the contracting agency's motion, file a written response to the motion.

### **309 DISCOVERY**

- 309.1 Discovery in protest cases shall be permitted only with approval by the Board and is available only to the protester, the contracting agency, and an intervenor.
- 309.2 The Board may permit a protester or intervenor to engage in discovery if no Agency Report is filed in order to provide a sufficient factual basis for the fair and just resolution of the protest.
- 309.3 The cost of discovery pursuant to Subsection 309.2 may be borne by the contracting agency as equitably determined by the Board.

### **310 CONFERENCE**

- 310.1 A conference may be held at the discretion of the Board upon its own motion or upon the request of the protester, the contracting agency, or another proper party who filed comments on the Agency Report in accordance with Section 307.
- 310.2 A request for a conference shall be made promptly in order to receive favorable consideration.
- 310.3 The protester, all proper parties who filed comments, and the contracting agency may attend the conference and the Board may request the attendance of other persons as it deems appropriate.

- 310.4 The conference shall be an informal meeting between the Board and the parties to discuss matters relevant to the protest without strict regard to formal rules of evidence or procedure. These matters may include:
- (a) Simplifying or clarifying the issues including the elimination of frivolous allegations or defenses;
  - (b) Stipulations, admissions, or agreements which will avoid unnecessary proof;
  - (c) Clarification of matters already in the record; and
  - (d) Any other matter which might aid in a just and expeditious disposition of the protest.
- 310.5 No direct or cross-examination shall be permitted at the conference.
- 310.6 The conference may be electronically recorded by the Board at its discretion. If the preparation of a transcript is ordered by the Board, any party desiring a copy of the transcript shall be responsible for obtaining one at the party's expense.
- 310.7 The Board may require or permit the submission of briefs, legal memoranda, or proposed findings of fact and conclusions of law after the conference has been completed. A party failing to attend the conference shall not be permitted to file a post-conference submission.

### **311 EVIDENTIARY HEARINGS**

- 311.1 If the Board determines that there is a genuine issue of material fact which cannot be resolved on the written record, the Board may order an evidentiary hearing. Ordinarily, hearings will be conducted at the Board, however, the Board may at its discretion order hearings by other electronic means, including by telephone.
- 311.2 At the hearing, the Board shall receive from the parties probative evidence or relevant testimony under oath or affirmation. Direct and cross-examination of witnesses shall be allowed at the hearing.
- 311.3 The hearing shall be stenographically transcribed or electronically recorded. Stenographic transcriptions shall be arranged in accordance with Subsection 211.5. Any party desiring a copy of the transcript shall be responsible for obtaining one at the party's expense.
- 311.4 At the conclusion of the hearing, the Board may order or permit the submission of proposed findings of fact and conclusions of law.

**312 DECISION**

312.1 All decisions shall be in writing, based solely on the record, issued sixty (60) business days from the protest filing date, and transmitted to each party who has participated in the protest before the Board.

312.2 Judicial Review of Board decisions on Protests.

- (a) A protester may seek judicial review of the Board's decision by filing a petition for review of agency action in the Superior Court of the District of Columbia.
- (b) If the District determines that it should seek judicial review, the Director, with the prior approval of the Office of the Attorney General, may seek judicial review of the Board's decision in the Superior Court of the District of Columbia.

[See *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 14 (D.C. 1993); *Francis v. Recycling Solutions, Inc.*, 695 A.2d 63, 70 (D.C. 1997).]

**313 RECONSIDERATION**

313.1 The protester, the contracting agency, or an interested party who filed comments on the Agency Report may by motion request the Board to reconsider a decision.

313.2 Motions for reconsideration shall be conducted in accordance with Section 117 of these rules, except that the time periods contained in Subsection 117.2 and Subsection 117.4 shall be shortened to fifteen (15) days and seven (7) days respectively.

**314 REMEDIES**

314.1 If the Board determines, in sustaining a protest, that the solicitation, proposed award, or award does not comply with the applicable law, regulations, or terms and conditions of the solicitation, the Board may order the contracting agency to do one or more of the following:

- (a) Terminate the contract for the convenience of the District government;
- (b) Refrain from exercising any options under the contract;
- (c) Recompete the contract;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the law and regulations; or

- (f) Take such other action, except enjoining a contract award, as the Board may direct.

If the Board determines that a contract is void pursuant to D.C. Official Code § 2-359.02(a), the Board shall direct that the contract be canceled and cause a determination to be made pursuant to D.C. Official Code § 2-359.02(c).

314.2 In determining the appropriate remedy, the Board shall consider the circumstances surrounding the procurement, including, but not limited to, the following factors:

- (a) Best interest of the District government;
- (b) Seriousness of the procurement deficiency or violation;
- (c) Existence of prejudice to other bidders or offerors;
- (d) Maintaining the integrity of the procurement system; and
- (e) Good faith of District government officials and other parties.

314.3 In determining whether to terminate a contract, the Board shall consider the following additional factors:

- (a) Extent of contract performance;
- (b) Impact of termination on the contracting agency's activities and mission;
- (c) Costs to the government from termination; and
- (d) Urgent need for the procurement.

314.4 If the Board finds that the District government actions were arbitrary and capricious, the Board may, when requested, award the protester's reasonable bid or proposal preparation costs and costs of pursuing the protest, but not legal fees.

314.5 A motion for bid or proposal preparation costs and costs of pursuing the protest shall be submitted by the protester within twenty (20) days of receipt of the Board's decision.

314.6 The motion shall be accompanied by sufficient documentation supporting the requested costs and an appropriate proposed order for the Board.

314.7 The contracting agency may, within fifteen (15) days after its receipt of the protester's motion, file a written response to the motion.

314.8 At the request of the protester or the District government or on its own initiative, the Board may conduct a hearing on the motion before issuing a ruling.

**Chapter 4, ELECTRONIC FILING, is amended to read as follows:**

**400 ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS**

400.1 All pleadings, motions, memoranda of law, orders, or other documents may be filed electronically through the Board's designated vendor, File & ServeXpress ("Vendor") which can be contacted online at: [www.fileandservexpress.com](http://www.fileandservexpress.com). Documents may be filed as either E Documents or E Images as defined under this Rule. The Board may at its discretion designate alternative and/or additional electronic filing systems.

**401 ASSIGNMENT BY THE VENDOR OF PERSONAL IDENTIFICATION NUMBERS**

401.1 Upon receipt by the Vendor of a properly executed subscriber agreement at their website, the Vendor shall assign a confidential password to the attorney or other designated representative of a party before the Board which must be used to file, serve, receive, review, and retrieve electronically filed pleadings, orders, and other documents. An attorney or other authorized user shall be responsible for any use of his or her password.

**402 MAINTENANCE OF ORIGINAL DOCUMENT**

402.1 Unless otherwise ordered by the Board, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel or the Board. From time to time, it may be necessary to provide the Board with a hard copy of an electronically filed document.

**403 TIME FOR FILING AND EFFECT OF USE OF E FILING**

403.1 Any pleading filed electronically shall be considered as filed with the Board when the transmission is completed ("authorized date and time"). Any document filed with the Board before midnight local time at the Board's offices is filed with the Board on that date; however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business shall be deemed to have been filed on the day and at the time of the next opening of the Board for business. In the event of service via facsimile, the Vendor's system will record the date and time the fax transmission was completed as proof of service. The Vendor is hereby appointed the agent of the Board as to the electronic filing, receipt, service, and/or retrieval of any pleading or document maintained electronically. Upon filing and receipt of a document, the

Vendor shall issue a confirmation that the document has been received. The confirmation shall serve as proof that the document has been filed. A filer will receive email notification of documents subsequently rejected by the Board, and may be required to refile the instruments to meet necessary filing requirements.

#### **404 SYSTEM OR USER FILING ERRORS**

404.1 If the electronic filing is not filed with the Board because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party, (2) a failure to process the electronic filing when received by the Vendor, or (3) other technical problems experienced by the filer, the Board may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

#### **405 FORM OF DOCUMENTS ELECTRONICALLY FILED**

405.1 Format of Electronically Filed Documents. All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings, and in such other and further format as the Board may require from time to time.

405.2 Representations by Using a Typographical Signature. Every pleading, document, and instrument electronically filed shall be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, and Bar number of a signing attorney. Typographical signatures shall be styled “/s/ name” and shall be treated as personal signatures for all purposes under these Rules.

405.3 Electronic Title of Pleadings and Other Documents. The electronic title of each electronically filed pleading or other document ("paper"), shall include:

Party or parties filing the paper;

Nature of the paper;

Party or parties against whom relief, if any, is sought; and

Nature of the relief sought (*e.g.*, “Appellant’s Motion to Compel Discovery and for Sanctions against Appellee”).

#### **406 MULTIPLE CASE FILING**

406.1 Where counsel is filing a pleading in consolidated cases, a single filing in the lead case is deemed to be filed in all cases consolidated with it.

#### **407 ELECTRONIC SERVICE OF PLEADINGS AND OTHER DOCUMENTS**

407.1 Electronic and Facsimile Service. All parties or their representatives may make service upon other parties electronically through the E File Service. Parties who

subscribe to the E File Service consent to receive electronic service of documents via the E Filing Service. Parties, or their designated counsel, shall receive all documents E Filed and E Served upon them via access to the Vendor's system over the Internet or, if a party or party's designee has not subscribed to the Services, via facsimile transmission. For the purposes of this Rule, service of documents via facsimile is hereby authorized in addition to those methods of service permitted in Subsection 108.3.

407.2 Effect of Electronic Service of Filings. The electronic service of a pleading or other document shall be considered as valid and effective service on all parties and shall have the same legal effect as an original paper document. Proof of service required by Section 109 shall not be necessary for electronically filed documents.

407.3 Service on Parties; Time to Respond or Act. E Service shall be deemed complete at the time a document has been received by the Vendor's system as reflected by the authorized date and time appearing on the confirmation provided, however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business shall be deemed to have been filed at the time of next opening of the Board for business. If electronic service on a party does not occur because of (1) inaccessibility to the Vendor's system; (2) an error in the Vendor's transmission of notice to the party being served, (3) the Vendor's failure to process the electronic filing for service, or (4) the party was erroneously excluded from the service list, the party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

In the event of service via facsimile, the Vendor's system will record the date and time the fax transmission was completed as proof of service.

#### **408 ELECTRONIC FILING AND SERVICE OF ORDERS AND OTHER PAPERS**

408.1 The Board may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these Rules.

#### **409 SEALED DOCUMENTS**

409.1 A motion to file documents under seal may be filed and served electronically. Redacted copies of documents filed under seal may be filed and served electronically.

#### **499 DEFINITIONS**

499.1 Definitions



**E Filing.** Electronic transmission of an original document (pleading) to the Board via the Vendor's system. An E File consists of a document, an image, or both.

**E Service.** Electronic transmission of an original document (pleading) to all other designated recipients via the Vendor's system. Upon the completion of any transmission to the Vendor's system, a certified receipt is issued to the sender acknowledging receipt by the Vendor system.

**E Document.** An electronic file of a word processing document that contains almost exclusively text.

**E Image.** An electronic file of a document that has been scanned or converted to a graphical or image format.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, not later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Mark D. Poindexter, General Counsel, Contract Appeals Board, 441 4<sup>th</sup> Street N.W., Suite 350-North, Washington, D.C. 20001. An interested person may also send comments electronically to [mark.poindexter@dc.gov](mailto:mark.poindexter@dc.gov). Copies of this proposed rulemaking are available, at reasonable cost, by writing to the above address, and are also available electronically, at no cost, on the Contract Appeal Board's website at [www.cab.dc.gov](http://www.cab.dc.gov).

## DEPARTMENT OF HEALTH

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Health (Department), pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor's Order 98-140, dated August 20, 1998, hereby gives notice of her intent to amend Chapter 92 (Teaching Licenses for Dentistry and Dental Hygiene) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of this rulemaking is to amend the continuing education requirements for individuals licensed to teach dentistry or dental hygiene in the District of Columbia to include continuing education in public health priorities as determined and amended from time to time by the Director, decrease the required number of hours in ethics for dentistry teaching licensees, increase the total required number of hours for dental hygiene teaching licensees, and allow for fifty percent (50%) of continuing education hours to be completed through online courses for both categories of licensees.

**Chapter 92, TEACHING LICENSES FOR DENTISTRY AND DENTAL HYGIENE, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:**

**Section 9211, CONTINUING EDUCATION REQUIREMENTS, is amended to read as follows:**

- 9211.1 This section shall apply to applicants for the renewal, reactivation, or reinstatement of a teacher's license in dentistry or of a teacher's license in dental hygiene beginning with the licensure period ending December 31, 2019, and for subsequent terms.
- 9211.2 A continuing education credit shall be valid only if it is part of a program or activity approved by the Board in accordance with § 9212.
- 9211.3 For the licensure period ending December 31, 2019, an applicant for renewal of a teacher's license in dentistry shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of credit within the two-year (2) period preceding the date the license expires, which shall include at least:
- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
  - (b) Two (2) hours of infection control in approved continuing education programs;
  - (c) Two (2) hours of ethics in approved continuing education programs; and

- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of Section 510(b)(5) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.10(b)(5)).

9211.4 Beginning with the licensure period ending December 31, 2021, an applicant for renewal of a teacher’s license in dentistry shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of credit within the two-year (2) period preceding the date the license expires, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers (“CPR certification”);
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and
- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

9211.5 For the licensure period ending December 31, 2019, an applicant for renewal of a teacher’s license in dental hygiene shall submit proof pursuant to § 9211.18 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date the license expires, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;
- (b) Two (2) hours of infection control training;

- (c) One (1) hour of ethics in approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of section 510(b)(5) of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.10(b)(5)).

9211.6 Beginning with the licensure period ending December 31, 2021, an applicant for renewal of a teacher’s license in dental hygiene shall submit proof pursuant to § 9211.18 of having completed twenty (20) hours of credit within the two-year (2) period preceding the date the license expires, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers (“CPR certification”);
- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and
- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

9211.7 Each applicant for renewal, reactivation, or reinstatement of a teacher’s license in dentistry who is permitted by the Drug Enforcement Agency and the District of Columbia Pharmaceutical Control Division to prescribe controlled substances in the District shall complete two (2) hours of continuing education in the abuse and misuse of controlled substances, and in opioid prescription practices. This continuing education shall be part of the continuing education hours required under Subsections 9211.3 and 9211.4 of this chapter.

- 9211.8 Beginning with the licensure period ending December 31, 2021, not more than fifty percent (50%) of the Applicant's total continuing education requirements may be met through approved internet continuing education courses in any renewal period, or for reinstatement or reactivation of a license.
- 9211.9 Internet courses and programs shall not be used to satisfy the continuing education CPR certification requirement.
- 9211.10 For the licensure period ending December 31, 2019, to qualify for a teacher's license in dentistry, a person in inactive status pursuant to Section 511 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.11), who submits an application to reactivate a license shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant's license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the applicant was in inactive status beginning with the third year, which shall include at least:
- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
  - (b) Two (2) hours of infection control in approved continuing education programs;
  - (c) Two (2) hours of ethics in approved continuing education programs; and
  - (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).
- 9211.11 Beginning with the licensure period ending December 31, 2021, to qualify for a teacher's license in dentistry, a person in inactive status pursuant to section 511 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.11), who submits an application to reactivate a license shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant's license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the applicant was in inactive status beginning with the third year, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers (“CPR certification”);
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and
- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

9211.12

For the licensure period ending December 31, 2019, to qualify for a teacher’s license in dentistry, an applicant for reinstatement of a license shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant’s license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers (“CPR certification”);
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) Two (2) hours of ethics in approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.13 Beginning with the licensure period ending December 31, 2021, to qualify for a teacher's license in dentistry, an applicant for reinstatement of a license shall submit proof pursuant to § 9211.18 of having completed thirty (30) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant's license and an additional fifteen (15) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include at least:

- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and
- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

9211.14 For the licensure period ending December 31, 2019, to qualify for a teacher's license in dental hygiene, a person in inactive status pursuant to Section 511 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.11), who submits an application to reactivate a license shall submit proof pursuant to § 9211.18 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant's license and an additional eight (8) hours of approved continuing education credit for each additional year that the applicant was in inactive status beginning with the third year, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;

- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.15 Beginning with the licensure period ending December 31, 2021, to qualify for a teacher’s license in dental hygiene, a person in inactive status pursuant to section 511 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.11), who submits an application to reactivate a license shall submit proof pursuant to § 9211.18 of having completed twenty (20) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reactivation of that applicant’s license and an additional eight (8) hours of approved continuing education credit for each additional year that the applicant was in inactive status beginning with the third year, which shall include:

- (a) Current cardiopulmonary resuscitation certification for health care providers (“CPR certification”);
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and
- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.



9211.16 For the licensure period ending December 31, 2019, to qualify for a license, an applicant for reinstatement of a teacher's license in dental hygiene shall submit proof pursuant to § 9211.18 of having completed fifteen (15) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant's license and an additional eight (8) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include:

- (a) Current CPR certification for healthcare providers at the basic level;
- (b) Two (2) hours of infection control training;
- (c) One (1) hour of ethics in approved continuing education programs; and
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5).

9211.17 Beginning with the licensure period ending December 31, 2021, to qualify for a license, an applicant for reinstatement of a teacher's license in dental hygiene shall submit proof pursuant to § 9211.18 of having completed twenty (20) hours of approved continuing education credit obtained within the two (2) year period preceding the date of the application for reinstatement of the applicant's license and an additional eight (8) hours of approved continuing education credit for each additional year that the license was expired beginning with the third year, which shall include:

- (a) Current cardiopulmonary resuscitation certification for health care providers ("CPR certification");
- (b) Two (2) hours of infection control in approved continuing education programs;
- (c) One (1) hour of ethics in approved continuing education programs;
- (d) Two (2) hours of continuing education on cultural competency or specialized clinical training focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression ("LGBTQ") meeting the requirements of D.C. Official Code § 3-1205.10 (b)(5); and

- (e) At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years or less frequently, as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

9211.18 An applicant for a teacher's license in dentistry or for a teacher's license in dental hygiene shall prove completion of required continuing education credits by submitting with the application the following information with respect to each program:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
- (c) The dates on which the applicant attended the program;
- (d) The hours of credit claimed; and
- (e) Verification by the sponsor of completion, by signature or stamp.

9211.19 An applicant for renewal of a teacher's license in dentistry or of a teacher's license in dental hygiene license who fails to submit proof of having completed continuing education requirements by the date the license expires may renew the license up to sixty (60) days after expiration by submitting this proof pursuant to § 9211.18 and by paying the required additional late fee.

9211.20 Upon submitting proof of having completed continuing education requirements and paying the late fee, the applicant shall be deemed to have possessed a valid license during the period between the expiration of the license and the submission of the required documentation and payment of the late fee.

9211.21 If an applicant for renewal of a teacher's license in dentistry or of a teacher's license in dental hygiene fails to submit proof of completion of continuing education requirements or pay the late fee within sixty (60) days after the expiration of applicant's license, the license shall be considered to have lapsed on the date of expiration.

9211.22 The Board may, in its discretion, grant an extension of the sixty (60) day period to renew after expiration if the applicant's failure to submit proof of completion was for good cause. As used in this section, "good cause" includes the following:

- (a) Serious and protracted illness of the applicant; and

- (b) The death or serious and protracted illness of a member of the immediate family.

All persons desiring to comment on the subject of this proposed rulemaking should file comments in writing not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*. Comments should be sent to the Department of Health, Phillip L. Husband, General Counsel, Office of the General Counsel, 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained during the hours of 9 a.m. to 5 p.m., Monday through Friday, excluding holidays, at the address listed above, or by contacting Angli Black, Paralegal Assistant, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.

**DEPARTMENT OF HUMAN SERVICES  
ECONOMIC SECURITY ADMINISTRATION**

**NOTICE OF PROPOSED RULEMAKING**

The Director of the Department of Human Services (DHS), pursuant to the authority set forth in Section 552 of the District of Columbia Public Assistance Act of 1982, effective April 6, 1982 (D.C. Law 4-101; D.C. Official Code § 4-205.52 (2019 Repl.)), Mayor's Reorganization Plan No. 3 of 1986, and the authority set forth in Mayor's Order 2006-50, dated April 13, 2006, hereby gives notice of its intent to amend Chapter 72 (Standards of Assistance and Payment Levels) and Chapter 58 (Temporary Assistance for Needy Families) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The proposed rules will establish new payment levels for recipients of the following benefits: Temporary Assistance for Needy Families (TANF) (D.C. Official Code § 4-205.52); General Assistance for Children (D.C. Official Code § 4-205.05a); Interim Disability Assistance (D.C. Official Code § 4-204.07); and Program on Work, Employment and Responsibility (D.C. Official Code § 4-205.78). The proposed rules will also amend 29 DCMR § 5814.5 to refer to the new payment levels enumerated in Chapter 72.

The purpose of the proposed rule is to modify the District of Columbia's public assistance payment levels for District of Columbia residents who have been participating in the TANF program, General Assistance for Children, IDA, and POWER public benefit programs. The rules increase payment levels by the Consumer Price Index for All Urban Consumers for all items from the preceding calendar year in accordance with D.C. Official Code § 4-205.52(d-1)(2) (2019 Repl.). In addition, the rules modify specific sections of 29 DCMR § 5814.5 to direct the application of the modified payment levels for public benefits, pursuant to Chapter 72.

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

**Chapter 72, STANDARDS OF ASSISTANCE AND PAYMENT LEVELS, of Title 29 DCMR, PUBLIC WELFARE, is amended to read as follows:**

**7200                    STANDARDS OF ASSISTANCE AND PAYMENT LEVELS**

7200.1                For the purposes of payments under Temporary Assistance for Needy Families (TANF) (D.C. Official Code § 4-205.52), Program on Work, Employment and Responsibility (D.C. Official Code § 4-205.78), General Assistance for Children (D.C. Official Code § 4-205.05a) and Interim Disability Assistance (D.C. Official Code § 4-204.07) (public assistance payments), effective October 1, 2019, the District of Columbia's payments levels are adjusted as set forth in § 7200.2.

7200.2                Pursuant to D.C. Official Code § 4-205.52(d), the payment levels set forth in this subsection shall apply to public assistance payments made after October 1, 2019.

Family Size	Standards of Assistance	Payment Level
1	\$ 450	\$414
2	\$ 560	\$515
3	\$ 712	\$658
4	\$ 870	\$804
5	\$ 1,002	\$928
6	\$ 1,178	\$1,091
7	\$ 1,352	\$1,251
8	\$ 1,494	\$1,382
9	\$ 1,642	\$1,522
10	\$ 1,786	\$1,653
11	\$ 1,884	\$1,743
12	\$ 2,024	\$1,875
13	\$ 2,116	\$1,959
14	\$ 2,232	\$2,066
15	\$ 2,316	\$2,146
16	\$ 2,432	\$2,255
17	\$ 2,668	\$2,471
18	\$ 2,730	\$2,529
19	\$ 2,786	\$2,579

7200.3 [REPEALED].

7200.4 Effective October 1, 2017 through March 31, 2018, the payment levels set forth in this subsection shall apply to recipients who have received TANF benefits for more than sixty (60) months:

Family Size	Standards of Assistance	Payment Level
1	\$ 450	\$109
2	\$ 560	\$138
3	\$ 712	\$174
4	\$ 870	\$214
5	\$ 1,002	\$246
6	\$ 1,178	\$290
7	\$ 1,352	\$332
8	\$ 1,494	\$367
9	\$ 1,642	\$404
10	\$ 1,786	\$438
11	\$ 1,884	\$462
12	\$ 2,024	\$497
13	\$ 2,116	\$520
14	\$ 2,232	\$547
15	\$ 2,316	\$568
16	\$ 2,432	\$597

17	\$ 2,668	\$654
18	\$ 2,730	\$669
19	\$ 2,786	\$683

7200.5 Effective April 1, 2018, the payment levels set forth in § 7200.2 shall apply to recipients who have received TANF benefits for more than sixty (60) months.

**Section 5814, INCOME DISREGARDS, of Chapter 58, TEMPORARY ASSISTANCE FOR NEEDY FAMILIES, is amended as follows:**

**Subsection 5814.5 is amended to read as follows:**

5814.5 After application of these disregards in § 5814.4, the remaining income shall be compared to the Standard of Assistance for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. If the remaining income is less than the Standard of Assistance, the income shall be compared to the payment standard for the applicable family unit size as specified in the District of Columbia Public Assistance Act of 1982, as amended. The payment levels set forth in Chapter 72 of Title 29 DCMR shall apply to payments made beginning on October 1, 2019.

All persons who desire to comment on these proposed rules should submit their comments in writing to the Department of Human Services, 64 New York Avenue, N.E., 6th Floor, Washington, D.C. 20002, Attn: Anthea Seymour, Administrator, Economic Security Administration or by email to [Anthea.Seymour@dc.gov](mailto:Anthea.Seymour@dc.gov). All comments must be received by the Department of Human Services not later than thirty (30) days after publication of this notice in the *D.C. Register*. Copies of these rules and related information may be obtained by writing to the above address, or by calling the Department of Human Services at (202) 671-4200.

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA**

**NOTICE OF PROPOSED RULEMAKING**

**RM3-2019-01 – UTILITY CONSUMER BILL OF RIGHTS AND RESPONSIBILITIES;**

**RM36-2019-01 – ELECTRICITY QUALITY OF SERVICE STANDARDS; AND**

**RM37-2019-02 – NATURAL GAS QUALITY OF SERVICE STANDARDS,**

1. The Public Service Commission of the District of Columbia (“Commission”), pursuant to its authority under D.C. Official Code §§ 2-505 (2016 Repl.) and 34-802 (2019 Repl.), hereby gives notice of its intent to adopt the following amendments to Chapter 3 (Consumer Rights and Responsibilities), Chapter 36 (Electricity Quality of Service Standards), and Chapter 37 (Natural Gas Quality of Service Standards) of Title 15 (Public Utilities and Cable Television) of the District of Columbia Municipal Regulations (DCMR), commonly referred to as the “Consumer Bill of Rights” (CBOR). The Commission shall take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*.

2. Chapter 3 sets forth residential consumer rights, responsibilities and rules for the initiation and acquisition of utility services, such as, but not limited to, Billing in the District of Columbia. The Commission is amending Section 304 (Billing) to include Billing Error Notifications. The Billing Error Notification provisions are being moved from Section 3604 of Chapter 36 (Electricity Quality of Service Standards) and Section 3706 of Chapter 37 (Natural Gas Quality of Service Standards) to Section 304 of Chapter 3, to better align the provisions with other utility-related billing information. The proposed amendments are being made primarily as a result of comments received in the Chapter 37 Rulemaking.<sup>1</sup> Also, the Commission is adding a new provision indicating that failure to comply with the provisions of the Section could result in sanctions.

**Title 15 DCMR, PUBLIC UTILITIES AND CABLE TELEVISION, is amended as follows:**

**Chapter 3, CONSUMER RIGHTS AND RESPONSIBILITIES, is amended to read as follows:**

**Section 304, BILLING, is amended as follows:**

**The title of Section 304 is renamed, BILLING AND BILLING ERROR NOTIFICATION.**

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<sup>1</sup> The Retail Energy Association requested that the Commission modify the rules to allow more time for providing notification when a billing error has occurred. See *Formal Case No. 977, In the Matter of the Investigation into the Quality of Service of Washington Gas Light Company, District of Columbia Division, in the District of Columbia*, (“Formal Case No. 977”), Retail Energy Association’s Reply Comments to Proposed Amendments to Chapter 37 of Title 15 of the DCMR, filed September 26, 2017.

304.16 When a billing error has occurred, the Electric Utility, Natural Gas Utility or the Energy Suppliers shall:

- (a) Notify the Commission and the Office of the People's Counsel ("OPC") when a billing error has affected one hundred (100) or more customers or when the number of affected customers is equal to or more than two (2) percent of the Electric Utility, Natural Gas Utility or Energy Supplier's customer base in the District, whichever is fewer. The Electric Utility, Natural Gas Utility or Energy Supplier with a customer base of fewer than one hundred (100) customers shall report errors when two (2) or more customers are affected.
- (b) Submit an initial billing error notification within three (3) business days of discovering or being notified of the error. After submitting the initial notification, the Electric Utility, Natural Gas Utility or Energy Supplier must submit a follow-up written report within fourteen (14) calendar days and a final written report within sixty (60) calendar days.
- (c) Send the initial billing error notification via e-mail to the Commission's Office of Compliance & Enforcement ("OCE") and OPC, and subsequently file the notice required by Subsection 304.16(b) with the Commission and provide a copy to OPC.

304.17 The initial billing error notification shall contain the following information:

- (a) Type(s) of billing error(s) found;
- (b) Date and time the billing error(s) was discovered;
- (c) How the Electric Utility, Natural Gas Utility or Energy Supplier discovered the error(s); and
- (d) Approximate number of customers affected.

304.18 The Electric Utility, Natural Gas Utility or Energy Supplier shall file a follow-up written report with the Commission, with a copy provided to OPC, within fourteen (14) calendar days of the initial report. The follow-up written report, shall contain the following information:

- (a) Type(s) of billing error(s);
- (b) Date and time of the billing error(s);
- (c) Number of customers affected;
- (d) Cause of the error and status of any and all corrective action(s) taken; and



- (e) Timeline for completing any and all other required corrective action(s) which must include the provision of refunds and/or credits, no later than 60 days after the billing error(s) was discovered, as necessary to correct the billing error(s).

304.19 The Electric Utility, Natural Gas Utility or Energy Supplier shall file a final written report with the Commission and provide a copy to OPC. The final written report shall contain the following information:

- (a) Type(s) of billing error(s);
- (b) Date and time of billing error(s);
- (c) Number of customers affected, and the dollar amount involved;
- (d) Duration of the billing error(s);
- (e) Cause of the error, corrective action(s) and preventative measure(s) taken; and
- (f) Lessons learned, if any.

304.20 Upon receipt of the final written report, the Commission shall determine whether any further investigation is necessary.

304.21 No later than sixty (60) days after the date the Electric Utility, Natural Gas Utility or Energy Supplier discovers or is notified of the billing error(s), it shall notify each affected customer of the following:

- (a) The nature of the error;
- (b) The amount by which the customer's previous bill(s) was inaccurate;
- (c) If appropriate, the steps the Electric Utility, Natural Gas Utility or Energy Supplier will take to ensure that the customer receives a full refund if overbilled, or when customers will be required to make payment if underbilled, no later than sixty (60) days; and
- (d) The Electric Utility, Natural Gas Utility or Energy Supplier shall by letter, bill insert, or any other means by which the Electric Utility, Natural Gas Utility or Energy Supplier and the customer have agreed to communicate, describe to customers the nature of the billing error and the corrective action that the company intends to implement. If a refund or outstanding balance appears on a customer's billing statement, the Electric Utility,

Natural Gas Utility or Energy Supplier shall provide a clear description and explanation of the reason(s) for the error.

304.22 Any Electric Utility, Natural Gas Utility or Energy Supplier that violates this section may be subject to Sanctions as determined by the Commission.

**Section 3604, BILLING ERROR NOTIFICATION, of Chapter 36, ELECTRICITY QUALITY OF SERVICE STANDARDS, is repealed in its entirety.**

**Section 3706, BILLING ERROR NOTIFICATION, of Chapter 37, NATURAL GAS QUALITY OF SERVICE STANDARDS, is repealed in its entirety.**

3. Any person interested in commenting on the subject matter of this proposed rulemaking action may submit written comments not later than thirty (30) days after publication of this notice in the *D.C. Register* to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 or electronically on the Commission's website at: [https://edocket.dcpSC.org/public/public\\_comments](https://edocket.dcpSC.org/public/public_comments). Copies of the proposed rules may be obtained by visiting the Commission's website at [www.dcpSC.org](http://www.dcpSC.org) or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPR should call (202) 626-5150, or send an email to: [psc-commissionsecretary@dc.gov](mailto:psc-commissionsecretary@dc.gov).

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11) and 216; D.C. Official Code §§ 34-2202.03(3) and (11) and § 34-2202.16 (2019 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2016 Repl.)), hereby gives notice that at its regularly scheduled meeting on November 7, 2019, the Board adopted Resolution #19-74 to propose the amendment of Chapter 1 (Water Supply) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to amend DC Water's engineering review fees and charges.

The Board requests comments on these proposed regulations. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

This proposed rulemaking, if finalized, will be effective March 2, 2020.

**Chapter 1, WATER SUPPLY, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:**

**Section 112, FEES, Subsection 112.5 is amended to read as follows:**

**112 FEES**

112.5 Fees for engineering reviews both standard and expedited, excessive submission, and as-builts shall be as follows:

- (a) **Small Project Plan Review Fees** shall be as provided in the table below for Small Projects, including:
- (1) Small Residential or Townhouse as defined by 12-B DCMR Residential Code Supplement with water service and meter two inches (2") or less;
  - (2) Small Non-Residential as defined by 12-A DCMR Building Code Supplement with water service and meter inches (2") or less;
  - (3) Small Hybrid means a Small Residential or Non-Residential project with a domestic water service and meter two inches (2") or less and a fire service greater than two inches (2"); or

- (4) Projects requiring only a sewer connection six inches (6”) or less in diameter or only a storm connection less than fifteen inches (15”) in diameter.

<b>Fee Name</b>	<b>Standard Fee</b>	<b>Expedited Review Fee</b>	<b>Standard Review Time* (Business Days)</b>	<b>Expedited Review Time* (Business Days)</b>
Small Project Base Plan - 1 <sup>st</sup> Submission Administrative Fee – All Small Projects	\$140	N/A	N/A	N/A
Small Project Rejected Plan Resubmission Administrative Fee - All Small Projects	\$75	N/A	N/A	N/A
Small Project Water and Sewer Availability Letter - All Small Projects	\$125	\$215	14	7
Small Project Sheet and Shore - All Small Projects	\$1,000	\$1,750	14	7
Small Residential or Townhouse Project:				
1 to 5 metered connections	\$700 each	\$1,200 each	14	7
6 to 20 metered connections	\$700 each	\$1,200 each	21	11
21 to 50 metered connections	\$700 each	\$1,200 each	40	20
greater than 50 metered connections	\$700 each up to 50; and \$350 each above 50	\$1,200 each up to 50 and \$600 each above 50	50	25
Small Non-Residential Project:				
1 metered connection	\$3,300	\$5,800	21	11
2 metered connections	\$6,600	\$11,600	21	11
3 metered connections	\$9,900	\$17,400	21	11
4 or more metered connections	\$13,200+ Determined on a per project basis	\$23,200+ Determined on a per project basis	30	15
Small Hybrid Project:				
1 metered connection	\$5,000	\$8,700	21	11
2 metered connections	\$10,000	\$17,400	21	11

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
3 metered connections	\$15,000	\$26,100	21	11
4 or more metered connections	\$20,000 + Determined on a per project basis	\$34,800 + Determined on a per project basis	30	15
Small Residential Approved Plan Revision (APR) per metered connection	\$250	\$500	14	7
Small Non-Residential or Hybrid APR per metered connection	\$1,000	\$1,750	21	11
Small Sanitary or Combined Sewer Connection Only – 6 inch or less for Small Residential, Non-Residential or Hybrid	\$700	\$1,200	14	7
Small Storm Sewer Connection Only - less than 15 inches – All Small Projects	\$700	\$1,200	14	7
Small Residential, Non-Residential or Hybrid Raze Utility Release Letter - No Abandonment	\$330	\$580	14	7
Small Raze Permit Review and Utility Release Letter - With Abandonments	\$700	\$1,200	14	7
Small Water Meter Size Reduction	\$700	\$1,200	14	7
Small Temporary Water Connections	\$3,300	\$5,800	21	11
Small Project Review and Sign Off - only in DCRA ProjectDox or for DCRA Walk-In Applicants	\$100	N/A	7	N/A

**\*Review Times are estimated; Actual Time may vary.**

- (b) **Large Project Plan Review Fees** (large means having a domestic water service and fire service greater than two inches (2”) in diameter) shall be as provided in the table below as follows:

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
Large Project Plan Submission Administrative Fee	\$140	N/A	N/A	N/A
Large Project Reject Plan Resubmission Administrative Fee	\$75	N/A	N/A	N/A
Large Plan Review Fee:				
1 metered connection	\$10,000	\$17,400	30	15
2 metered connections	\$20,000	\$34,800	30	15
3 metered connections	\$30,000	\$52,200	30	15
4 or more metered connections	\$40,000+ Determined on a per project basis	\$69,600+ Determined on a per project basis	45	23
Large Project Foundation to Grade	\$1,000	\$1,750	21	11
Large Project Approved Plan Revision (APR)	\$1,000	\$1,750	14	7
Large Project Sheeting and Shoring	\$6,500	\$11,300	30	15
Large Project Abandonment Waiver Request	\$500	\$880	14	7
Large Project Water and Sewer Availability Letter (Large)	\$500	\$880	30	15
Large Project Temporary Water Connections	\$3,300	\$5,800	21	11
Large Fire Service Only Greater than 2" - with no interior renovations	\$4,500	\$7,800	21	11
Large Sanitary or Combined Connection Only 8" or larger	\$4,500	\$7,800	21	11
Large Storm Connection Only 15" or larger	\$4,500	\$7,800	21	11
Large Project (no new water/sewer work) and Sign Off Only in DCRA ProjectDox	\$400	\$700	10	5
Large Water Meter Size Reduction Plan (with no	\$3,300	\$5,800	21	11

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
other work)				
Large Project Raze Utility Release Letter - No Abandonments	\$330	\$580	14	7
Large Project Raze Utility Release Letter - With Abandonments	\$700	\$1,200	14	7

**\*Review Times are estimated; Actual Time may vary.**

(c) **Miscellaneous Fees** shall be as provided in the table below as follows:

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
Small Residential or Townhouse Plan Excessive Submission Review (5 <sup>th</sup> review or more)	\$360	\$630	Based on No. of metered connections	Based on No. of metered connections
1 to 5 metered connections			14	7
6 to 20 metered connections			21	11
21 to 50 metered connections			40	20
greater than 50 metered connections			50	25
Small Non-Residential and Hybrid Plan Excessive Submission Review (5 <sup>th</sup> review or more)	\$600	\$1,050	Based on No. of metered connections	Based on No. of metered connections
1-3 metered connections			21	11
4 or more metered connections			30	15
Large Plan Excessive Submission Review (5 <sup>th</sup> review or more)	\$2,400	\$4,200		
Request for Information (RFI)	\$30	\$60	20	10
Request for As-Built Drawings	\$90	\$150	20	10
Water Meter Sizing	\$90	N/A	N/A	N/A

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
Computation – DC Water Staff Assistance for preparing water meter sizing computations				
Delayed Abandonment or Waiver from Standards Letter	\$500	\$880	14	7
Processing of Standard Easement and Covenant (Initial Document)	\$1,000	\$1,750	14	7
Processing of Non-Standard Easement and Covenant (Initial Document)	\$5,000	\$8,750	21	11

**\*Review Times are estimated; Actual Time may vary.**

(d) **DC Water “Velocity” Sign-Off Program** (One Day Final Plan Review and Approval) - a DCRA permit applicant may request to participate in the DC Water “Velocity” program in accordance with the following requirements:

- (1) Participation in DC Water’s “Velocity” Sign-Off Program only applies to plans resubmitted after DC Water’s initial standard or expedited plan review.
- (2) Applicant shall pay the DC Water “Velocity” Sign-Off Program fee of twenty thousand dollars (\$20,000) in an addition to the applicable plan review fee and any other applicable fees.
- (3) DC Water shall determine if the plans are eligible (complete and suitable) to participate in the program and that staff are available to perform the review requested.
- (4) Upon acceptance into the DC Water “Velocity” Sign-Off Program, DC Water shall schedule a meeting with the Applicant to review and approve the plans, not less than one (1) week after the request to participate in the program.
- (5) DC Water shall schedule one four-hour plan review and approval meeting, during which the Applicant shall present the revised plans and responses.
- (6) If approved, the Applicant shall pay all required fees (e.g., SAF, inspection review, deposits, etc.) and DC Water shall issue the



Water and Sewer Approval Certificate and approve the plans in ProjectDox.

- (7) If DC Water issues additional comments or requirements, the applicant shall resubmit the revised plans within two (2) business days, and if all comments are acceptable, the plans shall be approved within one business day.

(e) **Existing/Proposed As-Built Fee** shall be as provided in the table below as follows:

<b>Fee Name</b>	<b>Fee</b>
Small Residential or Townhouse	\$250 (each bldg)
Small Non-Residential	\$500 (each bldg)
Small Hybrid	\$750 (each bldg)
Large Project	\$750 (Each Connection)
Installation of New Water or Sewer Main (20 to 100 feet)	\$2,500
Each additional foot of water line	\$10/foot
Each additional foot of sewer main/line	\$5/foot
Installation of Water Line - larger than 24" in diameter	Determined on a per project basis
Installation of Sewer - larger than 60" in diameter	Determined on a per project basis

Comments on these proposed rules should be submitted in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 1385 Canal Street, S.E., Washington, D.C. 20003, by email to [Lmanley@dcwater.com](mailto:Lmanley@dcwater.com), or by FAX at (202) 787-2795. Copies of these proposed rules may be obtained from the DC Water at the same address or by contacting Ms. Manley at (202) 787-2332.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of an amendment, on an emergency basis, to Section 995 (Medicaid Physician and Specialty Services Rate Methodology) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These emergency and proposed rules provide DHCF the authority to make recurring periodic supplemental payments for one (1) fiscal year to Medicaid-enrolled physician groups, with at least five hundred (500) physicians that are members of the group, that contract with a public general hospital located in an economically underserved area of the District to deliver inpatient, emergency department, and intensive care physician services to Medicaid beneficiaries. These supplemental payments will mitigate the financial losses of eligible physician group practices that offer these critically important services to Medicaid beneficiaries. DHCF projects an increase in aggregate expenditures of approximately four and a half (\$4.5) million dollars in Fiscal Year 2020.

DHCF is also amending the District's State Plan for Medical Assistance. These proposed rules correspond to the State Plan Amendment (SPA), which requires approval by the Centers for Medicare and Medicaid Services (CMS). These rules shall become effective for services rendered on or after October 1, 2019 through September 30, 2020, if the corresponding State Plan Amendment (SPA) has been approved by CMS with an effective date of October 1, 2019, or on the effective date established by the CMS in its approval of the corresponding SPA, whichever is later.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid beneficiaries in need of inpatient, emergency, and intensive care physician services that are delivered by physicians. This emergency rulemaking will ensure that physicians that deliver these services are able to continue delivering critically important healthcare services to vulnerable District Medicaid beneficiaries in the District without interruption.

The emergency rulemaking was adopted on November 13, 2019, and shall become effective upon publication in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty (120) days from the date of adoption until March 12, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt this emergency and proposed rule not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Section 995, MEDICAID PHYSICIAN AND SPECIALTY SERVICES RATE METHODOLOGY, is amended to read as follows:**

**Subsection 995.8 is amended to read as follows:**

995.8 For services rendered on or after October 1, 2019 through September 30, 2020, supplemental payments in the amount described in § 995.10 shall be equally distributed among physician groups that meet the criteria described in Subsection 995.9.

**Subsection 995.10 is amended to read as follows:**

995.10 Supplemental payments made in accordance with Subsection 995.8 shall not exceed four and a half (\$4.5) million for Fiscal Year (FY) 2020.

**Subsection 995.11 is amended to read as follows:**

995.11 Payments shall be made in three (3) installments, aligning with the end of the first (1<sup>st</sup>), second (2<sup>nd</sup>), and third (3<sup>rd</sup>) quarters of the federal FY. All payments shall be made by June 30, 2020.

Comments on these rules should be submitted in writing to Melisa Byrd, Senior Deputy and Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4<sup>th</sup> Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

## DEPARTMENT OF HEALTH CARE FINANCE

**NOTICE OF EMERGENCY AND SECOND PROPOSED RULEMAKING**

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption, on an emergency basis, of amendments to Chapter 95 (Medicaid Eligibility) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR),

This rulemaking amends Section 9511 (Supplemental Security Income-Based Methodology for Certain Non-MAGI Eligibility Groups) and adds a new Section 9513 (Non-MAGI Eligibility Group: Optional Aged, Blind, and Disabled).

This emergency and second proposed rule sets forth the non-Modified Adjusted Gross Income (non-MAGI) financial and non-financial eligibility factors, pursuant to Sections 1902(a)(10)(A)(ii)(X), 1902(m)(1), and 1905(a)(iv) of the Social Security Act, and 42 CFR §§ 435.201(a)(1) - (3) for the optional Aged, Blind, and Disabled (ABD) eligibility group. This rulemaking is needed to ensure appropriate codification of eligibility requirements for the ABD non-MAGI eligibility group. In order to be eligible for Medicaid under the ABD eligibility group, an individual must meet the following requirements: (1) be aged sixty-five (65) or older or be determined blind or disabled pursuant to the criteria set forth under 42 USC § 1382c; (2) have income at or below one hundred percent (100%) of the federal poverty level; (3) Have resources at or below the Supplemental Security Income (SSI) resource levels of four thousand dollars (\$4,000) for an individual, or six thousand dollars (\$6,000) for a couple; and (4) meet other non-financial requirements, including District residency, a social security number, citizenship and, immigration requirements.

An initial proposed rulemaking that addressed the eligibility requirements for the optional aged and disabled eligibility group in Section 9513 was published on September 30, 2016 at 63 DCR 011910. No comments were received. Substantive and technical changes are made to Section 9513 in order to include the eligibility requirements on the blind eligibility group and to update renewal procedures. An amendment is also made to Section 9511 governing Supplemental Security Income-Based Methodology for Certain Non-MAGI Eligibility Groups in order to capture the income methodology that is applicable to the eligible blind applicants and beneficiaries. Specific changes are as follows: (1) the title of the section includes the word “blind” in order for the rule to address the eligibility criteria for the optional blind eligibility group; (2) the relevant federal citations for the optional blind eligibility group are added; (3) the requirement for an applicant or beneficiary to provide verification of blindness or disability from the Social Security Administration (SSA) would only apply if the Department cannot verify an applicant’s blindness or disability determination through electronic data sources; (4) the timeframe required for applicants to submit medical documentation to the Department is stricken

in order to minimize the risk of late submissions to the Department that would conflict with application timeliness standards set forth in Subsection 9501.9(a); (5) the required renewal documents that a beneficiary must complete specifically include a pre-populated renewal form, since the Department now implements the issuance of pre-populated forms to ABD applicants and beneficiaries; (6) the provision that specifies that the Department shall not submit a pre-populated renewal form, as described in Subsections 9501.22 through 9501.26, is stricken; (7) timeframes for when the Department sends renewal forms and when the beneficiary should submit the renewals forms to the Department are stricken in order to reduce duplication of provisions set forth under Subsections 9501.22 and 9501.25; (8) for beneficiaries that are terminated due to failure to submit a pre-populated renewal form, a thirty (30) day timeframe is added for current beneficiaries to submit the pre-populated form and necessary information after the termination date in order for the Department to determine eligibility without requiring a new application; (9) other existing language was clarified in order to simplify interpretation; (10) certain cross-referenced citations are revised to include section numbers rather than pin-citing specific subsections in order to avoid incorrect cross-referencing in the event the text within the cross-referenced subsections are amended in the future; and (11) the blind eligibility group is added to the rules governing Supplemental Security Income-Based Methodology for Certain Non-MAGI Eligibility Groups in order to conform the income methodology that is applicable to the eligible blind applicants and beneficiaries to those that are consistent with the requirements that are applicable to the aged and disabled eligibility group.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of Medicaid-eligible aged, blind, and disabled persons in the District. This emergency rulemaking will ensure that Medicaid eligibility and Medicaid-reimbursable coverage may be established timely and maintained for this vulnerable population in the District.

The emergency rulemaking was adopted on November 12, 2019 and shall become effective on that date. The emergency rules will remain in effect for one hundred and twenty (120) days or until March 11, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*. The Director also gives notice of the intent to take final rulemaking action to adopt these rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 95, MEDICAID ELIGIBILITY, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:**

**Subsections 9511.1 and 9511.2 of Section 9511, SUPPLEMENTAL SECURITY INCOME-BASED METHODOLOGY FOR CERTAIN NON-MAGI ELIGIBILITY GROUPS, are amended as follows:**

9511.1           The Department shall determine financial eligibility for Medicaid using a Supplemental Security Income (SSI)-based methodology pursuant to 42 CFR Section 435.601 for the following non-modified adjusted gross income (non-MAGI) eligibility groups:

- (a) Individuals who are aged sixty-five (65) years or older, blind, or disabled (ABD);
- (b) Individuals enrolled in the Qualified Medicare Beneficiary (QMB) program;
- (c) Individuals enrolled in the QMB Plus program;
- (d) Individuals with long-term medical needs;
- (e) Individuals receiving Medicaid through the Katie Beckett eligibility group; and
- (f) Individuals, described in Subsection 9500.15, who are medically needy.

9511.2 In order to receive Medicaid benefits, applicants and beneficiaries of the following non-MAGI eligibility groups set forth under Subsection 9511.1 shall be required to have the following income levels:

- (a) For ABD -income at or below one hundred percent (100%) of the federal poverty level (FPL);
- (b) For the QMB program - income at or below one hundred percent (100%) of the FPL. For applicants and beneficiaries that have income up to three hundred percent (300%) of the FPL, the Department shall disregard income in excess of one hundred percent (100%) of the FPL;
- (c) For the QMB Plus program -income at or below one hundred percent (100%) of the FPL, and shall be entitled to full Medicaid coverage and benefits under the QMB program;
- (d) For Long-term care - income at or below three hundred percent (300%) of the SSI Federal Benefit Rate (FBR);
- (e) For the Katie Beckett eligibility group - income at or below three hundred percent (300%) of the SSI FBR; and
- (f) For the Medically Needy – a medically needy (MN) spend-down process, in which the Department shall deduct the amount of medical expenses incurred by the individual or family or financially responsible relatives that are not subject to payment by a third party from countable income. The District shall disregard countable earned and unearned income in an amount equal to the difference between fifty percent (50%) of the FPL, and the District's medically needy income limit (MNIL) for a family of the same size, except the disregard for a family of one (1) will be equal to ninety-five percent (95%) of the disregard for a family of two (2).

A new Section 9513 is added to read as follows:

**9513 NON-MAGI ELIGIBILITY GROUP: OPTIONAL AGED, BLIND, AND DISABLED**

9513.1 This section shall govern eligibility determinations pursuant to Sections 1902(a)(10)(A)(ii)(X), 1902(m)(1), 1902(a)(10)(A)(ii)(I), and 1905(a)(iv) of the Social Security Act, 42 CFR §§ 435.201(a)(1) - (3) for the optional Aged, Blind, and Disabled (ABD) eligibility group.

9513.2 The Department of Health Care Finance (“Department”) may provide Medicaid reimbursement under the optional Aged, Blind, and Disabled (ABD) eligibility group to individuals who:

- (a) Are aged sixty-five (65) years or older or who are determined blind or disabled in accordance with the criteria set forth under 42 USC § 1382c, by either the U.S. Social Security Administration (SSA) or by the Department of Human Services, Economic Security Administration (ESA) Medical Review Team (MRT);
- (b) Have a household income at or below one hundred percent (100%) of Federal Poverty Level;
- (c) Meet the following non-financial eligibility factors in accordance with Section 9506:
  - (1) Are District residents pursuant to 42 CFR Section 435.403;
  - (2) Have Social Security Number s (SSNs) or are exempt pursuant to 42 CFR Section 435.910 and Section 9504; and
  - (3) Are U.S. citizens or nationals, or in satisfactory immigration status; and
- (d) Have resources at or below the Supplemental Security Income (SSI) resource levels of four thousand dollars (\$4,000) for individuals or six thousand dollars (\$6,000) for couples.

9513.3 The Department shall determine whether an applicant meets the eligibility factors for Medicaid reimbursement under the optional ABD eligibility group based upon the submission of:

- (a) A complete application for Medicaid in accordance with Section 9501 of this chapter. The date of application shall be the date that a complete application is received by the Department; and

- (b) A document containing verification from the Social Security Administration (SSA) if the Department cannot verify an applicant's blindness or disability through electronic data sources, or a completed medical review form in accordance with Subsection 9513.5, if applicable.
- 9513.4 If an applicant is applying for Medicaid based on age, the Department shall accept self-attestation of aged sixty-five (65) or older unless the attestation is not reasonably compatible with other available information.
- 9513.5 If an applicant is applying for Medicaid based on blindness or a disability and does not have a blindness or disability determination issued by the SSA, the Department shall immediately provide the applicant (by mail, in person, or other commonly available electronic means) a medical review form that must be completed by a physician to document blindness or disability and be submitted to the Department by the applicant or beneficiary to determine eligibility.
- 9513.6 All application and renewal materials, including the medical review form, may be submitted to the Department through the following means:
- (a) Mail;
  - (b) In person; or
  - (c) Other commonly available electronic means.
- 9513.7 Where the Department determines that an applicant is not at least aged sixty-five (65) or is not blind or disabled based on a review of the submitted medical review form and supporting medical documentation, the applicant shall be ineligible for Medicaid under the optional ABD eligibility group and the Department shall submit a notice to the applicant in accordance with Section 9508 of this chapter.
- 9513.8 Application timeliness standards for the Department to determine eligibility set forth under Section 9501 of this chapter shall apply.
- 9513.9 A beneficiary shall immediately notify the Department of any change in circumstances that directly affects the beneficiary's eligibility to receive Medicaid under the optional ABD eligibility group.
- 9513.10 For continued Medicaid coverage under the optional ABD eligibility group, each beneficiary shall complete and submit (by mail, in person, or through commonly available electronic means) the following renewal documents every twelve (12) months:
- (a) Completed and signed pre-populated renewal forms, as described under Section 9501;



- (b) If the individual was determined blind or disabled initially by the MRT or no longer has a disability determination from SSA, a new medical review form that is completed by the beneficiary's physician or verification of disability; and
- (c) Documents that may be required in order to verify financial and non-financial eligibility factors set forth under Subsection 9513.2.

9513.11 If an individual's benefits have been terminated for failure to submit the pre-populated renewal form and necessary information, then the Department shall determine eligibility without requiring a new application if the individual subsequently submits the pre-populated renewal form and necessary information within thirty (30) days after the date of termination.

Comments on the proposed rule shall be submitted, in writing, to Melisa Byrd, Senior Deputy Director/State Medicaid Director, Department of Health Care Finance, 441 4th Street, N.W., Suite 900S, Washington, D.C. 20001, via telephone on (202) 442-8742, via email at [DHCFPubliccomments@dc.gov](mailto:DHCFPubliccomments@dc.gov), or online at [www.dcregs.dc.gov](http://www.dcregs.dc.gov), within thirty (30) days after the date of publication of this notice in the *D.C. Register*. Copies of the proposed rule may be obtained from the above address.

**DISTRICT OF COLUMBIA STATE ATHLETIC ASSOCIATION**

**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The District of Columbia State Athletic Association (DCSAA), pursuant to the authority set forth in Section 113 of the District of Columbia State Athletics Consolidation Act of 2016, effective April 7, 2017 (D.C. Law 21-263; D.C. Official Code §§ 38-2661.31) (“Athletics Act”); and Mayor’s Order 2019-007, dated February 11, 2019, and with the approval of the Deputy Mayor for Education, hereby gives notice of the adoption, on an emergency basis, of a new Subtitle F (District Of Columbia State Athletic Association) of Title 5 (Education), of the District of Columbia Municipal Regulations (DCMR), and to repeal Chapter 27 (Interscholastic Athletics), of Title 5 (Education), Subtitle A (Office of the State Superintendent of Education) of the DCMR.

The purpose of this emergency and proposed rulemaking is to align the District’s interscholastic athletics regulations with the governance structure and requirements established in the Athletics Act. This emergency rulemaking is necessary to ensure the health, safety, and welfare of District students before the new athletic seasons begin.

This emergency rule was adopted on November 6, 2019 and became effective on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption, February 6, 2020, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The DCSAA also gives notice of its intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 27, INTERSCHOLASTIC ATHLETICS, of Subtitle 5-A DCMR, OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION, is repealed in its entirety.**

**A new Subtitle 5-F DCMR, DISTRICT OF COLUMBIA STATE ATHLETIC ASSOCIATION, is established as follows:**

**A new Chapter 1, INTERSCHOLASTIC ATHLETICS, of Subtitle 5-F DCMR, is established to read as follows:**

**CHAPTER 1 INTERSCHOLASTIC ATHLETICS**

- 100 GENERAL PROVISIONS**
- 101 STATE ATHLETIC ASSOCIATION: DUTIES**
- 102 MEMBER SCHOOLS**
- 103 MEMBER SCHOOL: CERTIFICATION OF ELIGIBILITY**
- 104 STUDENT ELIGIBILITY TO PARTICIPATE**
- 105 STUDENT ELIGIBILITY TO PARTICIPATE: INTERNATIONAL STUDENT**
- 106 STUDENT ELIGIBILITY TO PARTICIPATE: DESIRED SPORT AT OTHER SCHOOL**

- 107 STUDENT ELIGIBILITY TO PARTICIPATE: TRANSFERS**
- 108 STUDENT INELIGIBILITY TO PARTICIPATE**
- 109 WAIVER OF STUDENT ELIGIBILITY REQUIREMENTS**
- 110 COMPLAINTS OR CHALLENGES PROCEDURES**
- 111 STATE ATHLETIC COMMISSION: ATHLETICS APPEALS PANEL**
- 112 ALL-STAR CONTESTS**
- 113 MEMBER SCHOOL AND LEA REGULATIONS AND POLICIES**
- 199 DEFINITIONS**

**100 GENERAL PROVISIONS**

- 100.1 The purpose of this chapter is to establish standards, procedures, and requirements for the following:
  - (a) The operation and governance of the District of Columbia State Athletics Commission (DCSAC);
  - (b) The operation of the District of Columbia State Athletic Association (DCSAA);
  - (c) The operation of the DCSAA Athletic Appeals Panel; and
  - (d) Student eligibility and participation in interscholastic athletic programs and competitions.

**101 STATE ATHLETIC ASSOCIATION: DUTIES**

- 101.1 The DCSAA shall interpret, enforce, and implement the provisions set forth in the Act, this chapter, and the DCSAA Handbook.
- 101.2 The DCSAA shall update and publish the DCSAA Handbook annually, including an update of all approved sports and/or activities.
- 101.3 The DCSAA shall establish policies addressing probationary actions based on determinations of ineligibility in accordance with this chapter. The member school shall provide copies of their athletic policies and guidelines to DCSAA no later than August 1 of each school year.
- 101.4 The DCSAA may challenge the members school’s eligibility determination in accordance with § 111.
- 101.5 The DCSAA may request any documentation maintained by a member school and/or Local Education Agency (LEA) to verify a member school’s compliance with the Act, this chapter, and the DCSAA Handbook.

**102 MEMBER SCHOOLS**

102.1 Each District of Columbia Public School with an interscholastic athletics program serving grades nine (9) to twelve (12) shall be a member of the DCSAA.

102.2 Any secondary school located within the boundaries of the District of Columbia containing grades 9 through 12, or any grouping of some or all of such grade levels including nonpublic, private, public, and public charter schools, may voluntarily become a member school of the DCSAA.

102.3 Each member school shall:

- (a) Be subject to the DCSAA membership standards as set forth in this chapter and in the DCSAA Handbook;
- (b) Ensure that students with disabilities consistently have appropriate opportunities to participate in extracurricular athletic activities;
- (c) Provide, to the DCSAA, a copy of their fall, winter, and spring sports schedules for interscholastic competition. Schedules are due by the date designated, pursuant to the DCSAA Handbook, at the beginning of each season;
- (d) Ensure that all sports and activities offered by the school are covered by an insurance policy;
- (e) Ensure that students provide written authorization to participate for each team that he or she wishes to participate on, and that the authorization contains the signature of a parent, legal guardian, or adult student;
- (f) Prior to the first official contest of each sport, establish and maintain a record of a student's eligibility for each school year of a student's participation on a junior varsity or varsity team for the duration of the student's enrollment in the school, unless otherwise provided for in federal or local law; and
- (g) By July 1 of each year preceding the next school year, submit a membership application and declaration form, in the manner provided by DCSAA, that includes:
  - (1) Affirmation of membership;
  - (2) Agreement to comply with the Act, this chapter, and the Handbook; and

- (3) Declaration of the sports in which they will compete for any District of Columbia State Championships.
  - (A) A school that previously withdrew from DCSAA membership in a sport and wishes to declare as a member school for that sport for the next season must comply with member school re-entry requirements as established in the DCSAA Handbook.

- 102.4 Each member school shall ensure all coaches, officials, and other personnel, including covered volunteers engaged with students participating in interscholastic athletic programs at a member school biannually obtain any required background check and, if appropriate for their position and role, demonstrate expertise with regard to a respective sport, applicable rules, safety, and first aid standards. Officials shall submit background clearances directly to DCSAA and coaches shall submit background clearances to their member school.
- 102.5 All high school coaches coaching interscholastic athletics in a DCSAA approved sport at a DCSAA member school shall meet the coaching certification requirements set forth in the DCSAA handbook, and officiants at DCSAA approved competitions shall meet the certification requirements set forth in the DCSAA handbook. Certifications are good for two (2) years from the date of issuance and shall be submitted to the member school.
- 102.6 A member school shall not exclude a student from participation in interscholastic athletics, deny the benefits of, treat differently from other students, or otherwise unlawfully discriminate against based on, 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, status as a victim of an intra-family offense, or place of residence or business.
- 102.7 A member school shall limit a high school varsity team to eligible students enrolled in that member school in grades nine (9), ten (10), eleven (11), and twelve (12), except as provided in § 106.
- 102.8 A member school shall limit a high school junior varsity team to eligible students enrolled in that high school in grades nine (9), ten (10), and eleven (11), except as provided in § 106.
- 102.9 Notwithstanding § 102.6, a member school may operate a separate sports team for members of each sex, provided that the selection for such team is based upon competitive skill or the activity involved is a contact sport, as described in the DCSAA Handbook.

- 102.10 Notwithstanding § 102.6, a member school may operate a sports team for members of a single sex, so long as the member school operates a sports team for an underrepresented sex when there is sufficient interest to maintain a team. In the event there is insufficient interest, the member shall allow members of the underrepresented sex to try out for existing teams and qualify based on appropriate skill level, safety, and other standards for participation on such team.
- 102.11 LEAs or member schools that receive federal funding and maintain athletic programs in the District shall designate at least one (1) employee for purposes of athletics to coordinate with the LEAs' or member schools Title IX (20 USC §§ 1681 – 1688) coordinator, to ensure that the requirements of Title IX are met regarding athletics.
- 102.12 Representatives of member schools, including school administrators, coaches, players, school approved volunteers, and boosters, shall not engage in any activity seeking to influence a student to transfer from one (1) member school to another for the purpose of participating in interscholastic athletics.
- 102.13 It shall not constitute a violation of § 102.6 to exclude a student if the student lacks medical clearance to participate under § 104.7 if the coaches and/or trainers reasonably believe that the student's participation in the sport would be unreasonably dangerous to the student; if the exclusion is based on skill or fitness relevant to the activity rather than a disability; or if the student suffers an injury or illness precluding participation following the issuance of the medical approval specified under § 104.7. However, schools shall not preclude participation based on fear, such as when a student has asthma, allergies, diabetes, or epilepsy, if manifestation of such conditions can ordinarily be addressed successfully on the field.

### **103 MEMBER SCHOOL: CERTIFICATION OF ELIGIBILITY**

- 103.1 The LEA or member school shall make the initial determination of a student's eligibility to participate in interscholastic athletics and certify eligibility status for all enrolled and participating students as set forth in this section.
- 103.2 Before the first official contest for each team sport:
- (a) The LEA or member school shall determine the initial eligibility of the students participating in interscholastic athletics in accordance with this chapter; and submit a master eligibility roster by sport to the LEA and/or school athletic director, in a manner prescribed by its LEA and/or athletic director, so long as it does not conflict with the process established in these rules for submitting eligibility rosters to the DCSAA; and
  - (b) Each LEA and/or school athletic director shall submit each certification of eligibility roster by sport and by season to the DCSAA fourteen (14) days

after the start of the official season for the sport but prior to the first official date of competition, in a form and manner established by this chapter and as interpreted in the DCSAA Handbook.

- 103.3 After the first official contest for each team sport:
- (a) The LEA and/or member school may submit a supplemental eligibility list to the LEA and/or school athletic director, in a manner prescribed by its LEA and/or athletic director, so long as it does not conflict with the process established in these rules for submitting supplemental eligibility rosters to the DCSAA;
  - (b) The LEA and/or member school shall submit each supplemental eligibility list to the DCSAA no later than twenty-one (21) days after the first official contest; and
  - (c) Students on a supplemental eligibility roster may not participate in an official contest without prior written approval of the member school's principal and athletic director.
- 103.4 A certification of eligibility roster shall contain the following information:
- (a) Full name of Eligible Athlete (Last, First, MI);
  - (b) Address of Residence (Street, City, State);
  - (c) Age and Date of Birth;
  - (d) Date of First Entry Into Ninth (9<sup>th</sup>) Grade (Month and Year);
  - (e) Identify if the student is a transfer student and the name of the school from which the student transferred and the date of the transfer.
- 103.5 The information provided on an eligibility roster shall be considered "directory information" in accordance with 34 CFR § 99.31(a)(11). The member school shall provide this information to the DCSAA unless the parent(s) or the adult student has opted out of allowing directory information disclosure and refuses to sign a consent authorizing disclosure for this specific purpose.
- 103.6 If a member school is not authorized to disclose the above information on the eligibility roster, the applicable student shall not be certified as eligible to participate in a DCSAA approved sport or activity.
- 103.7 The DCSAA shall review the certified eligibility rosters to ensure compliance with the Act, this chapter, the DCSAA Handbook and membership standards.

- 103.8 The DCSAA may request that the member school provide supporting documentation to verify the certification including, the name of the parent or legal guardian of the student-athlete and contact information for the parent or legal guardian. The DCSAA may request additional information for circumstances including, the following: (1) if it determines that the information provided in the certification of eligibility roster is incomplete or (2) if it determines that the information provided is inconsistent with information that the DCSAA has on file, and will provide the LEA and/or member school with a letter detailing information being requested and how the information relates to eligibility verification.
- 103.9 If the LEA or member school fails to provide the aforementioned documentation, the student shall not be certified as eligible to participate in DCSAA approved sports or activities.
- 103.10 The DCSAA may challenge a student's eligibility pursuant to §111.

#### **104 STUDENT ELIGIBILITY TO PARTICIPATE**

- 104.1 Requirements for students to be eligible to participate in interscholastic athletics at a member school shall be applied uniformly to all member schools and amongst all students participating or seeking to participate in interscholastic athletics at a member school.
- 104.2 Any information in regard to any aspect of student eligibility that is provided by the student, the parent(s), legal guardian, or the member school shall be accurate and complete.
- 104.3 In order to establish eligibility to participate in interscholastic athletics at a member school, a student shall:
- (a) Meet the requirements set forth in this subsection regarding:
    - (1) Age, semester and grade level;
    - (2) Residency;
    - (3) Academics;
    - (4) Health and fitness; and
    - (5) Attendance; and
  - (b) Comply with any other eligibility requirements set forth in this chapter.



104.4 In order to be eligible to participate in a DCSAA approved sport and/or activity, a student shall meet the following age, semester and grade level requirements:

- (a) A student who turns nineteen (19) years old on or before August 1 shall not be eligible to participate in interscholastic athletics in the upcoming school year;
- (b) A student shall be eligible to participate in regular season, playoff, or championship interscholastic athletic contests for no more than eight (8) semesters following initial enrollment in the ninth grade. Eligibility beyond eight (8) semesters requires a waiver approved by the DCSAA. Completion of a summer school program shall not be counted as a semester of attendance; and
- (c) The student shall not have graduated from high school, provided that an eligible student whose graduation exercises are held before the end of the school year may continue to participate in interscholastic athletics through the conclusion of the athletic season that began before graduation, or until the end of that school year, whichever comes later; and
- (d) A student who is repeating the twelfth 12<sup>th</sup> grade, or who seeks eligibility for a fifth (5<sup>th</sup>) year, and who requires two (2) or fewer courses to graduate, and has not attempted course or credit recovery, is prohibited from participating in interscholastic athletics or activities and must request a waiver in order to participate.

104.5 In order to be eligible to participate in interscholastic athletics at a member school, a student shall meet the following residency requirements:

- (a) If the student is attending a District of Columbia public school or District of Columbia public charter school, or other school or educational program with funding provided by the District of Columbia, free of charge, the student shall establish *bona fide* residency in the District of Columbia pursuant to the requirements set forth in Chapter 50 of Subtitle 5-A DCMR (5-A DCMR §§ 5000 *et seq.*) unless the student is a valid non-resident current on tuition payments owed; or
- (b) If the student is a non-resident, the non-resident student is either:
  - (1) Validly enrolled in a District of Columbia public school, District of Columbia public charter school, or other school or educational program with funding provided by the District of Columbia consistent with the requirements set forth in Chapter 50 (Student Residency) of Subtitle 5-A in the DCMR (5-A DCMR §§ 5000 *et seq.*) and has paid or is current in payment of his or her nonresident tuition fee; or

- (2) Enrolled in a private, independent or parochial member school.
- (c) If the student is a resident of the District of Columbia and is home schooled, under the conditions set forth at § 106.4. Residency in the District of Columbia must be established through the same criteria as employed by the Office of the State Superintendent of Education (OSSE), currently set forth at 5-A DCMR §§ 5000 *et seq.*, and the member school is in charge of verifying the District residency of a home-schooled student who seeks to participate on its team.
- 104.6 Each member school and/or LEA shall establish standards which assure that students involved in interscholastic athletics are making satisfactory progress towards graduation. In order to be eligible for participation in interscholastic athletic contests and activities a student must pursue a regular course of study, or its equivalent as approved by the member school and/or LEA, and shall maintain a 2.0 grade point average (GPA), or its equivalent as officially calculated by the member school and/or LEA grading scale, per marking period. For those member schools which do not calculate a GPA, such member school shall submit a certification to the DCSAA, in a manner established by the DCSAA, stating that the school does not calculate GPAs and that all students participating in a DCSAA-approved sport have a minimum equivalence of a 2.0 GPA and are in good academic standing as consistent with this chapter.
- 104.7 In order to be eligible to participate in a DCSAA approved sport and/or activity, a student shall provide a current medical certification, to the student's member school and/or LEA, confirming that the student has been examined by a licensed physician, or other qualified medical practitioner, and is physically fit to participate in try-outs, practices, and contests for the sport in which the student seeks to participate.
- 104.8 In order to be eligible to participate in a DCSAA approved sport and/or activity, a student shall maintain compliance with state attendance regulations and shall maintain eighty-five percent (85%) attendance per marking period in order to maintain eligibility and any additional attendance requirements established by the student's LEA and/or member school. Additionally, a student must be in attendance at school for the full day during the regularly scheduled school day in order to participate in any try-out, practice, or contest, which is scheduled on that day, unless the student has an excused absence.
- 104.9 In order to maintain eligibility to participate in interscholastic athletics at a member school, a student shall maintain compliance with the requirements set forth in § 104.3 to establish eligibility and:
- (a) Participate only under the name by which he or she is registered in the school he or she is enrolled;

- (b) Represent only one (1) school in the same sport during a school year;
- (c) Not participate in junior varsity competition if the student participated in varsity competition in the same sport during the same school year;
- (d) Not participate in the same individual or team sport outside of school, or with a team, an organized league, tournament meet, match or contest between the first (1<sup>st</sup>) and last scheduled contest of the school team during the season of the sport; provided, that a student who is selected to represent the United States in international amateur competition shall not become ineligible in school competitions for participating in qualifying trials. The following sports shall be exempted from the restrictions of this requirement: Baseball; Bowling; Competitive Cheer; Crew; Cross Country; Field Hockey; Golf; Gymnastics; Lacrosse; Rugby; Soccer; Softball; Squash; Swimming; Tennis; Track & Field; Ultimate Frisbee; Volleyball; and Wrestling; and
- (e) Preserve amateur standing by engaging in sports only for the physical, educational, and social benefits derived from sports and by not accepting, directly or indirectly, a remuneration, gift, or donation based on his or her participation in a sport other than those approved or waived by the DCSAA.

104.10 Notwithstanding the provisions in §§ 104.3 to 104.9, a student that is granted a hardship waiver by the DCSAA shall be eligible to participate in interscholastic athletics at a member school.

**105 STUDENT ELIGIBILITY TO PARTICIPATE: INTERNATIONAL STUDENT**

105.1 An international student participating in a foreign exchange program shall be considered immediately eligible for a maximum period of one (1) calendar school year if the student:

- (a) Has not completed the country of origin's secondary school program;
- (b) Meets all other eligibility requirements of this section;
- (c) Has been randomly assigned to his or her host parents and school and neither the school the student attends nor any person associated with the school has had input in the selection of the student and no member of the school's coaching staff, paid or voluntary, serves as the resident family of the student;
- (d) Possesses a current J-1 visa issued by the U.S. State Department; and

- (e) Is attending school under a foreign exchange program on the current Advisory List of International Educational Travel and Exchange Programs published by the Council on Standards for International Education Travel and such program assigns students to schools by a method which ensures that no student, school, or other interested party may influence the assignment.

105.2 An international student not participating in a foreign exchange program shall be treated as all other students who transfer schools.

**106 STUDENT ELIGIBILITY TO PARTICIPATE: DESIRED SPORT AT OTHER SCHOOL**

106.1 Students in grade nine (9), ten (10), eleven (11), or twelve (12) attending a member school in which a desired sport is not offered (school of enrollment), may request authorization to participate from the athletic director at any member school offering the desired sport (school of choice). If the student athlete participates pursuant to this rule, the student and/or school of choice must notify the DCSAA.

106.2 The student's school of enrollment will serve as their primary school for athletic participation. If a student wishes to participate in one or more sports that their school of enrollment does not offer, the student must participate in those sports at the same school of choice if all of the sports are offered there. If all of the sports in which the student desires to participate are not offered at the school of choice, the student may participate in those sports at another school of choice.

106.3 Students who are not enrolled in a member school but home schooled pursuant to 5-A DCMR §§ 5200 *et seq.* may participate in interscholastic athletics at a member school if:

- (a) The principal and the athletic director of the member school provides the student with written authorization to participate in the desired sport; and
- (b) The student requests and is granted a waiver of student eligibility requirements as set forth in this chapter.

106.4 Students under this section seeking to participate at another school may only participate if it is allowed in the written policy of the member school in which the student seeks to participate, and the student meets the eligibility requirements of the DCSAA and/or member school. A member school may require actual costs associated with a student's participation and the sending school may be required to provide funding for the costs.

**107 STUDENT ELIGIBILITY TO PARTICIPATE: TRANSFERS**

107.1 A student who transfers enrollment from any school, including a member school, to any member school in grades nine (9), ten (10), eleven (11), or twelve (12) is ineligible to participate in interscholastic athletics unless he or she meets one (1) of the following exceptions:

- (a) A student in grade nine (9) may transfer one (1) time during that school year without loss of eligibility. They shall be eligible immediately upon registration provided they meet all other DCSAA eligibility requirements. However, a student shall not participate in a contest at the varsity level for two different schools in the same sport during the same school year. A student is considered a ninth (9<sup>th</sup>) grader until the first day of school of their tenth (10<sup>th</sup>) grade year;
- (b) A student attending a member school has a valid change of address, as defined in this chapter;
- (c) The transfer is caused by court action, court action being an order from a court of law affecting legally committed students. In the case of a transfer of guardianship or custody, the transfer shall be the result of a court order signed by a judge, commissioner, or master of a court of competent jurisdiction. A petition for the transfer of guardianship or custody, an affidavit, or a notarized statement signed by the affected parties shall not be sufficient to render the student eligible to participate in interscholastic athletics. For purposes of eligibility, a child placed within Child and Family Services Agency (CFSA) custody is eligible to participate in interscholastic athletics immediately at the school they attend;
- (d) A student who registers on the basis of a petition for the transfer of guardianship is not eligible to compete until the custodial legal guardian has provided the aforementioned required documentation or has received a signed court order designating them as the student's custodial legal guardian.
- (e) If the student is in their second, third or fourth year of eligibility and the transfer is a result of a seat opening in the receiving school if the student had previously applied to the school and had been rejected due to a lack of capacity or a result of admission via the D.C. school-based lottery. For this exception to apply, the receiving school shall have appropriate documentation including: a dated and school stamped student application from a previous school year; a letter in response to the application notifying the student that they were not accepted; and a letter dated after the start of the school year offering the student a seat in the receiving school or a notification of admission from the lottery school.

- (f) Transfer because of promotion or administrative assignment to the ninth (9<sup>th</sup>) grade from a school whose terminal point is the eighth (8<sup>th</sup>) grade, or to the tenth (10<sup>th</sup>) grade from a junior high school whose terminal point is the ninth (9<sup>th</sup>) grade, shall not constitute a transfer. Students so promoted or administratively assigned shall be eligible.
- (g) The sending school dropping their entire athletic program. Dropping their athletic program is defined as the school discontinuing all of their interscholastic athletics sports programs;
- (h) The closure of the sending school;
- (i) The sending school discontinuing a single sport that the student sought to participate in at the varsity level;
- (j) The student has special needs, as identified by the Individualized Education Program (IEP) or Section 504 Plan, and is transferred to another public school for the delivery of a free appropriate public education;
- (k) A transfer is the result of the student's being homeless as defined by OSSE, except if the student's homeless status is shown to have been created by the student or his/her family for the primary reason of eligibility in interscholastic athletics;
- (l) The transfer is a result of a student exercising transfer options (*i.e.*, persistently dangerous schools (5-E DCMR § 3805) or victim of a violent crime (5-E DCMR § 3809) as allowed by D.C. law;
- (m) The student is a qualified foreign exchange student under § 105.1 or an international student residing in the District with his or her parent(s); or
- (n) A student who has not previously participated in the sport for which they are interested in competing; who is released by a proper school authority from a sending school, and has completed the registration process at the receiving school shall be eligible, provided they meet all other DCSAA eligibility requirements. The receiving school shall submit, to the DCSAA, an electronic or signed statement from the athletic director of the sending school that states the student did not participate in the specific sport the preceding year in which they wish to participate.

## 107.2

The student-athlete may submit, to the DCSAA, a Student-Athlete Transfer release form which shall be signed by the parent, the athletic director and principal of the sending school and the athletic director and principal of the receiving school stating that the transfer is for non-athletic purposes.

**108 STUDENT INELIGIBILITY TO PARTICIPATE**

- 108.1 A student who is ineligible to participate in interscholastic athletics is prohibited from playing with a DCSAA member school team during the period of such ineligibility. The student shall, however, be permitted to practice with the teams of the school in which the student is properly enrolled or, where the student's school of enrollment does not offer the desired sport, the teams of the school for which the student has secured permission to play.
- 108.2 A student who participates in interscholastic athletics and is found ineligible to participate is prohibited for one (1) calendar year from the date of the finding of ineligibility, except for academic and attendance based ineligibility for which eligibility can be regained immediately upon satisfaction of the requirements. Additionally, in order to be considered for eligibility when the calendar year has passed, the student shall show that all of the eligibility requirements are satisfied.
- 108.3 The period of ineligibility for students that transfer absent an exception shall be one (1) calendar year commencing with the first (1st) day of official attendance in the receiving school.
- 108.4 A student who is ineligible to participate in interscholastic athletics at the time of transfer from one (1) school to another, for any reason other than failing to meet the requirements of this chapter, shall not be considered for eligibility at the receiving school until one (1) full calendar year has passed from the date it was determined that the student was ineligible.
- 108.5 Any member school carrying an ineligible student as a member of the team shall forfeit each contest played by such student.
- 108.6 If any forfeiture creates a tie among teams participating in a DCSAA tournament and/or championship contest, a coin toss as mutually agreed by the member school ADs shall determine the requisite order.
- 108.7 A member school including, without limitation, a coach, trainer, or volunteer assisting in athletics, who knows, or should have known, that an ineligible student is participating or has participated in an interscholastic athletic program or contest, shall be subject to probation, suspension, or disqualification from participating in any DCSAA-approved sport or activity.
- 108.8 If a member school, LEA, or the DCSAA takes any action pursuant to § 108.7, the member school or LEA shall electronically submit the action to the DCSAC for review by the DCSAC Athletic Appeals Panel (AAP) no later than five (5) calendar days after the date of such action. The DCSAC AAP within five (5) calendar days will conduct a review and determine if the violation merits any additional probation, suspension or disqualification from any DCSAA-approved

sport or activity. Any additional action taken by the DCSAC AAP will be issued via a written decision.

## **109 WAIVER OF STUDENT ELIGIBILITY REQUIREMENTS**

109.1 The DCSAA may grant a student a waiver of any of the student eligibility requirements set forth in this chapter, subject to the following:

- (a) A request for a waiver due to hardship, as defined in this chapter, shall include supporting documentation; and
- (b) A request for a waiver of the age requirement in § 104.4 shall only be considered for participation in non-contact or non-collision sports.

109.2 Waiver requests should be filed promptly when it becomes apparent to the student-athlete, principal, and head of school or other affected party that a waiver will be required. When a member school and/or LEA receives a request for waiver from a student, the member school and/or LEA must forward that request for waiver to the DCSAA for decision, regardless of whether the member school and/or LEA supports the request for waiver. If the waiver request is submitted by the member school and/or LEA to the DCSAA on behalf of a student, it must be submitted within five (5) school days of receipt of the request for waiver by the school. When the member school and/or LEA submits the request for waiver to the DCSAA on behalf of the student, the athletic director of a member school and/or LEA may include any additional information they are authorized to release that is relevant to the request for waiver. If the student submits a completed request for waiver directly to DCSAA, the DCSAA shall notify the member school and/or LEA of the waiver submission within two (2) school days of receipt of the request for waiver. If the student submits the request for waiver directly to the DCAA, the member school and/or LEA may include any additional information they are authorized to release that is relevant to the request for waiver within five (5) days of being notified by the DCSAA that a request for waiver has been submitted.

109.3 In order to request a waiver, the student or a member school and/or LEA on behalf of the student, shall submit a completed waiver request to the DCSAA. Waiver requests shall include the following:

- (a) The student's name, date of birth, school, grade, parent/legal guardian name, address, telephone number, and email address;
- (b) A complete list of interscholastic sports the student played on school teams, including the level of competition (e.g. junior varsity or varsity);
- (c) Identification of the sport(s) for which the student is seeking a waiver to play;



- (d) Identification of the section and paragraph of this chapter that the student wishes the DCSAA to waive;
- (e) A statement of the student's reason for requesting the DCSAA to waive an athletic rule, including an explanation of the situation, the reason for the request, and supporting documentation;
- (f) Official transcripts from the ninth (9<sup>th</sup>) grade through the current school year, medical records (if applicable), and Individualized Education Plans (IEP) (if applicable);
- (g) Signature of the student's parent or legal guardian if the student is under 18 years of age, or of the student if the student is 18 years of age or older; and
- (h) Any additional supporting documentation such as letters of support from the school administration, athletic director, LEA, etc.

109.4 When a request for waiver is submitted from the member school to DCSAA, and the DCSAA has confirmed receipt, the DCSAA shall issue a written decision to grant or deny a request for a waiver within five (5) school days. When a request for waiver is submitted from a student athlete to the DCSAA, the DCSAA shall issue a written decision to grant or deny the request for waiver within five (5) days of the date by which the member school may submit additional information.

109.5 The DCSAA may request further supporting documentation necessary to make a determination to grant or deny the waiver request pursuant to §103.9. If the DCSAA requests additional supporting documentation, the request for the documentation shall state a date by which the additional documentation must be submitted.

109.6 Failure to provide all required documentation to the DCSAA, within the timeframe provided in writing by the DCSAA, may result in an unfavorable inference or decision for the party that fails to provide the required information.

109.7 The DCSAA decision to grant or deny a request for a waiver may be appealed to the DCSAC AAP in the manner set forth in § 111.

109.8 If a decision is not appealed to the DCSAC AAP within five (5) business days, the decision to deny or grant a request for a waiver shall be final. If a student's circumstances have altered, the student shall submit a new waiver request.

**110 COMPLAINTS OR CHALLENGES PROCEDURES**

- 110.1 The DCSAA, on its own motion, or upon receipt of a complaint or challenge submitted in accordance with this section, may investigate conduct that would constitute a violation of the requirements of this chapter. The DCSAA shall hear and decide complaints or challenges:
- (a) Related to its membership standards;
  - (b) Arising under the DCSAA handbook including sections that pertain to school membership, member school staff conduct, member school staff responsibilities, duties, and requirements, conduct of practices, scrimmages, and contests, health safety and wellness, DCSAA policies, and penalties; or
  - (c) Related to participant eligibility arising between a DCPS and non-DCPS member school participating in a DCSAA-approved competition or arising between a member school and non-member school participating in a DCSAA-approved competition.
- 110.2 Any complaints or challenges shall be submitted to the DCSAA as follows:
- (a) A complaint or challenge shall be presented in writing and signed by the submitting party and mailed, hand delivered, or sent electronically to the DCSAA;; and
  - (b) The complaint or challenge shall include any necessary supporting documentation.
- 110.3 Once the written complaint or challenge is submitted to DCSAA, the DCSAA shall:
- (a) Confirm receipt of the complaint or challenge;
  - (b) Inform the member school and/or LEA of the complaint or challenge; and
  - (c) Provide the member school with the opportunity to respond, in writing, to the complaint or challenge within five (5) school days of the date on which the DCSAA notification of complaint was received by the member school pursuant to § 110.3(b).
- 110.4 The DCSAA may request further supporting documentation necessary to make findings or issue a decision regarding a complaint or challenge. If the DCSAA requests additional supporting documentation, the request for the documentation shall state a date by which the additional documentation must be submitted.

Parties shall comply with DCSAA requests for information related to the allegations in the complaint or challenge.

- 110.5 Failure to provide all required documentation to the DCSAA may result in an unfavorable decision for the party that fails to provide the required information.
- 110.6 The DCSAA shall issue written findings and/or a decision regarding the complaint or challenge within ten (10) school days of the DCSAA receiving the report described in § 110.3.
- 110.7 If an eligibility question arises that requires a review of a member school or LEA's eligibility determination, the DCSAA may request to review the documents that were used by the member school or LEA to determine eligibility subject to relevant federal and local student privacy laws, regulations, and policies. The DCSAA will request, through a member school and/or LEA, from a parent, legal guardian, or the adult student, to sign a consent form, for release of information authorizing the release of eligibility files. Such DCSAA requests will include the reasons supporting the request and will specify the record or records needed for review. Failure to provide consent upon written request from the DCSAA will result in the student whose eligibility is being questioned to be deemed ineligible to participate in any official contest of an approved DCSAA sport or activity.
- 110.8 The DCSAA's decision may be appealed to the DCSAC AAP in the manner set forth in § 111. Failure of the DCSAA to adhere to the procedures for processing a complaint may be submitted to the DCSAC AAP for remedy. If a decision is not appealed to the DCSAC AAP within five (5) business days, the DCSAA decision shall be final.

## **111 STATE ATHLETIC COMMISSION: ATHLETICS APPEALS PANEL**

- 111.1 The DCSAC shall establish Athletics Appeals Panels (AAP) to hear appeals of:
- (a) LEA decisions related to student eligibility; and
  - (b) Final written decisions of the DCSAA.
- 111.2 The Chairperson of the DCSAC shall appoint a separate AAP for each matter brought before the DCSAC.
- 111.3 The Chairperson of the DCSAC shall maintain the integrity of the appeal process.
- 111.4 Any Commissioner of the DCSAC who may be directly affected or whose member school or LEA may be directly affected by a potential decision related to an appeal shall disclose the conflict of interest, recuse himself or herself from

consideration of the matter and shall not be appointed to an appeals panel for that matter.

- 111.5 In order to request an appeal of the decision of an LEA or the DCSAA, a party shall submit written notice of appeal to the Chairperson.
- 111.6 The Chairperson shall appoint the three voting members AAP and the assigned AAP within three (3) school days of receipt of a request for an appeal. The AAP shall schedule a hearing to occur within seven (7) calendar days of the appointment of the members of the AAP, where all parties shall be provided with the opportunity to present facts and all relevant arguments. The AAP shall notify the parties of the date, time, and location of the hearing. If a party is unable to be present on the date and time selected by the AAP, the party may request a continuance of the hearing.
- 111.7 The DCSAC AAP shall issue a written decision within five (5) school days of the hearing affirming or denying the decision of an LEA or the DCSAA.
- 111.8 An AAP shall be conducted as follows:
- (a) An athletic appeals panel shall hear all issues relating to an appeal *de novo*, except that the evidence before the panel shall be limited to the record made before the LEA or the DCSAA unless a party seeks to introduce relevant evidence that, in the exercise of reasonable diligence, it could not have produced during the initial hearing on the complaint or that was improperly excluded from the initial hearing on the complaint;
  - (b) The presence of all members of the AAP is required in order for the hearing to take place. Members of the AAP may participate in a hearing remotely by telephone conference, video conference, or other electronic means. If all members of the AAP are not present, the hearing shall be postponed until a time when all members of the AAP are able to be present;
  - (c) All testimony given before the AAP shall be under oath or affirmation;
  - (d) All persons at the AAP shall maintain decorum and good order at all times, and the AAP may exclude, or have removed, from the hearing any person deemed to be disruptive to the hearing process;
  - (e) If a party who requested an appeal does not appear for the hearing, and a continuance was not requested pursuant to §2711.6 was not granted, the AAP may proceed to act, and render a decision, based on the evidence before it;

- (f) All hearings shall be recorded and the DCSAA shall compile a complete record of all evidence presented during the course of the hearing; and
- (g) The DCSAA shall make a transcript of a hearing upon the request of a party, and if the DCSAA does not make a transcript of the hearing, it shall maintain an electronic copy of the hearing as part of the record.

111.9 The decision of the Commission shall be final. The party may appeal the Commission's final decision to the D.C. Superior Court, pursuant to D.C. Official Code § 11-921. Appeals must be received by the Clerk of the Superior Court no later than thirty (30) days after the date of the final decision.

111.10 A student whose eligibility is in question may play in DCSAA-approved interscholastic athletic competition during the appeal process. If the AAP finds against the student, the DCSAA may issue penalties against the member school and/or student, retroactively and for future events.

111.11 In the event a member requires forfeiture of a contest already played, the AAP shall review the decision affirming or denying the forfeiture and shall provide the results of its findings and recommendations to the member school not later than five (5) school days after the date the matter is initially reported to the DCSAA.

## 112 ALL-STAR CONTESTS

112.1 A student who participates in a team sport may participate in an "all-star" competition for the sport that occurs outside the interscholastic season of the sport without jeopardy to his or her eligibility if:

- (a) The all-star competition is an activity approved by the DCSAA or another National Federation of State High School Association ("NFHS") member;
- (b) All participants in the all-star competition are graduating seniors or students completing their athletic eligibility at the end of the school year or they have received a waiver from DCSAA to participate;
- (c) The student has played in no more than one (1) other all-star competition in his or her sport; or
- (d) The all-star competition occurs after the student has participated in his or her final contest for his or her school.

112.2 A student athlete who fails to comply with § 112.1 may be subject to a penalty that may result in the loss of athletic eligibility for the balance of the school year or for the next season in the sport in which the student participated in the all-star competition.

**113 MEMBER SCHOOL AND LEA REGULATIONS AND POLICIES**

- 113.1 Member school and/or LEA regulations or policies shall not be in conflict with this chapter or the DCSAA handbook. Member school and/or LEA standards shall meet the state minimum standards and requirements. .
- 113.2 Member schools and/or LEA policies and procedures related to interscholastic athletics shall comply with the provisions of this chapter.
- 113.3 Upon request, member schools and/or LEAs shall provide the DCSAA with copies of their respective policies and procedures.

**199 DEFINITIONS**

- 199.1 When used in this chapter, the following terms shall have the meanings ascribed:

**Adult Student** - A student who is eighteen (18) years of age or older, or who has been emancipated from parental control by marriage, operation of statute, or the order of a court of competent jurisdiction.

**Amateur Standing** - eligibility status for a student athlete who is a nonprofessional and not receiving profit from their participation in athletic activities

**Athletic Appeals Panel (AAP)** - A review panel composed of three (3) voting members of the District of Columbia State Athletics Commission.

**Athletic Director (“AD”)** – A person who holds the position of athletic director or a person or entity that performs the functions of an athletic director.

**Athletic League** – Includes the District of Columbia Interscholastic Athletic Association or its successor, the Public Charter School Athletic Association or its successor, and any other collaborative of LEA’s or schools for the purpose of which is to organize interscholastic athletic competitions against other members of the collaborative.

**Commission** – the District of Columbia State Athletics Commission (DCSAC).

**Day** – One (1) calendar day, unless otherwise stated.

**DCPS** - means the District of Columbia Public Schools.

**DCSAA** - means the District of Columbia State Athletic Association.

**DCSAA-approved sport or activity** - a sport in which DCSAA hosts a state championship and/or is governed by the National Federation of State High School Association rules.

**DCSAA Handbook** –an annual publication containing playing rules, codes of conduct, sanctions and guidelines for each DCSAA-sanctioned sport, consistent with this chapter, the District of Columbia State Athletics Consolidation Act of 2016, effective April 7, 2017 (D.C. Law 21-263; D.C. Official Code §§ 38-2661.01 *et seq.*), and the National Federation of State High School Associations’ Rules Books.

**DCSAA-approved competition** - an interscholastic athletic event or program governed by DCSAA membership standards.

**Enroll and Enrollment** -- A process through which a student obtains admission to a public or public charter school that includes, at a minimum the following stages:

- (a) Application by student to attend the school;
- (b) Acceptance and notification of an available slot to the student by the school;
- (c) Acceptance of the offered slot by the student (signified by completion of enrollment forms and parent signature on a “letter of enrollment agreement form”);
- (d) Registration of the student in the Student Information System (SIS) by school upon receipt of required enrollment forms and letter of enrollment agreement; and
- (e) Receipt of educational services, which are deemed to begin on the first official school day.

**First year of eligibility** – The school year a student first enters ninth (9<sup>th</sup>) grade for the first (1<sup>st</sup>) time.

**Hardship** - A hardship is defined as an unforeseeable, unavoidable, and uncorrectable act, condition or event, which causes the imposition of a severe and non-athletic burden upon the student or his/her family.

**Interscholastic Athletics Program** - all athletic activities or sports offered within a school, the purpose of which is to provide opportunities for students to compete with other students on like teams in other schools.

**Local Education Agency or LEA** – the District of Columbia Public Schools system or any individual or group of public charter schools operating under a single charter.

**Member School** - a public, public charter, parochial, or private school in the District that is a member of the DCSAA.

**Ninth Grade** - A student is considered to be in grade nine (9) upon the student's promotion from the eighth (8<sup>th</sup>) grade to the ninth (9<sup>th</sup>) grade on the last school day of the student's eighth (8<sup>th</sup>) grade (8<sup>th</sup>) grade academic year. The ninth (9<sup>th</sup>) grade year is considered to be completed on the last day of summer vacation prior to the first day of the new academic (tenth (10<sup>th</sup>) grade) year.

**OSSE** – The District of Columbia's Office of the Superintendent of State Education.

**Parent** – Consistent with the terms as defined in 5-A DCMR § 5099, the natural parent, stepparent, or parent by adoption who has custody or control of a student, including joint custody; a person who has been appointed legal guardian of a student by a court of competent jurisdiction; or other primary caregiver as verified pursuant to 5-A DCMR § 5005.

**Participate** – Inclusion on the tryout roster or team roster as a member of a recognized school team to tryout or play in practices, contests, and competitions, or otherwise engaging in other activities as part of the team.

**Previous participation** – Prior participation in interscholastic athletics in grades nine (9) through twelve (12).

**Receiving school** - The school a student enrolls in, after leaving his or her previous school.

**Sending School** – A school that a student withdraws from, in order to attend a different school.

**Title IX** - Title IX is a portion of the Education Amendments of 1972, approved June 23, 1972 (Pub. L. No. 92318, 86 Stat. 235; 20 USC §§ 1681-1688).

**Transfer** - The student has withdrawn from a sending school and has enrolled in a receiving school.

**Valid Change of Residence** – when a student moves from the residence where the enrolling parent(s) lived with the student, and that has been vacated by the entire family for use as its residence, to a new residence with the enrolling parent(s).

**Week** – Seven (7) calendar days, unless otherwise stated.

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



the *D.C. Register* via email addressed to: [michael.aniton@dc.gov](mailto:michael.aniton@dc.gov), or by mail or hand delivery to the District of Columbia State Athletic Association, Attn: Michael Aniton re: Interscholastic Athletics, 1050 First Street, N.E. 6th Floor, Washington, D.C. 20002. Additional copies of this rule are available from the above address and on the District of Columbia State Athletic Association website at [www.dcsaasports.org](http://www.dcsaasports.org).

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2019-120  
November 20, 2019

**SUBJECT:** Delegation - Authority to the Directors of the District Department of Transportation and the Department of Employment Services pursuant to the Student, Foster Youth, Summer Youth Employee, and Adult Learner Transit Subsidies Act of 2019.


**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422(6) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(6) and (11) (2016 Repl.), and in accordance with sections 6043 through 6048 of the Student, Foster Youth, Summer Youth Employee, and Adult Learner Transit Subsidies Act of 2019 (the "**Act**"), effective September 11, 2019 (D.C. Law 23-16; 66 DCR 8621), it is hereby **ORDERED** that:

1. The authority vested in the Mayor under section 6043 of the Act to negotiate and execute agreements with the Washington Metropolitan Area Transit Authority for the transportation of elementary and secondary school students, adult learners, and foster youth at subsidized or free fares is delegated to the Director of the District Department of Transportation ("**DDOT Director**").
2. The authority vested in the Mayor under section 6043 of the Act to negotiate and execute agreements with the Washington Metropolitan Area Transit Authority for the transportation of summer youth employees at subsidized or free fares is delegated to the Director of the Department of Employment Services ("**DOES Director**").
3. The authority vested in the Mayor under sections 6045, 6047, and 6048 of the Act to establish and administer programs and issue rules to implement the provisions of sections 6045 and 6047 of the Act (related to student, foster youth, and adult learner transit subsidies) is delegated to the DDOT Director.
4. The authority vested in the Mayor under sections 6044 and 6048 of the Act to issue rules to implement the provisions of section 6044 (related to the Kids Ride Free transit subsidy program) is delegated to the DDOT Director.
5. The authority vested in the Mayor under sections 6046 and 6048 of the Act to establish and administer a program and issue rules to implement the provisions of

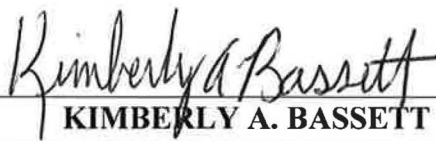
section 6046 of the Act (related to summer youth employee transit subsidies) is delegated to the DOES Director.

- 6. The DDOT Director may further delegate any of the authority delegated to him or her under this Order to subordinates under his or her jurisdiction.
- 7. The DOES Director may further delegate any of the authority delegated to him or her under this Order to subordinates under his or her jurisdiction.
- 8. This Order shall supersede all previous Mayor's Orders to the extent of any inconsistency.
- 9. **EFFECTIVE DATE:** This Order shall become effective *nunc pro tunc* to September 11, 2019.




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MURIEL BOWSER  
MAYOR

ATTEST:   
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 KIMBERLY A. BASSETT  
 SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

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**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2019-121  
November 20, 2019


**SUBJECT:** Amended Establishment – Creative Affairs Office

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to sections 422(2) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) and (11) (2016 Repl.), it is hereby **ORDERED** that:

- I. **ESTABLISHMENT:** There is established in the Office of Cable Television, Film, Music and Entertainment (**OCTFME**), reporting to the Director of OCTFME, the Creative Affairs Office.
- II. **PURPOSE:** The mission of the Creative Affairs Office is to engage the vibrant arts and creative communities and institutions of the District of Columbia, and to strategically coordinate public and private resources and stakeholders to support the sustainability of creative organizations and equitable access to arts in all eight (8) wards.
- III. **FUNCTIONS:** The Creative Affairs Office shall:
  - a. Develop and execute strategies aimed to support the sustainability of artistic and creative institutions and that all communities in the District have equitable access to arts and creative opportunities;
  - b. Coordinate work between District agencies and independent agencies, such as the DC Commission on the Arts and Humanities, ensuring resources are accessible and strategically targeted to the arts community;
  - c. Engage residents, artists, creators, creative organizations, businesses, and other community stakeholders to better understand issues facing the arts community and those participating in and sustaining the creative history of the District; and
  - d. Work cooperatively with the Commission on Arts and Humanities (**CAH**) in accordance with the November 2019 Memorandum of Understanding between the Deputy Mayor for Planning and Economic Development and CAH relating to the Art Bank and public art.

IV. **EFFECTIVE DATE:** This Order supersedes Mayor's Order 2019-077, dated August 29, 2019, and shall become effective immediately.



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MURIEL BOWSER  
MAYOR

ATTEST:



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KIMBERLY A. BASSETT

SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

**DEPARTMENT OF BEHAVIORAL HEALTH**  
**NOTICE OF FUNDING AVAILABILITY (NOFA)**

**Recovery Residences**

The District of Columbia, Department of Behavioral Health (DBH) is soliciting applications from qualified applicants for services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of the Department of Behavioral Health's intent to make funds available for the purpose described herein. The applicable Request for Application (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DBH terms and conditions for applying for and receiving funding.

**General Information:**

Funding Opportunity Title:	Recovery Residences Grant
Funding Opportunity Number:	RFA No. RM0 RR112219
Program RFA ID#:	RFA No. RM0 RR112219
Opportunity Category:	Competitive
DBH Branch/Division Unit:	Adult Services Division
DBH Administrative Unit:	Community Services Administration
Program Contact:	Orlando Fox (202) 673-2291 <a href="mailto:orlando.fox@dc.gov">orlando.fox@dc.gov</a>
Program Description:	The DBH Community Services Administration (CSA) is soliciting applications from community-based organizations to provide National Association of Recovery Residences (NARR) Standard Level I or Level II Recovery Residences or Opioid Specific Recovery Residences in the District of Columbia. An organization may apply to provide Level I or Level II Recovery Residences under Competition #1 and Opioid Specific Recovery Residences under Competition #2.
Eligible Applicants:	<ol style="list-style-type: none"> <li>1. A community-based organization located in the District of Columbia (DC);</li> <li>2. 501(c)(3) non-profit status; and</li> <li>3. Eligible to participate in District-funded programs (not disbarred) as evidenced by an exclusion verification</li> </ol>
Anticipated Number of Awards:	Up to 16
Anticipated Amount Available:	\$483,264.00
Floor Award Amount:	N/A
Ceiling Award Amount:	\$30,204.00/residence

**Funding Authorization:**

Legislative Authorization:	Local Appropriated Funds
Associated CFDA#:	93.788 93.959
Associated Federal Award ID#:	1H79TI0811707 2B08TI010008
Cost Sharing/Match Required?	No
RFA Release Date:	Friday, November 22, 2019
Pre-Application Conference (Date):	December 6, 2019
Pre-Application Conference (Time):	3:00 – 4:00 p.m. ET
Pre-Application Conference (Location/Conference Call Access):	64 New York Avenue, NE, 2 <sup>nd</sup> Floor Washington, DC 20002 Pre-Registration required for conference call access. Contact: Orlando Fox <a href="mailto:orlando.fox@dc.gov">orlando.fox@dc.gov</a>
Letter of Intent Due Date:	Monday, December 2, 2019
Application Deadline Date:	Friday, December 13, 2019
Application Deadline Time:	5:00 p.m. ET
Links to Additional Information about this Funding Opportunity:	DC Grants Clearinghouse <a href="https://opgs.dc.gov/page/opgs-district-grants-clearinghouse">https://opgs.dc.gov/page/opgs-district-grants-clearinghouse</a>

## Notes:

- A. DBH reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.
- B. Awards are contingent upon the availability of funds.
- C. Individuals are not eligible for DBH grant funding.
- D. Applicants must have a DUNS#, Tax ID#, and be registered in the federal Systems for Award Management (SAM).
- E. Contact the program manager assigned to this funding opportunity for additional information.

**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION****NOTICE OF FUNDING AVAILABILITY (NOFA)****FISCAL YEAR 2020****Special Education Enhancement Fund (SEEF) Competitive Grant****Request for Applications Release Date: Friday, Dec. 13, 2019, by 5:00 p.m.**

The Office of the State Superintendent of Education (OSSE) is soliciting grant applications for the Special Education Enhancement Fund (SEEF) Competitive Grant, pursuant to OSSE's authority to issue grants for programs that increase the capacity of a local education agency (LEA) to provide special education services (D.C. Code § 38-2602(b)(18)) and the Special Education Quality Improvement Amendment Act of 2014, effective March 10, 2015 (D.C. Law 20-196; D.C. Code § 38-2613). The purpose of this funding is to:

- Address systemic barriers to academic achievement for students with disabilities (SWD) identified based on the landscape analysis research conducted by OSSE;
- Accelerate student achievement for SWD by using research-based interventions; and
- Share and scale promising practices citywide.

**Eligibility and Selection Criteria:** OSSE will make these grants available through a competitive process. Eligible lead applicants include third-party non-profit organizations and institutions of higher education. All applicants must partner with targeted school(s) at one or more LEAs. Applicants must secure partnerships with the partner school(s) and/or parent LEA(s) with which they intend to work and will be required to verify these partnerships by uploading, as part of the grant application, a signed Partnership Agreement that details the parameters of the partnership and demonstrates each partner's role in the planning and implementation of programs and services. For more information on eligibility and selection criteria, please visit [OSSE's website](#).

**Length of the Award:** Grantees may obligate funds beginning February 19, 2020, or the date of the grant award notice, whichever date is later. The grant period will end on September 30, 2021.

**Available Funding for the Award:** The total funding available for the grant award period is up to \$2,000,000. Awards are limited to one per applicant. OSSE will provide up to \$1,000,000 per award, subject to the number of students being served as well as the intensity and expected impact of the intervention, availability of continued funding and satisfactory completion of grant obligations. OSSE expects to make 1-4 awards, depending on the quality of applications and availability of funds.

Determinations regarding the number of competitive grant awards will be based on the quality and number of applications received and available funding. Successful applicants may be awarded amounts less than requested. Successful applicants must budget their award over the entire award period, which crosses two local fiscal years.



**Application Process:** The grants described in this NOFA will be awarded competitively. A panel of at least three external reviewers will be convened to review, score, and rank each application. The review panel will be composed of neutral, qualified, professional individuals selected for their expertise, knowledge, or related experiences. In addition, a parallel panel of neutral, qualified, professional OSSE staff members with similar qualifications will be selected and conduct a separate scoring process. All internal and external reviewers must sign a Conflict of Interest statement. The application will be scored against a rubric. The complete rubric will be available at the application release date in EGMS and in the full RFA. The panels shall make recommendations for awards based on the scoring rubric. The State Superintendent of Education, or her designee, will make all final award decisions. Winning applicants may be required to make amendments to the Budget or other application sections to meet grant requirements.

**Pre-Application Period:**

*Applicant Webinar:* Potential applicants will be **required** to attend a webinar that will cover grant requirements and the application process and will be offered at the following times. Applicants may register [here](#).

- **Monday, Dec. 16, 2019 – 2-3 p.m.**
- **Wednesday, Dec. 18, 2019 – 10-11 a.m.**
- **Tuesday, Jan. 7, 2020 – 10-11 a.m.**

*Intent to Apply:* Potential applicants **must** submit an Intent to Apply by **Wednesday, Jan. 8, 2020, at 5 p.m.** to [SEEF@dc.gov](mailto:SEEF@dc.gov). Submitting an Intent to Apply does not obligate completing an application.

*Partnership Facilitation Meeting:* OSSE will host an **optional** in-person meeting with potential applicants that submit an Intent to Apply. Representatives of eligible High-Need partner schools will also be invited. This meeting will not be required, but may be a helpful opportunity to form an eligible application partnership. The meeting will be held **Tuesday, January 14, 2020, 1 p.m.-3 p.m.** at OSSE, 1050 First St. NE, Washington, DC 20002.

To receive more information on this grant, please contact:

[SEEF@dc.gov](mailto:SEEF@dc.gov)

Office of the State Superintendent of Education  
1050 First Street, NE, Washington, D.C. 20002

The Requests for Applications (RFAs) for the competitive grant program as well as the instructions for completing the grant application will be available on OSSE's website at [www.osse.dc.gov](http://www.osse.dc.gov). All applications will be submitted through the Enterprise Grants Management System (EGMS) at [grants.osse.dc.gov](http://grants.osse.dc.gov).

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

Office of Government Ethics

**Advisory Opinion – Redacted – Lobbyist Registration Requirements**

VIA EMAIL

October 18, 2019

XXXXX XXXXX  
XXXXX  
XXXXX  
Washington, DC XXXXX

Dear Mr. XXXXX:

This responds to your request of September 19, 2019, for a formal advisory opinion on whether XXXXX as an organization needs to register with the Office of Government Ethics (OGE) as a lobbying entity and whether you, personally, should also register as a lobbyist with OGE. Based on the information provided in your letter, as well as a review of the organization’s website, and the Lobbying Activity Report it recently submitted for the 3<sup>rd</sup> quarter of Calendar Year 2019, I can provide the following advice.

Your request stated that XXXXX is a 501(c)(3) tax exempt organization under the Internal Revenue Code as of December 7, 2017. You are listed as the organization’s Executive Director, for which services you receive a stipend. Your organization’s primary mission is to “elevate the voice” of District teachers and education leaders. While the majority of your work can be described as outreach to, and organizing amongst teachers, your letter indicated that you “maintain contact with elected officials,” that the contacts “occasionally involve legislation, and that you sometimes communicate with elected officials on behalf of your stakeholders.

Under the Ethics Act, “lobbying” is communicating directly with any official in the legislative or executive branch of the District government with the purpose of influencing any legislative action or an administrative decision. The phrase “administrative decision” includes an action to make any contract, grant, reprogramming or procurement of goods and services, issue a Mayor’s Order, or cause a rulemaking proceeding to be undertaken. This includes activity before the Council and the State Board of Education.

Accordingly, because XXXXX does more than merely coordinate meetings between educators and elected officials, but also meets with and occasionally engages officials on legislation, XXXXX is a lobbying entity or firm as defined under § 1–1161.01(32)(A) and must register as such with the OGE. As the organization’s Executive Director who performs such activities on XXXXX’s behalf, you do not need to register as a lobbyist with BEGA separately or file a separate registration fee. You should be identified as a lobbyist performing lobbying activities

on behalf of XXXXX within that organization's Registrant Profile in BEGA's Lobbying Registration and Reporting (LRR) e-filing system. Should your organization ever employ additional staff that will meet with executive and legislative branch officials in the District of Columbia to influence legislative actions and administrative decisions, those individuals should also be added to XXXXX's Registrant Profile as additional lobbyists performing lobbying activities on its behalf.

As a 501(c)(3) tax exempt organization, XXXXX should qualify for the reduced lobbying registration fee of \$50 per year.

XXXXX does not qualify for an exemption from the lobbying registration requirements pursuant to D.C. Official Code § 1-1162.28(a)(4), which exempts certain entities<sup>1</sup> "whose activities *do not consist of lobbying*, the result of which shall inure to the financial gain or benefit of the entity." (emphasis added) As your letter states, XXXXX does engage in lobbying activity, and the communications disclosed in the organization's Activity Report for the 3<sup>rd</sup> Quarter of Calendar Year 2019 clearly demonstrate that these activities mandate registration with BEGA as a lobbying entity.

Please note that even though XXXXX is not entitled to the exemption from registration set forth in D.C. Official Code §1-1162.28(a)(4), the organization is only required to file a Lobbyist Registration Report under the Ethics Act and pay the applicable fee, if it:

- a) Receives compensation in an amount of \$250 or more in any 3-consecutive-calendar month period for lobbying;
- b) Receives compensation from more than one source in an aggregate amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying; or
- c) Expends funds in an amount of \$250 or more in any 3-consecutive-calendar-month period for lobbying.<sup>2</sup>

If you have questions about whether you are required to file a Lobbyist Registration Report, please contact our office.

This advice is provided to you pursuant to section 219 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011 ("Ethics Act"), effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.19), which empowers me to provide such guidance. As a result, no enforcement action for a violation of the District's Code of Conduct may be taken against you in this context, provided that you have made full and accurate disclosure of all relevant circumstances and information in seeking this advisory opinion.

You are also advised that the Ethics Act requires this opinion to be published in the District of Columbia Register within 30 days of its issuance, but that your identity will not be disclosed unless you consent to such disclosure in writing. We encourage individuals to so consent in the interest of greater government transparency. Please, then, let me know your wishes about disclosure.

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<sup>1</sup> These entities are defined as "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, . . . and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." D.C. Official Code § 47.1802.01(4)(A). Under the definition, "no part of the net earnings of the entity inures to the benefit of any private shareholder or individual." D.C. Official Code § 47.1802.01(4)(B).

<sup>2</sup> See D.C. Official Code §1-1162.27(a)

Pursuant to section 219(c)(1) of the Ethics Act (D.C. Official Code § 1-1162.19 (c)(1)), you may appeal this determination to the Ethics Board. If you wish to do so, please send a written appeal to: Board of Ethics and Government Accountability, Attn: Rochelle Ford, Esq., 441 4th Street, N.W. Suite 830 South, Washington, D.C. 20001, or email to [bega@dc.gov](mailto:bega@dc.gov).

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Brent Wolfingbarger  
Director of Government Ethics  
Board of Ethics and Government Accountability

**FRIENDSHIP PUBLIC CHARTER SCHOOL**  
**REQUEST FOR PROPOSALS**

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

- **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.

The competitive RFP can be found on FPCS website at:

<http://www.friendshipschools.org/procurement>. Proposals are due no later than **4:00 P.M., EST, Monday December 17, 2019**. Questions and Proposals should be submitted online at: [Procurementinquiry@friendshipschools.org](mailto:Procurementinquiry@friendshipschools.org). Proposals can be submitted in person at 1400 1<sup>st</sup> Street NW, Suite 300, Washington, DC. 20001. All bids not addressing all areas as outlined in the RFP will not be considered. No proposals will be accepted after the deadline.

**DISTRICT OF COLUMBIA DEPARTMENT OF HEALTH**  
**TEMPORARY NOTICE OF CLOSURE OF ALL OPERATIONS**

Please take notice that the Department of Health will close its operations at 899 North Capitol Street, NE, Washington, DC 20002 on Friday, December 6, 2019 at 12 p.m. This includes the Vital Records Division and the Processing Unit of the Health Regulation and Licensing Administration. The Department of Health will reopen its operations at 899 North Capitol Street, NE, Washington, DC 20002 at 8:15 a.m. on Monday, December 9, 2019.

Please take additional notice that the Department of Health will close the DC Health and Wellness Center and the Tuberculosis dc register and Chest Clinic located at 77 P Street, NE, Washington, DC 20002 on Friday, December 6, 2019 at 1 p.m. The Department of Health will reopen its operations at 77 P Street, NE, Washington, DC 20002 at 8:30 a.m. on Monday, December 9, 2019.

**KIPP DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****Violence Interrupter Services**

KIPP DC is soliciting proposals from qualified vendors for Violence Interrupter Services. The RFP can be found on KIPP DC's website at [www.kippdc.org/procurement](http://www.kippdc.org/procurement). Proposals should be uploaded to the website no later than 5:00 PM EST, on December 4, 2019. Questions can be addressed to [jacque.patterson@kippdc.org](mailto:jacque.patterson@kippdc.org).

Notice: This decision may be formally revised before it is published in the District of Columbia Register. Parties should promptly notify this office of any errors so that they may be corrected before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**Government of the District of Columbia  
Public Employee Relations Board**

<hr/>		)	
In the Matter of:		)	
		)	
Board of Trustees of the University		)	
of the District of Columbia		)	
		)	
	Petitioner	)	PERB Case No. 18-N-05
		)	
		)	Opinion No. 1713
	v.	)	
		)	
University of the District of Columbia Faculty		)	
Association		)	
		)	
	Respondent	)	
<hr/>		)	

**DECISION AND ORDER**

On June 6, 2018, the University of the District of Columbia Faculty Association (Faculty Association) filed the instant negotiability appeal (Appeal). The Faculty Association and the Board of Trustees of the University of the District of Columbia (UDC) are negotiating their Eighth Master Agreement.<sup>1</sup> In accordance with section 1-617.16(a) of the D.C. Official Code, they are negotiating both compensation and noncompensation issues. The instant Appeal concerns one (1) UDC compensation proposal that the Faculty Association has declared nonnegotiable.<sup>2</sup> For reasons stated herein, the Board concludes that UDC’s proposed section A(4) “Market Adjustments” is negotiable.

**I. Statement of the Case**

The pertinent facts are undisputed. On May 23, 2018, UDC presented to the Faculty Association a proposed Article XXI(A) of the agreement.<sup>3</sup> Article XXI is entitled “Compensation,” and paragraph A of Article XXI is entitled “Salary.” In a June 1, 2018, letter to

<sup>1</sup> Appeal at 1.

<sup>2</sup> UDC’s negotiability appeal concerned two proposals, section A(4) “Market Adjustments” and section A(5)(b) “Individual Adjustments and Retention.” UDC subsequently withdrew proposed section A(5)(b) in its Brief filed on February 1, 2019. Therefore, the Board will only address the parties’ arguments concerning proposed section A(4).

<sup>3</sup> Appeal at 2.



Decision and Order  
PERB Case No. 18-N-05  
Page 2

UDC, the Faculty Association declared UDC's proposed section A(4) of Article XXI was nonnegotiable.<sup>4</sup>

Proposed section A(4) provides as follows:

4. Market Adjustments

In addition and subsequent to the adjustment referenced in paragraph A.3, in fiscal year 2019, Bargaining Unit members will be placed on the Salary Structures set forth in paragraph A.1 based on rank and discipline in accordance with the following provisions:

(a) To the extent a Bargaining Unit member's base salary, including fiscal year 2019 COLA, is not equal to or greater than eighty-five percent (85%) of the national median salary for public institutions in that rank and discipline as evaluated by the College and University Professional Association for Human Resources (CUPA-HR), the Bargaining Unit member will receive a market adjustment which will bring their salary to eighty-five percent (85%) of the national median salary for public institutions in that rank and discipline as evaluated by CUPA-HR.

(b) All market adjustments set forth in this paragraph A.4 will be paid out over two fiscal years, with forty percent (40%) of the market adjustment paid to the Bargaining Unit member in fiscal year 2019 and the remaining sixty percent (60%) of the market adjustment paid to the Bargaining Unit member in fiscal year 2020.<sup>5</sup>

Citing section 1-611.03(a)(1) of the D.C. Official Code, the Faculty Association declared nonnegotiable "Section 4, to the extent it mandates consistency with the College and University Professional Association for Human Resources (CUPA-HR) national studies."<sup>6</sup>

On July 6, 2018, UDC filed the instant negotiability appeal. UDC contends that section 1-611.03(a)(1) permits the type of market adjustment in proposed section A(4) by providing "that compensation levels may be examined for public and/or private employees outside the area and/or for federal government employees when necessary to establish a reasonably representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels."<sup>7</sup>

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<sup>4</sup> Appeal, Exhibit 2.

<sup>5</sup> Appeal, Exhibit 1.

<sup>6</sup> Appeal Exhibit 2.

<sup>7</sup> Appeal at 2.

Decision and Order  
PERB Case No. 18-N-05  
Page 3

On July 13, 2018, the Faculty Association filed an answer to the Appeal (Answer). In its Answer the Faculty Association contends that proposed section A(4) is inconsistent with section 1-611.03(a)(1)'s requirement that salaries of employees in the Educational Service be competitive with those of other public sector employees and that "compensation shall be deemed to be competitive if it falls reasonably within the range of compensation prevailing in the Washington, D.C., Standard Metropolitan Statistical Area (SMSA)."<sup>8</sup> The Faculty Association noted that, in an interest arbitration concerning the Seventh Master Agreement, the arbitrator found that under that statute using comparison data from outside the Washington, D.C. SMSA was neither necessary nor appropriate.<sup>9</sup>

On January 8, 2019, PERB directed the parties to file briefs discussing whether the proposal in question was an illegal subject of bargaining. On February 1, 2019, the parties filed supplemental briefs.

#### Faculty Association Brief

The Faculty Association contends that UDC's proposal that faculty salaries be based on the CUPA-HR survey is either an illegal subject of bargaining or a nonnegotiable permissive subject of bargaining. The Faculty Association notes that section 1-611.03(a) of the D.C. Official Code states, in pertinent part, that compensation must be "competitive with that provided to other public sector employees having comparable duties, responsibilities, qualifications, and working conditions by occupational groups." "Competitive" is defined as "reasonably within the range of compensation prevailing in the Washington, D.C. [SMSA]."<sup>10</sup> When necessary to establish a representative comparison or when conditions in the local labor market require a larger sampling, "compensation levels may be examined from public and/or private employees outside the area and/or for federal government employees."<sup>11</sup> The Faculty Association contends that a nationwide CUPA study is not "necessary." The Faculty Association notes that the participating institutions in the survey, of which the University is not a participating member, are not similar to the University.<sup>12</sup> Additionally, the Faculty Association argues that in 2014 Arbitrator Sean Rogers found that the Washington, D.C. SMSA included over twenty (20) counties, including two public universities and several community colleges.<sup>13</sup> Further, the Faculty Association states that UDC's proposal seeks to eliminate as comparators faculty members from the District of Columbia Public Schools (DCPS), who are more highly paid.<sup>14</sup>

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<sup>8</sup> Answer at 4.

<sup>9</sup> Answer 4.

<sup>10</sup> Association Brief at 8.

<sup>11</sup> Association Brief at 8.

<sup>12</sup> Association Brief a 9.

<sup>13</sup> Association Brief at 10-11.

<sup>14</sup> Association Brief at 11.

Decision and Order  
PERB Case No. 18-N-05  
Page 4

### UDC Brief

UDC argues that its proposal is negotiable and consistent with the CMPA. UDC contends that CUPA-HR is necessary as “there is no comparability across duties, responsibilities, qualifications, and working conditions between the University and any other D.C. instrumentality.”<sup>15</sup> UDC explains that DCPS is not comparable to UDC because its teachers teach more complex material and because “the funding accorded to DCPS and the University is vastly different.”<sup>16</sup> Further, UDC argues that the other institutions within the Washington, D.C. SMSA are not “aligned with the University” because the private institutions have more revenue and none of the public institutions are “public masters, urban-land grant, [historically black colleges and universities] with a community college.”<sup>17</sup> For comparison, UDC argues that the University of Maryland at College Park and George Mason University have “very high research activity” and more selective admissions than the University.<sup>18</sup>

Finally, UDC argues that the CUPA-HR is necessary to create competitive salary structures. UDC alleges that a search of the CUPA-HR yielded seventeen (17) public institutions in Virginia and Maryland, which “did not produce sufficient data for the University to conduct an analysis of compensation by rank and discipline for all of the disciplines at the University. . . .”<sup>19</sup> By using the exception in section 1-611.03(a)(1) of the D.C. Official Code and expanding its search in CUPA-HR, UDC states that it was “able to analyze comprehensive salary data by rank and discipline for almost all faculty positions in the bargaining unit.”<sup>20</sup> Based on this data, UDC asserts that it was able to create the proposed salary structure set forth in the May 23, 2018 proposal.<sup>21</sup> UDC states that it then adjusted that proposed salary structures by eight percent (8%) to recognize the higher pay structures within the SMSA.<sup>22</sup> UDC contends that its approach in creating the proposed salary structures “clearly” complies with section 1-611.03(a)(1) of the D.C. Official Code as it is competitive with other public sector employees and “aligned with higher pay practices in the SMSA . . . .”<sup>23</sup> Therefore, UDC asserts that its proposed section A(4) is negotiable.<sup>24</sup>

## **II. Discussion**

### **A. General Principles**

The Board is authorized to make a determination in disputed cases as to whether a matter is within the scope of collective bargaining.<sup>25</sup> Section 1-617.08(b) of the D.C. Official Code

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<sup>15</sup> UDC Brief at 2-3.

<sup>16</sup> UDC Brief at 5.

<sup>17</sup> UDC Brief at 6-7.

<sup>18</sup> UDC Brief at 7.

<sup>19</sup> UDC Brief at 8.

<sup>20</sup> UDC Brief at 8.

<sup>21</sup> UDC Brief at 8.

<sup>22</sup> UDC Brief at 9.

<sup>23</sup> UDC Brief at 9-10.

<sup>24</sup> UDC Brief at 10.

<sup>25</sup> D.C. Official Code § 1-605.02(5).

Decision and Order  
PERB Case No. 18-N-05  
Page 5

states that “all matters shall be deemed negotiable” with the exception of certain “management rights” as to which the District and its agencies are not required to negotiate.<sup>26</sup> The Board has adopted the three-category approach articulated by the Supreme Court in *National Labor Relations Board vs. Wooster Division of Borg-Warner Corporation*,<sup>27</sup> which held that there are mandatory subjects over which parties must bargain, permissive subjects over which the parties may bargain, and illegal subjects over which the parties may not legally bargain.<sup>28</sup>

The Board finds that the proposed section A(4) is negotiable. The Board has long held that matters of compensation are negotiable subjects of bargaining. Under § 1-617.17(b) of the D.C. Official Code, salary is a mandatory subject of collective bargaining concerning compensation. Contrary to the Faculty Association’s argument, the Board finds that the proposed section A(4) does not contravene section 1-611.03 of the D.C. Official Code. The Board finds that the statute does not prohibit the parties from examining compensation outside of the Washington, D.C. SMSA in order to determine the appropriate compensation package. Section 1-611.03 of the D.C. Official Code authorizes the examination of public and/or private employees outside of the area “when necessary to establish a reasonable representative statistical basis for compensation comparisons, or when conditions in the local labor market require a larger sampling of prevailing compensation levels.” Therefore, the Board finds that UDC’s proposed section A(4) is negotiable.

### **ORDER**

#### **IT IS HEREBY ORDERED THAT:**

1. UDC’s proposed section A(4) is negotiable.
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 Chairperson Charles Murphy and Board Members Mary Anne Gibbons, Ann Hoffman, and Douglas Warshof.

June 20, 2019

Washington, D.C.

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<sup>26</sup> D.C. Official Code § 1-617.08(b).

<sup>27</sup> 356 U.S. 342 (1975).

<sup>28</sup> *D.C. Nurses Ass’n v. D.C. Dep’t of Pub. Health*, 59 D.C. Reg. 10,776, Slip Op. No. 1285 at p. 4, PERB Case No. 12-N-01 (2012) (citing *NLRB v. Wooster Div. of Borg-Warner Corp.*, 356 U.S. 342 (1975)).

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order in PERB Case No. 18-N-05, Slip Op. No. 1713 was sent by File & ServeXpress to the following parties on this the 21<sup>st</sup> day of June 2019.

Jonathan G. Axelrod, Esq.  
Beins, Axelrod, P.C.  
1717 K Street, N.W., Suite 1120  
Washington, D.C. 20006

Anessa Abrams, Esq.  
Ford Harrison LLP  
1300 19<sup>th</sup> Street, N.W., Suite 420  
Washington, D.C. 20036

/s/ Sheryl Harrington  
Administrative Assistant

**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 January 2, 2020.

Comments on these potential appointments should be submitted, in writing, to the Office of Notary Commissions and Authentications, 441 4<sup>th</sup> 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 November 22, 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](http://www.os.dc.gov).

D.C. Office of the Secretary  
Recommendations for Appointments as DC Notaries PublicEffective: January 2, 2020  
Page 2 of 7

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Amahdi	Tamika	Project ReDirect, Inc. 6405 Chillum Place, NW	20012
Anaya	Gabriel T.	Self 439 Tennessee Avenue, NE	20002
Ayala	Amilcar E.	PNC Bank 1100 25th Street, NW	20037
Bennett	Michelle Elaine	Bert Smith & Co. 1090 Vermont Avenue, NW, Suite 250	20005
Bock	Katherine Ellen	Campaign Legal Center 1101 14th Street, NW, Suite 400	20005
Boyd	Valerie	Wells Fargo 5301 Wisconsin Avenue, NW	20015
Brooks	Arvell Lorenzo	Self 518 Hamilton Street, NE	20011
Brown	Derek J.	National Committee to Preserve Social Security and Medicare 111 K Street, NE, Suite 700	20002
Brown	Selena T.	Premium Title & Escrow, LLC 3407 14th Street, NW	20010
Bullock	Lorraine J.	Kaiser Family Foundation 1330 G Street, NW	20005
Burley	Barbara A.	U.S. Court of Appeals for the Armed Forces 450 E Street, NW	20442
Byng	Katelyn Alexandria	Crowell & Moring 1001 Pennsylvania Avenue, NW	20004
Caldwell	Tabitha Elisha	HHS 200 Independence Avenue, SW	20201
Cameron	Robert J.	The DuPont Circle Hotel 1500 New Hampshire Avenue, NW	20036

D.C. Office of the Secretary  
Recommendations for Appointments as DC Notaries PublicEffective: January 2, 2020  
Page 3 of 7

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Catt	Yvonne M.	Self (Dual) 1712 Lang Place, NE	20002
Charles	Mark Anthony	Self (Dual) 1329 Independence Court, SE	20003
Cohen	Amy Victoria	The Law Office Of Linda M. Hoffman, P.C. 919 18th Street, NW, Suite 250	20006
Conteh	Amara	The George Washington University 1922 F Street, NW, 4th Floor	20052
Coronejo	Catherine C.	EP Federal Credit Union 13th C Street, SW, Room 215A	20228
Costello	Austin	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Davis	Rosetta	Self 1708 Montello Avenue, NE	20002
Davis-Sylvestre	Jacqueline	Children's National Hospital 111 Michigan Avenue, NW	20010
de Jong	Jonathan	Institute for Constitutional Advocacy and Protection 600 New Jersey Avenue, NW	20001
Duran	Denia	Self 2211 Perry Street, NE	20018
Fitzpatrick	Jennifer	KVS Title, LLC 230 6th Street, NE	20002
Foster	Ruth E.	Kotz Partnership 2828 Connecticut Avenue, NW, 215	20008
Fowler	Mastin T.	White Case, LLP 701 Thirteenth Street, NW	20005



D.C. Office of the Secretary  
Recommendations for Appointments as DC Notaries PublicEffective: January 2, 2020  
Page 4 of 7

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Gabbard	Paul D.	Citibank, NA 1101 Pennsylvania Avenue, NW, 9th Floor	20004
Hawkins	Tyler	Wells Fargo Bank 215 Pennsylvania Avenue, SE	20003
Hernandez	Sara A.	Bank Of American 1835 Columbia Road, NW	20009
Hill	Joan P.	National Child Research Center 3209 Highland Place, NW	20008
Hunter	Terrance	Self 4433 C Street, SE	20019
Johnson	Christopher S.W.	State Farm 4723 Sheriff Road, NE	20019
Johnson	Janet E.	Self 1721 First Street, NW	20001
Jones	Daniel Joseph	Law Office of D. J. Jones PLLC 2201 Wisconsin Avenue, NW, Suite 200	20007
Jones	Danielle	Government Printing Office Federal Credit Union 732 North Capitol Street, NW	20401
Lance	Louis R.	G3 Global Services 919 18th Street, NW, Suite 230	20006
Lawhorn-Brown	Linda	US Department of Commerce 1401 Constitution Avenue, NW, Room 51030	20230
Lee	Z. Lynn	Avenue Settlement Corporation 2401 Pennsylvania Avenue, NW, Suite H	20037
Lehan	Debra	Keener Management 1746 N Street, NW	20036

D.C. Office of the Secretary  
 Recommendations for Appointments as DC Notaries Public

Effective: January 2, 2020  
 Page 5 of 7

Lewis	Corey Lee	Self (Dual) 5605 Nannie Helen Burroughs Avenue, NE	20019
Linder	Marcia	Self 65 Gallatin Street, NW	20011
Lockett	Corleus D.	Medstar Washington Hospital Center 110 Irving Street, NW	20010
Long	Daniel D'Amani	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Marshall	Ruth E.	Premier Consultants International, Inc. 1020 16th Street, NW, #201	20036
McCauley	Earl J.	Citibank, N.A. 1775 Pennsylvania Avenue, NW	20006
Moose	Lauren	Legal Services Corporation 3333 K Street, NW	20007
Pearson	Christianne	American Chemical Society 1155 Sixteenth Street, NW	20036
Ramirez	Marcia	So Others Might Eat 71 O Street, NW	20001
Richardson	Danielle T.	Bruch Hanna LLP 1099 New York Avenue, NW, Suite 500	20001
Roberts	Kristen Jane	United States Department of Health and Human Services 200 Independence Avenue, SW	20201
Root	Casey John	The NHP Foundation 1090 Vermont Avenue, NW, #400	20005
Roseborough	Donna S.	Unite for Reproductive Gender and Equity (URGE) 734 15th Street, NW, Suite 800	20005

D.C. Office of the Secretary  
Recommendations for Appointments as DC Notaries PublicEffective: January 2, 2020  
Page 6 of 7

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Rudolph	Deborah Jean	Marriott Vacation Club 1130 Connecticut Avenue, NW, Suite 700	20036
Ruffner	Matthew	NAFSA 1307 New York Avenue, NW	20005
Sandle	Jessica A.	Self (Dual) 845 52nd Street, NE	20019
Savchenko	Dasha	Carr Properties 1615 L Street, NW, Suite 615	20036
Seo	Soo Jae	Lincoln Property Company 950 F Street, NW	20004
Simms	Patricia Ann	U.S. Department of Commerce 1401 Constitution Avenue, NW, 51030/HCHB	20230
Simms	Torrancia R.	Loeb & Loeb, LLP 901 New York Avenue, NW, Suite 300 East	20001
Sinclair	Michelle	The Washington Post 1301 K Street, NW	20071
Sizemore	Vanessa	Sizemore Wealth Solutions 1300 I Street, NW, Suite 400	20005
Smith, Jr.	Marcel	JP Morgan Chase Bank 3100 14th Street, NW, Suite 118	20010
Stanley	Denise H.	Advisory Council on Historic Preservation 401 F Street, NW, Suite 308	20001
Stone	Laura Lee	Birchstone Moore, LLC 2233 Wisconsin Avenue, NW, Suite 400	20007
Straitz	Dawn	Ivins, Phillips & Barker 1717 K Street, NW, Suite 600	20006

D.C. Office of the Secretary  
Recommendations for Appointments as DC Notaries PublicEffective: January 2, 2020  
Page 7 of 7

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Stroman	Dylan Jacob	Neal R. Gross & Co, Inc. 1323 Rhode Island Avenue, NW	20005
Tekle	Abele	The Vertias Law Firm 1225 19th Street, NW, Suite 320	20036
Vasseghi	Sheda	Rothwell, Figg, Ernst & Manbeck, P.C. 607 14th Street, NW, Suite 800	20005
Vaughn	Jeanette B.	Gallagher Fiduciary Advisors, LLC 1667 K Street, NW, Suite 1270	20006
Walker	Leonora	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Walton	Judy R.	Self 1329 28th Street, SE	20020
Weishaupt Prelesnik	Stefanie J.	The Washington Post  1301 K Street, NW	20071
Welsh	Caleb Austin	Planet Depos 1100 Connecticut Avenue, NW, Suite 950	20036
Williams	Meka	Self 1129 48th Street, NE	20019
Woldemichale	Frezer Teklu	U.S. Department of Health and Human Services 330 C Street, SW	20201
Wright	Tia	PNC Bank 1100 25th Street, NW	20037
Zelaya	Cindy Cecilia	Wells Fargo Bank 4841 Massachusetts Avenue, NW	20016

**DISTRICT OF COLUMBIA SENTENCING COMMISSION****NOTICE OF PUBLIC MEETING**

The Commission meeting will be held on Tuesday, November 19, 2019 at 5:00 p.m. The meeting will be held at 441 4<sup>th</sup> 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://www.scdc.dc.gov>

For additional information, please contact: Mia Hebb, Staff Assistant, at (202) 727-8822 or email [mia.hebb@dc.gov](mailto:mia.hebb@dc.gov)

**Agenda**

1. Review and Approval of the Minutes from the October 15, 2019 Meeting - Action Item, Judge Lee.
2. Three-Year Outreach Strategy Initiatives – Discussion Item, Miatta Sesay, Outreach Specialist, Barbara Tombs-Souvey, and Judge Lee.
3. Continued Discussion of Title 16 Sentences:
  - a. Presentation of Title 16 Sentencing Data – Taylor Tarnalicki, Research Analyst.
  - b. Grid Box Analysis – Mehmet Ergun, Statistician.
4. December 17<sup>th</sup> Meeting is cancelled.  
Next Scheduled Meeting – January 21, 2020.
5. Adjourn.

**DC SENTENCING COMMISSION****MEETING UPDATE**

The DC Sentencing Commission meeting scheduled for December 17, 2019 is cancelled. Inquiries concerning the meeting may be addressed to Mia Hebb, Administrative Assistant at (202) 727-8822 or [Mia.Hebb@dc.gov](mailto:Mia.Hebb@dc.gov).

**SOJOURNER TRUTH PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Family and Community Engagement Services**

The Sojourner Truth Public Charter School requests proposals for Family and Community Engagement Services to assist the school in achieving enrollment targets in SY2020-2021.

Full RFP document available by request. Proposals should be emailed as PDF documents no later than 5pm on Wednesday, November 27th, 2019. Contact: [info@thetruthschool.org](mailto:info@thetruthschool.org)

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 13540-A of National Geographic Society**, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the plans approved by BZA Order No. 13540, to add a front entry pavilion to an existing building in the RF-1 Zone at premises 1600 M Street, N.W. (Square 183, Lots 883 and 884).

<b>HEARING DATE</b> (13540):	July 29, 1981
<b>DECISION DATE</b> (13540):	September 4, 1981
<b>ORDER ISSUANCE DATE</b> (13540):	November 26, 1981
<b>MODIFICATION OF CONSEQUENCE DECISION DATE</b> (13540-A):	November 6, 2019

**SUMMARY ORDER ON REQUEST FOR MODIFICATION OF CONSEQUENCE**

Original Application. The Property contains three buildings for the headquarters of the National Geographic Society (the “Applicant”), including the 16th Street Building, the 17th Street Building, and the M Street Building. The Board of Zoning Adjustment (“Board” or “BZA”) approved special exception and variance relief to allow the construction of the M Street Building as an addition to the 16<sup>th</sup> Street Building in Application No. 13540. The approval allowed the Applicant to extend office use into the SP-2 zone (now D-2), extend the permitted uses of the C-4 zone (now D-6) into the SP-2, and to vary the open court requirements. The Board issued Order No. 13450 on November 26, 1981. (Exhibit 2A.)

Proposed Modification. On August 26, 2019, the Applicant submitted a request for modification of consequence to Order No. 13540. (Exhibits 1-3.) The proposed modification would add a new front entry pavilion located on the north side of the Property between the 17th Street Building and the M Street Building and would add a connection to the 17th Street building so that all three of the buildings on the Property are connected above grade. The Applicant submitted revised plans reflecting these modifications. (Exhibits 2B1-2B2.)

Notice of the Request for Modification. Pursuant to Subtitle Y §§ 703.8-703.9 of Title 11 of the DCMR (Zoning Regulations of 2016, the “Zoning Regulations” to which all references are made unless otherwise specified), the Applicant provided proper and timely notice of the request for modification of consequence. (Exhibit 2.)

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission (“ANC”) 2B.



ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 10, 2019, at which a quorum was present, the ANC voted to support the request. (Exhibit 5.)

OP Report. Office of Planning submitted a report recommending approval of the proposed modification of consequence. (Exhibit 7.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the proposed modification of consequence, subject to a condition regarding curb cuts on M Street, N.W. (Exhibit 6.) The Board declined to adopt the condition, finding that it was not relevant to the original application.

### **Request for Modification of Consequence**

The Applicant seeks a modification of consequence under Subtitle Y § 703.4 to revise the plans approved by BZA Order No. 13540 in order to add a front entry pavilion to an existing building in the RF-1 Zone.

The Board determines that the Applicant's request complies with 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." Based upon the record, the Board concludes that in seeking a modification of consequence, the Applicant has met its burden of proof under as directed by Subtitle Y § 703.4.

#### "Great Weight" to the Recommendations of OP

The Board is required to give "great weight" to the recommendation of OP pursuant to § 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 (2018 Repl.) and Subtitle Y § 405.8). The Board finds OP's recommendation that the Board approve the application persuasive and concurs in that judgment.

#### "Great Weight" to the Written Report of the ANC

The Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) The Board finds the ANC's recommendation that the Board approve the application persuasive and concurs in that judgment.

Pursuant to 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 of BZA Order No. 13540 is hereby **GRANTED**, subject to the approved plans at Exhibits 16 and 37 of Application No. 13540, as modified by Exhibits 2B1-2B2 of Application No. 13540-A.

**BZA APPLICATION NO. 13540-A  
PAGE NO. 2**

In all other respects, Order No. 13540 remains unchanged.

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; no other Board members 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:** November 7, 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. 13540-A  
PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 20104 of Zeta Phi Beta Sorority, Inc.**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 320.1(b), to permit a community service use in an existing, semi-detached principal dwelling unit in the RF-2 Zone at premises 1461 S Street, N.W. (Square 206, Lot 25).

**HEARING DATES:** October 2, 2019 and October 30, 2019  
**DECISION DATE:** October 30, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 48 (Final Revised); Exhibit 11 (Revised); (Exhibit 3 (Original).)<sup>1</sup>

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 11, 2019, at which a quorum was present, the ANC voted 8-0-1 to support the application. (Exhibit 43.)

OP Report. The Office of Planning ("OP") recommended denial of the originally-requested relief in a report dated September 20, 2019. (Exhibit 42.) OP submitted a supplemental report, dated October 21, 2019 recommending approval of the revised application subject to five conditions, which the Board adopted as part of this order (Exhibit 47.)

DDOT Report. The District Department of Transportation submitted a report, dated August 26, 2019, indicating that it had no objection to the application. (Exhibit 35.)

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<sup>1</sup> The Applicant originally requested special exception relief under the use provisions of Subtitle U § 320.1(a) and an area variance from the residential use requirements of Subtitle U § 203.1(n)(2), to permit a non-profit use on the premises. Subsequent to the BZA public hearing of October 2, 2019, the Applicant worked with the Zoning Administrator's office which determined that this use could be considered a community service center use which is permitted by special exception in Subtitle U § 320.1(b). Accordingly, the Applicant withdrew the originally requested relief to replace it with a request for special exception under Subtitle U § 320.1(b).

Persons in Support. The Board received letters from two neighbors in support of the application. (Exhibits 32, p. 7 and 36.) The Board also received a petition with multiple neighbors' signatures in support of the application. (Exhibit 37.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 320.1(b), to permit a community service use in an existing, semi-detached principal dwelling unit in the RF-2 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, WITH THE FOLLOWING CONDITIONS:**

1. The hours of operation shall be Monday through Friday, 9:00 a.m. to 5:00 p.m.
2. There shall be a maximum of six staff members.
3. There shall be no events on the property.
4. The property shall not be rented for any third-party purposes.
5. Office use shall be confined to first and second floor, with residential use in the basement and carriage house.

**VOTE: 3-0-2** (Carlton E. Hart, Peter A. Shapiro, and Frederick L. Hill to APPROVE; Lorna L. John not participating; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**BZA APPLICATION NO. 20104**

**PAGE NO. 2**

**FINAL DATE OF ORDER:** November 13, 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 § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, 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. 20104**

**PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 20114 of 3569 Warder LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exceptions under the residential conversion provisions of Subtitle U § 320.2, with waivers from the chimney and external vent requirement of Subtitle U § 320.2(f) and the rooftop architectural element requirement of Subtitle U § 320.2(h), and under Subtitle C § 703.2 from the from the minimum parking requirements of Subtitle C § 701.5, to convert an existing two-story, semi-detached principal dwelling unit into a five-unit semi-detached apartment building in the RF-1 Zone at premises 3569 Warder Street N.W. (Square 3035, Lot 820).

**HEARING DATES:** October 9, 2019 and November 6, 2019  
**DECISION DATE:** November 6, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 8.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 11, 2019, at which a quorum was present, the ANC voted to support the application. (Exhibit 31.)

In advance of the continued hearing on this application, ANC 1A Chair Kent Boese submitted a request to be accepted as an expert witness in the areas of architectural history and historic preservation. At the November 6, 2019 hearing, the Board granted his request for expert status, defining his area of expertise as architectural history. Commissioner Boese provided expert testimony regarding the front porch design, raising concerns about the proposed columns and commenting on the porch roof.

The Board determined that, because the waiver to modify the rooftop architectural element involves only the porch roof, the design of the columns is not part of the Board's consideration for the relief requested. The Board notes that the Applicant committed to working with the ANC moving forward on the column design issue.

OP Report. The Office of Planning (“OP”) submitted two reports regarding this application. The first OP report, dated September 26, 2019, recommended approval of the relief requested, except for the requested waiver from the rooftop architectural element requirement of Subtitle U § 320.2(h). (Exhibit 38.) OP’s supplemental report, dated November 1, 2019, recommended approval of the waiver from Subtitle U § 320.2(h), based on the Applicant’s redesign of the proposed porch roof. (Exhibit 47.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 39.)

Persons in Support. The Board received a letter in support from Edith Clemons of 3567 Warder Street, N.W. and a petition in support from 19 neighbors. (Exhibits 32 and 36.)

Persons in Opposition. The Board received a letter in opposition from Daniel Nasaw of 434 Manor Place, N.W. (Exhibit 28.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under the residential conversion provisions of Subtitle U § 320.2, with waivers from the chimney and external vent requirement of Subtitle U § 320.2(f) and the rooftop architectural element requirement of Subtitle U § 320.2(h), and under Subtitle C § 703.2 from the from the minimum parking requirements of Subtitle C § 701.5, to convert an existing two-story, semi-detached principal dwelling unit into a five-unit semi-detached apartment building in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 45 AND THE FOLLOWING CONDITION:**

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<sup>1</sup> Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

1. **Prior to the issuance of any building permit authorized by this Order**, the Applicant shall obtain the issuance of a building permit for 3567 Warder Street, N.W. to extend the chimney or otherwise comply with the requirements of Subtitle U § 320.2(f).

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; one Board member 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:** November 12, 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

**BZA APPLICATION NO. 20114**

**PAGE NO. 3**



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. 20127 of David Boggs**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1(b) and (c), and pursuant to Subtitle X, Chapter 10, for area variances from the penthouse requirements of Subtitle C § 1500.4, the floor area ratio requirements of Subtitle F § 302.1, the lot occupancy requirements of Subtitle F § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a one-story addition, to expand the existing penthouse structure and to convert an existing apartment house to a flat in the RA-2 Zone at premises 1204 Q Street N.W. (Square 277S, Lot 7).

**HEARING DATE:** October 30, 2019

**DECISION DATE:** October 30, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2F. The Board received a request for party status in opposition from Barbara Schauer of 1504 Vermont Avenue, N.W. (Exhibits 41-41A); however, the request was withdrawn by Ms. Schauer in advance of the public hearing based on design changes to the proposed addition. (Exhibits 44-45B.)

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 4, 2019, at which a quorum was present, the ANC voted to support the application. (Exhibit 37.)

OP Report. The Office of Planning ("OP") submitted a report recommending approval of special exception relief from the penthouse requirements of Subtitle C § 1502.1(c); conditional approval of variance relief from the penthouse requirements of Subtitle C § 1500.4(b); and denial of variance relief from the floor area ratio requirements of Subtitle F § 302.1, the lot occupancy requirements of Subtitle F § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2. (Exhibit 47.) Based on supplemental information provided by the Applicant at the public hearing, OP testified that it now recommends approval of all areas of relief requested and submitted a supplemental report to confirm its support. (Exhibit 53.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 46.)

Persons in Support. The Board received four letters in support of the application. (Exhibits 18-21.)

### **Variance Relief**

The Applicant seeks relief under Subtitle X § 1002.1 for area variances from the penthouse requirements of Subtitle C § 1500.4, the floor area ratio requirements of Subtitle F § 302.1, the lot occupancy requirements of Subtitle F § 304.1, and the nonconforming structure requirements of Subtitle C § 202.2, to construct a one-story addition, to expand the existing penthouse structure and to convert an existing apartment house to a flat in the RA-2 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exception under Subtitle C § 1504 from Subtitle C § 1502.1(b), (c)(1), and (c)(4) to allow an addition to an existing penthouse that does not meet the rear and side setback requirements.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 45A.**

**VOTE: 3-0-2** (Frederick L. Hill, Carlton E. Hart, and Peter A. Shapiro to APPROVE; Lesylleé M. Whit and Lorna L. John not participating.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 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.

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,

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<sup>1</sup> Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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. 20137 of WH Development**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to convert an existing semi-detached principal dwelling unit, to a three-unit apartment house in the RF-1 Zone at premises 3518 13th Street N.W. (Square 2834, Lot 846).

**HEARING DATE:** November 6, 2019

**DECISION DATE:** November 6, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 10, 2019, at which a quorum was present, the ANC voted 8-0-0 to support the application. (Exhibit 38.)

OP Report. The Office of Planning submitted a report, dated October 24, 2019, recommending approval of the application. (Exhibit 34.)

DDOT Report. The District Department of Transportation submitted a report, dated October 18, 2019, indicating that it had no objection to the application. (Exhibit 35.)

Persons in Support. The Board received a letter in support of the application from Romi Bhatia, the owner of 3520 13th Street, N.W. (Exhibit 40.)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to convert an existing semi-detached principal dwelling unit, to a three-unit apartment house in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS<sup>1</sup> AT EXHIBIT 36.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 8, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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<sup>1</sup>Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.



**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 20138 of Joyce Cowan**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the use permissions of Subtitle U § 301.1(g) and under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 404.1, from the accessory building lot occupancy requirements of Subtitle E § 5003.1, from the accessory building rear yard setback requirements of Subtitle E § 5004.1, and from the nonconforming structures requirements of Subtitle C § 202.2, to construct a second-story addition to an existing accessory structure to be used as a studio, garage and second-floor dwelling unit in the RF-2 Zone at premises [1436 S Street N.W.](#) (Square 207, Lot 49).

**HEARING DATE:** November 6, 2019

**DECISION DATE:** November 6, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2F.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 4, 2019, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 28.)

OP Report. The Office of Planning submitted a report, dated October 25, 2019, recommending approval of the application. (Exhibit 35.)

DDOT Report. The District Department of Transportation submitted a report, dated October 25, 2019, indicating that it had no objection to the application. (Exhibit 34.)

Persons in Support. The Board received letters from four neighbors in support of the application. (Exhibits 29, 30, 32, and 39.)

### Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under the use permissions of Subtitle U § 301.1(g) and under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 404.1, from the accessory building lot occupancy requirements of Subtitle E § 5003.1, from the accessory building rear yard setback requirements of Subtitle E § 5004.1, and from the nonconforming structures requirements of Subtitle C § 202.2, to construct a second-story addition to an existing accessory structure to be used as a studio, garage and second-floor dwelling unit in the RF-2 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 31A.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; one Board seat vacant.)

### BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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<sup>1</sup>Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**BZA APPLICATION NO. 20138**

**PAGE NO. 2**

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**BZA APPLICATION NO. 20138**

**PAGE NO. 3**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
BOARD OF ZONING ADJUSTMENT**

**Application No. 20139 of 716 L ST SE LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle H § 1200.1 from the ground floor use requirements of Subtitle H § 1101.1, to construct an addition to the existing detached building, and to convert it into a 18-unit apartment house in the NC-6 Zone at premises 716-718 L Street, S.E. (Square 906, Lot 16).

**HEARING DATE:** November 6, 2019

**DECISION DATE:** November 6, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 2.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 15, 2019 at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 34.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application, with the condition that the Applicant shall implement a TDM plan. (Exhibit 32.) DDOT's TDM plan provisions were adopted by the Board and made a condition of this order.

Persons in Support. One letter was submitted by the Capitol Hill Restoration Society in support of the application. (Exhibit 37.)

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle H § 1200.1 from the ground floor use requirements of Subtitle H § 1101.1, to construct an addition to

the existing detached building, and to convert it into an 18-unit apartment house in the NC-6 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>1</sup> AT EXHIBIT 30A – UPDATED ARCHITECTURAL PLANS AND ELEVATIONS, AND SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The Applicant shall identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall act as points of contact with DDOT, [goDCgo](#), and Zoning enforcement.
2. The Applicant shall provide Transportation Coordinators' contact information to [goDCgo](#), conduct an annual commuter survey of employees on site and report TDM activities and data collection efforts to [goDCgo](#) once per year.
3. Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to residents, including promoting transportation events (i.e. Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications.
4. Transportation Coordinators shall receive TDM training from [goDCgo](#) to learn about the TDM conditions for this project and available options for implementing the TDM plan.
5. The Applicant shall provide welcome packets to all new residents that should, at minimum, include Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupons or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's [goDCgo](#) program by emailing [info@godcgo.com](mailto:info@godcgo.com).

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<sup>1</sup> Self-certification. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

6. Transportation Coordinator shall subscribe to goDCgo's residential newsletter.
7. Transportation Coordinator shall submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years demonstrating compliance with the transportation and TDM conditions in the Order.

**VOTE:**     **4-0-1**     (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Lesylleé M. White 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:** November 7, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF

BZA APPLICATION NO. 20139  
PAGE NO. 3

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. 20140 of Todd Vassar and Bryant Hall**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1, to construct a two-story rear addition to an existing, detached principal dwelling unit in the R-1-B Zone at premises 3020 Cortland Place, N.W. (Square 2103, Lot 49).

**HEARING DATE:** November 6, 2019

**DECISION DATE:** November 6, 2019

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 39A (Corrected); Exhibit 4 (Original).<sup>1</sup>)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 3C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting at which a quorum was present, the ANC voted unanimously to have no objection to the application. (Exhibit 37.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 32.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 31.)

Persons in Support. Two letters were filed by neighbors in support of the application. (Exhibits 15 and 29.)

Persons in Opposition. One letter was submitted from two neighbors in opposition to the application. (Exhibit 33.)

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<sup>1</sup> The self-certification form was revised to provide an accurate rear yard calculation of 21.46 feet.



**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle D § 5201 from the rear yard requirements of Subtitle D § 306.1, to construct a two-story rear addition to an existing, detached principal dwelling unit in the R-1-B Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS<sup>2</sup> AT EXHIBIT 30A – UPDATED PLANS.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; Lesylleé M. White 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:** November 8, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED

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<sup>2</sup> Self-certification. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC MEETING NOTICE  
WEDNESDAY, JANUARY 29, 2020  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

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

**EXPEDITED REVIEW**

**WARD FIVE**

20173            **Application of Susan Ludwig and Laura Olsen**, pursuant to 11 DCMR  
ANC 5E           Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from  
the lot occupancy requirements of Subtitle E § 304.1, to construct a one-  
story accessory structure in the rear yard of an existing attached principal  
dwelling unit in the RF-1 Zone at premises 2011 1st Street N.W. (Square  
3117, Lot 39).

**PLEASE NOTE:**

Failure of an applicant to supply a complete application to the Board, and address the required standards of proof for the application, may subject the application or appeal to postponement, dismissal or denial. The public meeting 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. Individuals and organizations interested in any application may submit written comments to the Board.

An applicant is not required to attend for the decision, but it is recommended so that they may offer clarifications should the Board have questions about the case.

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

BZA PUBLIC MEETING NOTICE  
JANUARY 29, 2020  
PAGE NO. 2

The application will remain on the Expedited Review Calendar unless a request for party status is filed in opposition, or if a request to remove the application from the agenda is made by: (1) a Board member; (2) OP; (3) an affected ANC or affected Single Member District; (4) the Councilmember representing the area in which the property is located, or representing an area located within two-hundred feet of the property; or (5) an owner or occupant of any property located within 200 feet of the property.

The removal of the application from the Expedited Review Calendar will be announced as a preliminary matter on the scheduled decision date and then rescheduled for a public hearing on a later date. Notice of the rescheduled hearing will be posted on the Office of Zoning website calendar at <http://dcoz.dc.gov/bza/calendar.shtm> and on a revised public hearing notice in the OZ office. If an applicant fails to appear at the public hearing, this application may be dismissed.

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

**Do you need assistance to participate?**

Amharic

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

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

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

Chinese

您需要有人帮助参加活动吗?

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](mailto: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](mailto: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](mailto:Zelalem.Hill@dc.gov) 로

이메일을 주시기 바랍니다. 이와 같은 서비스는 무료로 제공됩니다.

Spanish

BZA PUBLIC MEETING NOTICE

JANUARY 29, 2020

PAGE NO. 3

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

*Vietnamese*

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

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

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

**FREDERICK L. HILL, CHAIRPERSON  
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 FILING**  
**Z.C. Case No. 15-27E**  
**(350 Morse CPK Owner, LLC – Second-Stage PUD @**  
**Square 3587, Lot 853 [Market Terminal Building D])**  
**November 6, 2019**

**THIS CASE IS OF INTEREST TO ANC 5D**

On October 31, 2019, the Office of Zoning received an application from 350 Morse CPK Owner, LLC (the “Applicant”) for approval of a second-stage planned unit development (“PUD”) for the above-referenced property.

The property that is the subject of this application consists of Lot 853 in Square 3587 in northeast Washington, D.C. (Ward 5), on property bounded by New York Avenue, N.E. (north), 4<sup>th</sup> Street, N.E. (northeast), Morse Street, N.E. (southeast), Florida Avenue, N.E. (southwest), and the Amtrak and Metrorail line (west). The property is zoned C-3-C<sup>1</sup> through a PUD-related map amendment and its underlying zoning is PDR-1.

The development site for the overall project includes four buildings containing residential, retail, office and optional hotel uses to be constructed over two phases. This application consists of the second-stage approval for Building D, which is a residential building with a maximum height of 130 feet and approximate square footage of 143,585 square feet of residential space and 6,044 square feet of retail space (with additional gross floor area devoted to loading and building service areas). The building will contain approximately 159 residential units and a penthouse with residential amenity space and two residential units.

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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<sup>1</sup> The PUD was originally approved under the 1958 Zoning Regulations through Z.C. Order 15-27, which included a PUD-related map amendment from the C-M-1 Zone District to the C-3-C Zone District.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 18-21**  
**Z.C. Case No. 18-21**  
**Hanover R.S. Limited Partnership**  
**(Consolidated Planned Unit Development and Related Map Amendment @**  
**Squares 3832 and 3835)**  
**June 10, 2019**

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on April 25, 2019, to consider the application of Hanover R.S. Limited Partnership (the “Applicant”) for a consolidated planned unit development (“PUD”) and a related Zoning Map amendment (the “Application”) for property which is located at Square 3832, Lot 15 and Square 3835, Lot 804 (collectively the “Property”). 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 (Zoning Regulations of 2016, the “Zoning Regulations”, to which all references are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

**FINDINGS OF FACT**

**Notice**

1. On February 28, 2019, the Office of Zoning (“OZ”) sent notice of the hearing to:
  - Advisory Neighborhood Commission (“ANC”) 5E, the “affected” ANC pursuant to Subtitle Z § 101.8;
  - ANC Single Member District (“SMD”);
  - Office of Planning (“OP”);
  - District Department of Transportation (“DDOT”);
  - Department of Consumer and Regulatory Affairs (“DCRA”);
  - District of Columbia Housing Authority (“DCHA”);
  - Office of the Attorney General (“OAG”);
  - Department of Energy and the Environment (“DOEE”);
  - the DC Council; and
  - Property owners within 200 feet of the Property. (Exhibit [“Ex.”] 19.)
2. OZ also published notice of the hearing in the *D.C. Register* on March 8, 2019 (66 DCR 2736) as well as through the calendar on OZ’s website. (Ex. 17.)

**Parties**

3. The parties to the case were the Applicant and ANC 5E, the ANC in which the Property is located. There were no requests for party status.

**The Property**

4. The Property has a total land area of 90,293 square feet and is bounded by the Washington Metropolitan Area Transit Authority (“WMATA”) tracks to the east and 8<sup>th</sup> Street, N.E. to the west. Kearny Street, N.E. is located to the northwest of the Property, and Irving Street, N.E. is located to the southwest of the Property.

5. The southern portion of the Property is presently improved with a vacant industrial building that was most recently used by a nonprofit. The northern portion of the Property is occupied by industrial uses. Approximately one-half of the Property is a machine laydown yard leased by a construction rental company. The remainder of the Property contains two free-standing, light-weight sheet metal warehouse buildings. These building are used predominantly to store construction equipment and building supplies. Individual warehouse bays within these structures are leased to trade contractors in the construction business.
6. Directly to the north of the Property is the District Artspace Lofts, which was approved as a PUD (Z.C. Case No. 09-08, subsequently modified by Z.C. Case Nos. 09-08A and 09-08B). The PUD included new facilities for Dance Place, which has been located in the neighborhood since 1986. The District Artspace Lofts is four-story building that is 48 feet in height and includes open space between the buildings generally at the terminus of Kearney Street.
7. Further to the north is the Brookland-CUA Metrorail station and adjacent to the Metrorail is Monroe Street Market, which was approved as a PUD (Z.C. Case No. 08-24, subsequently modified by Z.C Case Nos. 08-24B through 08-24C). The Monroe Street Market PUD is a development on five separate “blocks” and includes buildings with a maximum height of 90 feet.
8. These two PUDs, as well as the PUD that is the subject of the Application, create a spine of development that traverse from Michigan Avenue to the Brookland-CUA Metrorail station and down 8<sup>th</sup> Street along the WMATA tracks.
9. To the west of the Property is the Edgewood neighborhood, which is predominantly residential in character. Existing industrial uses are clustered along the east side of 8<sup>th</sup> Street, which are incompatible with the longstanding residential neighborhood to the west. Further to the south along Edgewood Street (which is a continuation of 8<sup>th</sup> Street south of Hamlin Street) is the Tolson Campus of the Hope Community Public Charter School (the “Hope Community Charter School”). Two additional schools (DC Prep Edgewood Elementary School and City Arts and Prep Public Charter School) are located south of Franklin Street.
10. Since the majority of 8<sup>th</sup> Street between the Brookland-CUA Metrorail station and the school is improved with industrial uses, the streetscape along 8<sup>th</sup> Street does not include sidewalks to provide a connection between the schools to the south and the Metrorail station and Dance Place to the north, which serve the schools’ transportation and after-school enrichment needs, respectively.
11. The area is served well by various transportation options. The Brookland-CUA Metrorail station is located 0.3 miles to the north of the Property. In addition, Michigan Avenue to the north of the Property is also well served by five Metrobus routes (80, H1, H2, H3, and H4).



12. The Metropolitan Branch Trail (“MBT”) generally traverses the western side of the WMATA tracks and Metrorail red line from Union Station up to Franklin Street. The MBT turns west along Franklin Street and terminates at 7<sup>th</sup> Street. Since the MBT begins again at the intersection of Monroe Street and 8<sup>th</sup> Street to the north of the Property, 8<sup>th</sup> Street serves as an unmarked portion of the MBT. As a result, DDOT is studying options for implementing an extension of the MBT immediately adjacent to the Property.
13. The Property is currently zoned PDR-1.

### **The Application**

14. On October 30, 2018, the Applicant filed the Application with the Commission for the consolidated review and approval of a PUD and a related Zoning Map amendment from the PDR-1 zone to the MU-4 zone for the Property. (Ex. 1-2L.)
15. The Applicant proposes to construct two multifamily residential buildings separated by a landscaped entry plaza, with a total of approximately 377 units (the “Project”). (Ex. 2, 3A1-3A10.)
16. While the buildings will function as a single residential development, the Project includes two separate buildings in order to break down the scale of the PUD and appropriately site the Project within the surrounding residential neighborhood.
17. Though each building includes its own residential lobby accessed from the landscaped entry plaza, the amenities for the buildings’ residents will be located primarily in the north building. This includes amenity space on the ground floor as well as third-floor amenity space adjacent to the outdoor pool in the north building’s courtyard. The south building includes two outdoor courtyards above the second level, with landscaping, paving, and seating.
18. The two buildings will include approximately 325,050 square feet of gross floor area, or a density of 3.6 floor area ratio (“FAR”), calculated based on the overall Property. The maximum height of the both buildings is 65 feet as measured to the top of the parapet. Each building also includes setbacks at the sixth story and the courtyards above the second level fronting on 8<sup>th</sup> Street act as additional setbacks, breaking up the façade along 8<sup>th</sup> Street. Both buildings in the Project include a habitable penthouse with a maximum height of 12 feet and a mechanical penthouse with a maximum height of 18 feet, 6 inches. All portions of the penthouses will be set back 1:1 in accordance with the Zoning Regulations and will comply with the other penthouse requirements set forth in Subtitle C, Chapter 15.
19. The north building is “U” shaped, and the south building is “E” shaped. The massing of both buildings is weighted towards the tracks, which shields the surrounding lower-density residential uses in the vicinity of the Property from the WMATA tracks to the

east. The building wings open towards the street to minimize the buildings' scale and the double order fenestration helps to minimize the perceived height of the buildings.

20. The Project is designed within the framework of the Brookland-CUA Small Area Plan ("SAP") and specifically within the recommendations of the Commercial Area South of Metro Station Subarea. Both buildings include a .5:1 setback at approximately 50 feet in height as called for in the SAP. (*See* SAP at 52 ["Building facades facing a public street in the sub area should step back in height at a ratio of one half (1/2) to one above 50 feet."].) The buildings are further stepped back at the penthouse level and the overall building scale is compatible with the spine of development that is clustered along Michigan Avenue and 8<sup>th</sup> Street to the north of the Property.
21. The buildings' wings include asymmetrical composition, and the materials include glass and dark panel grid projections contrasting with recessed textured punched openings in the main brick façades. This asymmetrical theme is carried up and around the building façade façades and the dark grid is also carried through to the buildings' penthouses in order to minimize the penthouse from view.
22. Each residential building has a two-story base that relates to the two-story rowhomes across 8<sup>th</sup> Street. While the two buildings are related in the architecture, they vary slightly in brick color to create distinct identities while fostering a coherent vision for the entirety of the Property. The brick layering and detailing provided on both buildings further relate the Project to the surrounding rowhome aesthetic as does the inclusion of bays, stoops, canopies, wood doors, and street level gardens. The inclusion of private stoops along with tiered foundation plantings at the base of both buildings further compliment the scale and character of the surrounding neighborhood. The Project also includes "townhouse-style" units along 8<sup>th</sup> Street, N.E. that further activate and enliven the streetscape.
23. The Project is designed to LEED-Gold standards and the similarly intends to seek LEED- Gold certification of the Project under the LEED v4-Multifamily Midrise standard. The LEED v4-Multifamily Midrise standard is tailored to the unique aspects of multifamily buildings and includes prescriptive requirements for onsite testing and performance. In addition to the standard LEED features and credit categories, the Multifamily Midrise standard requires mandatory compartmentalization, reduced duct leakage, and verified performance of exhaust and ventilation systems, all of which are unique in comparison with LEED BD+C for New Construction.
24. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project.
25. The green area ratio ("GAR") will be met by way of intensive and extensive green roof, bioretention, permeable pavers, grass and plantings, and solar panels. These best management practices will be implemented throughout the Project, both on and around the proposed buildings.

26. The below-grade parking garage provides approximately 186 parking spaces, which exceeds the 63 spaces required for the Project. (See Subtitle C § 702.1.) the Project includes two loading berths at 30 feet, two 100-square-foot platforms, and one service/delivery space at 20 feet. The loading berths have been designed to achieve front-in/front-out access from the public street for all loading vehicles.
27. The Project includes 125 long-term bicycle parking spaces in an enclosed bike storage area in the below-grade garage and will include 20 short-term bicycle parking spaces in the public space adjacent to the Property.
28. All access to parking and loading for the Project is from a curb cut on the north side of the Property along 8<sup>th</sup> Street, N.E. A private driveway provides access to the parking garage entrance on the north side of the north building on the Property, and the loading facilities will be located along the eastern portion of the Property adjacent to the WMATA tracks. All truck turning maneuvers will occur on the Property. Locating the parking entrance and loading facilities away from 8<sup>th</sup> Street minimizes pedestrian and vehicular conflicts as well as conflicts with the MBT that may be located adjacent to the Property.
29. The proposed buildings will be separated by a landscaped entry plaza that aligns with Jackson Street and breaks up the massing of the Project. This plaza will be the focal point at the terminus of Jackson Street while also masking views of the WMATA tracks to the east. The plaza features a wedged geometry that widens from the WMATA tracks towards 8<sup>th</sup> Street. The plaza width ranges from 30 feet to 55 feet similar to the Arts Walk at Monroe Street Market and includes approximately 5,150 square feet.
30. The leasing office and the amenity spaces of both buildings will be oriented towards the plaza to activate this space. The plaza will be well-lit and landscaped and will include seating for the public and buildings' residents. In addition, the primary residential entrances are located in the central landscaped entry plaza separating the two buildings. At the request of the Department of Parks and Recreation ("DPR"), the Applicant will provide a public drinking fountain in the entry plaza for use by runners, bikers and pedestrians.
31. Since the entry plaza is located between the two residential buildings, the plaza has been designed for more passive use in order to limit noise and activity that may impact the adjacent residential units. As a result, the plaza includes several types of seating to host groups of various sizes and provides ample opportunities for neighbor interaction, while also limiting any adverse impacts on the building's residents.
32. Layers of evergreen trees and shrubs will be mixed in with leafy deciduous planting to provide year-round tree cover. Drip irrigation is proposed for all plantings, which is a best management practice to promote plant health while preserving water. Several bio-retention planters will utilize roof runoff for irrigation as they filter the water and slow

the conveyance and impact on the public storm sewer. The extensive use of permeable pavers for the driveway on the northern portion of the Property will greatly reduce storm runoff and reinforce the Applicant's commitment to green practices. The Project also includes a landscaped dog run in the rear of the south building that will be made available to the buildings' residents

33. The Property site is located in a connected, previously developed neighborhood with connections to existing infrastructure, services and public transportation options, such as the MBT, which is a vital artery for alternative forms of transportation and commuting throughout the District.
34. The Project includes improvements to the public space along 8<sup>th</sup> Street adjacent to the fronts of each building, which will enliven the streetscape and provide a safe walking environment both for residents in the area as well as the children that travel between Dance Place to the north of the Property and the Hope Community Charter School to the south of the Property. The 8<sup>th</sup> Street streetscape includes an eight-foot-wide planting strip with ornamental trees. (Ex. 25A1-25A6, Sheets L03-L07.) Moreover, the 8<sup>th</sup> Street sidewalk will be 10 feet wide and will be improved with benches and bicycle racks. The Applicant will also provide a one-foot clearance on both sides of the Property's proposed sidewalk to accommodate the future design and location of the MBT.

**First Application Revision – Response to Comments at Setdown**

35. On February 25, 2019, the Applicant submitted a Prehearing Submission which included revised architectural drawings in response to questions raised by OP Setdown Report and the Commission at the setdown meeting, including: (Ex. 13-15J.)
  - a. Additional information regarding vinyl windows and cementitious panels;
  - b. Additional information regarding the proposed landscaping for the project, including additional information on the landscape entry plaza;
  - c. Additional information regarding the Applicant's environmental and LEED commitments;
  - d. Updated information regarding the Applicant's proffered public benefits and project amenities;
  - e. Updated information regarding the Applicant's community outreach;
  - f. Updated information regarding the Applicant work with relevant District agencies; and
  - g. Additional information regarding the provision of three-bedroom units in furtherance of the District's goals of providing more family-sized affordable units.

36. In response to comments from the Commission during the Setdown meeting, the Applicant replaced the proposed cementitious panels with metal panel and stucco. ACM metal panel is included on the base and middle of the buildings, and corrugated metal is included on the top of the buildings.
37. The proposed stucco is a full three-coat stucco system with a 7/8" thickness. The Applicant is not proposing an exterior insulation and finish system ("EIFS"), which is meant to resemble stucco. The proposed stucco is comprised of a lath, brown and scratch coat, and a finish coat. In addition to the traditional stucco installation, the Applicant is proposing to use a continuous drainage mat that works by creating an air gap that promotes rapid drainage of potential moisture. As a result, the proposed stucco is a high quality and long-lasting material that will age appropriately over time since it includes an integral color to prevent it from fading.
38. The Applicant's Statement explained that the proposed vinyl windows are low-profile and a dark color. These modern vinyl windows are steel-reinforced, which allows for a slimmer profile than traditional vinyl windows and provides for increased durability. While the proposed windows are a dark color, technological advancements in vinyl window construction allow them to be fade- and scratch-resistant such that they are more durable than traditional white or beige vinyl windows. In addition, the vinyl windows provide comparable or better energy efficiency than aluminum windows. As a result, the proposed vinyl windows are also a high quality and long-lasting material.
39. The Applicant also revised the design such that Juliette- and full-sized balconies are included on approximately half the units. The addition of balconies provides additional outdoor space for the building's residents and also enhances the residential character of the building.
40. The Application stated that the Applicant attended an Interagency PUD meeting (the "Interagency Meeting") on February 6, 2019. Representatives from the DOEE, DHCD, OP's Design Development Team, the Office of the State Superintendent of Education ("OSSE"), and Fire and Emergency Medical Services Department Emergency ("FEMS") attended the meeting.
41. The Application stated that at the Interagency Meeting, representatives of FEMS raised certain questions regarding fire hydrants, fire truck access to the Property, and emergency responder radio coverage. In subsequent discussions, the Applicant's team confirmed that the Property complies with the fire hydrant requirements of the DC Fire Code (IFC § 507). Additionally, the Applicant confirmed that the Property has been designed to provide the required access for fire trucks (IFC § D103) and apparatuses. Moreover, the Applicant confirmed that it will comply with DC Fire Code § 510.1, which requires emergency responder radio cover in new buildings. (Ex. 15.)

42. The Application stated that at the Interagency Meeting, DOEE discussed the Applicant's LEED proffer, including the Applicant's previous success with achieving LEED certification, compliance with the GAR requirements, and the Applicant's sustainable design features, including the provision of solar panels. (Ex. 15.)

### **Second Application Revision**

43. On April 4, 2019, the Applicant submitted a Supplemental Prehearing Submission with revised architectural drawings, which provided updated information regarding: (Ex. 25-25F.)
- a. The proposed landscaping for the Project, including additional information on the landscaped entry plaza in response to OP's requests for additional information at the Interagency Meeting;
  - b. Access to the Project and a revised loading dock layout due to the elongation of the access drive along the eastern portion of the Property;
  - c. Revised building materials (replacing stucco and masonry segments with metal panels) and taller courtyard guardrails;
  - d. The Applicant's proffered public benefits and project amenities, specifically updates to the contributions to McKinley Tech Track Club and 1way2rise;
  - e. Revised development flexibility which would permit the Applicant to make changes to the streetscape features and to vary the approved sustainable features of the Project;
  - f. An updated list of witnesses;
  - g. A revised certificate of service for the Applicant's Prehearing Submission; and
  - h. The Applicant's Transportation Demand Management ("TDM") measures.

### **Third Application Revision – Response to OP's Hearing Report**

44. The Applicant also submitted a separate response to the OP Hearing Report on April 25, 2019, which included: (Ex. 33.)
- a. A revised inclusionary zoning ("IZ") unit location plan showing the MFI levels for each unit and designating one of the "townhouse" style units as an IZ unit;
  - b. Additional information regarding the landscaped entry plaza including the Applicant's commitment to provide a water fountain for runners, bikers, and pedestrians; and
  - c. A revised signage plan that includes the materials for the proposed signage.

45. In response to DHCD's comments contained in the OP Hearing Report, the Applicant revised the IZ unit location plan to include an IZ unit as a "townhouse style" unit along 8<sup>th</sup> Street, N.E. These "townhouse style" units are designed to mimic the design of townhouses on the exterior but are single level units with an in-board bedroom (constituting a one-bedroom unit under the Building Code and as a studio for IZ purposes). Each unit includes access from the interior corridor as well as 8<sup>th</sup> Street, N.E. (Ex. 33.)

**Development Flexibility Requested - Map Amendment and GAR Flexibility**

46. The Property is currently zoned PDR-1. The Application requests to rezone the Property from the PDR-1 Zone to the MU-4 Zone to allow for the proposed development. Subtitle X § 303.12 provides that a PUD-related Zoning Map amendment shall be considered flexibility against which the Commission shall weigh the benefits of the PUD.
47. The PDR-1 zone is intended to permit medium-density commercial and production distribution, and repair ("PDR") activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones. (Subtitle J § 200.2.)
48. The PDR-1 zone permits a maximum height of 50 feet, with a maximum height of 60 for a PUD. (Subtitle J § 203.1; Subtitle X § 303.7.) The PDR-1 zone permits a maximum FAR of 2.0 for restricted uses and 3.5 FAR for permitted uses. (Subtitle J § 202.1.) The maximum FAR for a PUD in the PDR-1 Zone is 2.4 for restricted uses and 4.2 for permitted uses. (Subtitle X § 303.3.)
49. Multifamily residential use is not permitted in the PDR-1 zone. New residential uses are limited to either: (1) an apartment unit for a caretaker watchman, or janitor employed on the premises; or (2) an apartment unit that is integrated with and accessory to an artist studio. (Subtitle U § 801.1(v).)
50. The MU-4 zones are intended to permit moderate-density mixed-use development. (Subtitle G § 400.3(a).) In addition, the MU-4 zones are located in low- and moderate-density residential areas with access to main roadways or rapid transit stops. (Subtitle G § 400.3(c).)
51. The MU-4 zone permits a maximum matter-of-right height of 50 feet, with no limit on the number of stories. (Subtitle G § 403.1.) The maximum permitted FAR is 2.5, with up to 3.0 FAR for IZ projects, and with a maximum non-residential FAR of 1.5. (Subtitle G § 402.1.)
52. Under the PUD guidelines for the MU-4 zone, the maximum height is 65 feet and the maximum FAR is 3.6, with a maximum non-residential FAR of 2.01. (Subtitle X §§ 303.7, 303.3.)

53. A tabulation of the PUD's development data is included on Sheets G08 and G09, titled "Zoning Analysis", submitted with the Applicant's Supplemental Prehearing Submission, and marked as Exhibit 25A of the record. The architectural drawings titled "Hanover 8<sup>th</sup> Street," prepared by KTG Architecture and dated April 4, 2019, and marked as Exhibits 25A1-28A6 of the record, as revised by the "Revised Signage Plan," marked as Exhibit 33B, are collectively referred to hereinafter as the "Plans."
54. The Applicant also requests technical flexibility to allow the GAR requirements to be satisfied based on the entire Property and not based on each individual building and theoretical lot, as would otherwise be required. (Subtitle C § 302.4.) The minimum GAR of 0.3 is met for the Property, which is consistent with the Zoning Regulation.

### **Project Impacts**

55. The Application contends that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities, but instead the impacts are either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project.
56. With respect to transportation issues, the Applicant prepared a Comprehensive Traffic Assessment ("CTR") to evaluate potential impact. (Ex. 22.) The CTR identified potential adverse impacts and proposed mitigation for the same. DDOT evaluated those impacts and the proposed mitigation and requested additional mitigation, to which DDOT and the Applicant came to agreement. (Ex. 32.) At the hearing, DDOT confirmed its determination that the identified project impacts were capable of being mitigated through the Applicant's robust TDM Plan and the Loading Management Plan discussed below. (Transcript of the April 25, 2019 Public Hearing ["Hrg. Tr."] at 67.)

### **Transportation Mitigations**

57. Transportation Demand Management: The Applicant will provide a TDM Plan as follows:
- a. The Applicant will identify a TDM Leader (for planning, construction, and operations) at the building, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader will work with residents to distribute and market various transportation alternatives and options. The TDM Leader shall receive training from goDCgo to learn about TDM conditions for the Project and available options for implementing the TDM Plan. The TDM Leader will also subscribe to goDCgo's residential newsletter;
  - b. The Applicant will share the full contact information of the TDM Leaders for the Project with DDOT and goDCgo (info@godcgo.com);
  - c. The Applicant will provide TDM materials to new residents in the Residential Welcome Package materials, which at a minimum shall the Metrorail pocket guide, Capital Bikeshare coupon or rack card, Guaranteed Ride Home ("GRH") brochure, and the most recent DC Bike Map;



- d. The Applicant will work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the Property;
- e. The Applicant will post all TDM commitments online for easy reference;
- f. The Applicant will exceed Zoning requirements by providing 125 long-term bicycle parking spaces in the Project's garage. The long-term bicycle storage room will accommodate non-traditional bicycles including, but not limited to cargo, tandem, and children's bicycles;
- g. The Applicant will provide 20 short-term bicycle parking spaces along 8th Street, N.E. adjacent to the Property;
- h. All parking on the Property will be priced at market rates, at minimum, defined as the average cost for parking in a one-quarter-mile radius from the Property;
- i. The Applicant will unbundle the cost of residential parking from the cost of lease or purchase of each unit;
- j. The Applicant will provide a \$100 SmarTrip Card for the first two years of occupancy of the buildings to each incoming unit. A proactive marketing strategy shall be provided to ensure residents are aware of this benefit;
- k. The Applicant will provide a bicycle repair station to be located in the bicycle storage room;
- l. The Applicant will provide an on-site business center to residents with access to internet services;
- m. The Applicant will install a Transportation Information Center Display (electronic screen) within the residential lobby of each building. At a minimum the Transportation Information Center Display shall include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.
- n. The Applicant will provide at least seven shopping carts in the residential buildings for residents to use for running errands and grocery shopping;
- o. The Applicant will provide at least three vehicle charging stations within the Project's garage;
- p. The Applicant will not lease unused residential parking spaces to anyone aside from buildings' tenants;

- q. The Applicant will install two expansion plates of four docks each to the Capital Bikeshare station at 10<sup>th</sup> and Monroe Street, N.E. The maximum amount the Applicant will pay for this benefit is \$12,000;
  - r. The Applicant will offer a one-year Capital Bikeshare membership to each unit during the initial lease up; and
  - s. The Applicant will provide residents who wish to carpool with detailed carpooling information and will refer them to other carpool matching services sponsored by Metropolitan Washington Council of Governments (“MWCOG”) or other comparable service it MWCOG does not offer this in the future.
58. Loading Management: The Applicant will provide a Loading Management Plan as follows:
- a. A loading dock manager will be designated by building management. The dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
  - b. All residents will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;
  - c. The dock manager(s) will schedule deliveries for trucks using the loading berths such that the dock’s capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
  - d. The dock manager(s) will monitor inbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering the loading facilities;
  - e. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to the Title 20, Chapter 9, Section 900 (Engine Idling), of the District of Columbia Municipal Regulations (“DCMR”), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
  - f. The dock manager(s) will be responsible for disseminating suggested truck routing maps to residents and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT’s Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock

manager(s) will also post these documents in a prominent location within the service area.

### **Public Benefits and Amenities**

59. The Application presented the following public benefits to balance the requested development flexibility and potential project impacts:

- Housing, including affordable housing,
- Transit-oriented development,
- Accommodation of the MBT, and
- Support for the arts-related uses,

All of which are supported by the Comprehensive Plan (“CP”) (Title 10-A of the DCMR) and the Small Area Plan (“SAP”).

### **CP Consistency**

60. The Application asserted that the Project met the standards for a PUD approval and was not inconsistent with the CP, various aspects of which would be furthered by the Project, as follows.

*Urban Design and Architecture (Subtitle X § 305.5(a)); Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c))*

61. The Project is designed to be compatible with the adjacent residential community as the building design is also oriented away from the neighboring residences to the north and west. Moreover, the buildings are set back at the sixth story in accordance with the SAP. (See SAP at 52 [“Building facades facing a public street in the sub area should step back in height at a ratio of one half (1/2) to one above 50 feet.”].) In addition, the replacement of an underutilized site with the Project constitutes a significant benefit since it increases safety in the Edgewood neighborhood and replaces a use that is not compatible with the surrounding residential community. The Project will also bring the Property into compliance with the goals of the Future Land Use Map (“FLUM”) and CP, since the current PDR zoning is inconsistent with the Property’s designations as Moderate Density Residential and Low Density Commercial on the FLUM. **[General Note: I did not put hyphens in where the references were to classification titles]**

*Housing (Subtitle X § 305.5(f)) and Affordable Housing (Subtitle X § 305.5(g))*

62. The Project results in the creation of new housing consistent with the goals of the Zoning Regulations, the CP, the SAP, and the FLUM. Overall, the Project will replace an underutilized industrial site with approximately 377 units. This amount of housing exceeds the amount that would have been provided if the Property was developed as a matter of right under the existing PDR zoning as no multifamily residential use is permitted in PDR Districts. (Subtitle X § 305.5(f)(1).) **[I deleted the See because the reference is a clear fact]**
63. The Applicant will set aside approximately 12% of the net residential floor area (approximately 35,322 square feet of net residential floor area) of the overall Project (i.e., based on the residential use provided in both the building and the penthouse) as affordable units at varying levels of the MFI, which will create a mixed-income community. Based on this net residential floor area, it is anticipated that approximately 47 units will be set aside as IZ units. The affordable housing will be set aside as follows: 6% of the affordable net residential floor area at 30% MFI, 14% of the affordable net residential floor area at 50% MFI, 67% of the affordable net residential floor area at 60% MFI, and 13% of the affordable net residential floor area at 80% MFI.
64. The Project creates a greater amount of IZ units that are reserved at the deeper levels of affordability than would be required for a matter-of-right development in the MU-4 zone. This affordable housing represents a substantial increase in the amount of affordable residential floor area when compared to the fact that no affordable housing would be generated if the Property was developed as a matter of right. (Subtitle X § 305.5(g) [“Affordable housing; except that affordable housing provided in compliance with the Inclusionary Zoning requirements of Subtitle C, Chapter 22, shall not be considered a public benefit except to the extent it exceeds what would have been required through matter-of-right development under existing zoning.”].)
65. The Applicant will reserve two of the three-bedroom units in the Project as IZ units. In addition, the Applicant will reserve one of the “townhouse-style” units on the ground floor fronting on 8<sup>th</sup> Street, N.E. as an IZ unit.

*Environmental and Sustainable Benefits (Subtitle X § 305.5(k))*

66. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project. The Project is designed to LEED-Gold standards and the similarly intends to seek LEED-Gold certification of the Project under the LEED-v4 Multifamily Midrise standard.

*Streetscape Plans (Subtitle X § 305.5(l))*

67. The Applicant has focused on creating a pedestrian-friendly streetscape, especially along 8<sup>th</sup> Street, N.E. The design proposal includes substantial streetscape improvements including new paving for the sidewalks, street lighting fixtures, new and replacement shade trees, and 20 bike parking spaces in public space. Since the Property is presently

improved with industrial uses, the streetscape adjacent to the Property is unimproved. In addition, a majority of the streetscape along 8<sup>th</sup> Street is also unimproved, which provides an unsafe environment for the students at the Hope Community Public Charter School and at those schools further to the south who commute to school via the Brookland-CUA Metrorail station or who use the after-school enrichment programs at Dance Place. As a result, the Project will include substantial streetscape improvements that will help provide safe pedestrian access for students attending school in the vicinity of the Project.

*Transportation Features (Subtitle X § 305.5 (o))*

68. The Applicant worked with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property. Specifically, the Applicant will provide a one-foot clearance on both sides of the Property's proposed sidewalk to accommodate the future design and location of the MBT.
69. The Project has been designed to create safe vehicular and pedestrian access and to use the existing public transportation network. In addition to its proximity to the MBT, the Project is proximate to multiple bus routes and has access to the Brookland-CUA Metrorail station.
70. The Applicant has studied the anticipated parking demand and has sought to provide the appropriate number of parking spaces to accommodate expected demand, which exceeds the base requirement under the Zoning Regulations. The Applicant will also provide TDM measures in excess of the mitigations required as a result of the Project.
71. Based on discussions with the community, the Applicant has agreed to remove the PUD from the District's Residential Parking Permit ("RPP") program in order to alleviate on-street parking concerns of the surrounding neighborhood. The Applicant will include a rider in all residential leases that restricts residential tenants from obtaining RPPs.
72. In an effort to monitor whether residents are abiding by this lease restriction, the Applicant will require that the PUD's property manager submit a request pursuant to the Freedom of Information Act, DC Code §§ 2-531 to 2-539 to the District of Columbia Department of Motor Vehicles annually to confirm whether any building tenant has registered a vehicle at the address of the PUD. If the property manager determines that any car has been registered by a tenant and/or that the tenant has received an RPP, the property manager will notify the tenant that it must surrender the RPP in accordance with the residential lease rider.

*Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q))*

73. Beacon House: The Applicant will contribute \$10,000 to Beacon House, which engages over 300 boys and girls in the Edgewood neighborhood annually in an award-winning program. The Applicant's contribution will support Beacon House's summer camp, which serves approximately 90 children over five weeks. The camp seeks to address

demand from the Edgewood community for a low-cost, high-quality summer camp and includes academic, athletic, arts, cultural and other lessons. The Applicant's contribution will cover the full cost of attendance for at least eight campers. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

74. Edgewood Street Festival: The Applicant will contribute \$24,000 to the Edgewood Civic Association for the creation of an Edgewood Street Festival. There is currently no street festival in the Edgewood neighborhood and the Applicant's contribution will fund a festival that will bring together the residents of the surrounding neighborhood and highlight all that Edgewood has to offer. Specifically, the Applicant's contribution will fund various elements, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits. The contribution will be spread out over three years (\$8,000 per year), which is estimated to fund the event in large part. The Applicant anticipates that, at a minimum, the first two years of contributions will be made prior to the issuance of a final certificate of occupancy for the PUD. Thus, the Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided. In the likely event that the third annual contribution cannot be made prior to the issuance of the final certificate of occupancy, the Applicant will fully fund an escrow account setting forth delivery of the funds for the final year and will provide evidence of that escrow account prior to the issuance of a final certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d).
75. Hope Community Public Charter School, Tolson Campus: The Applicant will contribute \$50,000 to the Hope Community Charter School to help revitalize the school's campus. The Hope Community Charter School is located in the Edgewood neighborhood, just south of the Property, and is the learning community for 470 scholars in grades PK3 through 8. The majority of the students at the Hope Community Charter School are from Ward 5. The Applicant's contribution will help revitalize the school's outdoor space to the north side of its building. This new multipurpose outdoor space will promote and support outdoor activities as well as support the Hope Community Charter School's programming, afterschool athletics, and activities programs. Specifically, the Applicant's contribution will fund the following: (i) \$30,000 to resurface, seal, and paint blacktop on the north side of the Hope Community Charter School building; (ii) \$5,000 to remove the concrete platform in front of the Hope Community Charter School building entrance that has been an ongoing safety concern; (iii) \$4,000 to purchase and install two in ground basketball hoops; (iv) \$600 to purchase and install a bicycle rack; (v) \$3,000 to purchase large planters, supplies, and tools to create a garden space for the STEAM program; (vi) \$6,600 to repair and improve fencing on north side of the school building; and (vii) \$1,400 for minor landscaping on west side of the school building. In the event that there are excess funds, those funds will be used to paint an artistic mural on the front entrance side of the Tolson Campus building. The estimated cost of the mural is between \$5,000

and \$7,000. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

76. McKinley Tech Track Club (Fast Lane): The Applicant will contribute \$20,000 to a non-profit organization that supports the McKinley Tech Track Club (Fast Lane). Specifically, the Applicant's contribution will fund the following: (i) \$5,200 for the Track Club's participation in the Penn Relays Meet including bus transportation and lodging costs; (ii) \$10,750 for the Track Club's participation in the National Capitol Invitational Meet including a timer, security, officials, venue fees, clerks, and a starter; (iii) \$1,850 for uniforms and equipment; and (iv) \$2,200 for other meet and administrative fees. The Penn Relays is the world's first and most widely recognized annual meet hosted at the University of Pennsylvania. Over the course of the three-day meet, top high school, collegiate, and professional athletes compete in the events. The National Capitol Invitational Meet is hosted at McKinley Technology High School. While the meet was hosted in 2017, it was not hosted in 2018 as a result of a lack of funds. The Applicant's contribution will provide vital funds to ensure that the meet can remain an annual event. The Applicant's contribution will fund the above expenses during the school year in which the donation is made or in the school year immediately following the school year in which the donation is made. In the event that there are excess funds, those funds will be devoted to additional meet and administrative fees. While the above breakdown is the intended distribution of the contribution, the actual distribution of the funds may vary based on the actual costs at the time the funds are spent. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.
77. 1way2rise: The Applicant will contribute \$20,000 to 1way2rise, which will fund tutoring and afterschool services that will occur during the construction of the Project. 1way2rise is a non-profit organization licensed to do business in the District of Columbia. Its mission is to educate at-risk, teens and adults through technology training, job training, and sports development programs. The focus of the programming is intended for families and residents of ANC 5E. Specifically, the Applicant's contribution will fund the following:
- (i) \$14,500 for educational supplies and programming for the afterschool youth and teen tutoring services, which may include but not be limited to book bags, pens, pencils, composition books, flash drives, lecturer and workshop fees, facility rental fees, and volunteer expenses;
  - (ii) \$4,000 for sporting equipment, which may include but not be limited to rugby equipment, tennis equipment, lacrosse equipment, and chess equipment; and
  - (iii) \$1,500 for STEM/robotics supplies and equipment, which may include but not be

limited to scientific calculators.

In the event that there are excess funds, those funds will be used for miscellaneous educational expenses related to the afterschool program or a scholarship for one senior at McKinley Technology High School who is pursuing post-secondary education. In the event 1way2rise is unable to administer these services, the Applicant will contribute \$20,000 to Beacon House for the provision of similar services. The Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.

*Arts Uses in Furtherance of the Brookland-CUA Small Area Plan (Subtitle X § 305.5(r))*

78. To foster artistic uses in the neighborhood as called for in the SAP, the Applicant will contribute \$75,000 to Dance Place. Dance Place is an important arts-focused nonprofit in the neighborhood that offers performances, dance classes for adults and kids, and arts in education programs for youth.
79. The Applicant's contribution will help fund the Energizers Program that is centered on-site at Dance Place's home campus in Ward 5. This program targets youth from the surrounding neighborhood and includes an after-school program, a teenage leadership program, as well as a creative arts camp during the summer months.
80. The Applicant's contribution will be \$25,000 per year for three years (\$75,000 total). Specifically, the \$25,000 per year will fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program.
81. The multi-year support ensures the continued delivery of these services and on-going value to the neighborhood, and the multi-year nature of the contribution is critical to Dance Place to ensure the funding provides the greatest amount of support to these programs.
82. The Applicant intends to commence the initial contribution prior to the issuance of a building permit for the Project and will continue annual contributions for the following two years.
83. The Applicant anticipates that, at a minimum, the first two years of contributions will be made prior to the issuance of a final certificate of occupancy for the PUD. Thus, the Applicant will comply with Subtitle X § 305.3(d) such that no final certificate of occupancy for the PUD will be issued unless the Applicant provides proof to the Zoning Administrator that the items or services funded have been or are being provided.
84. In the likely event that the construction timeframe and the fiscal years for Dance Place do not align in such a way as to allow the third annual contribution to be accepted and used by Dance Place prior to the issuance of the final certificate of occupancy, the Applicant will fully fund an escrow account setting forth delivery of the funds for the final year and



will provide evidence of that escrow account prior to the issuance of a final certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d).

**Design Flexibility from the Final Plans**

85. The Applicant also requests design flexibility to make minor modifications to the final plans in the following additional areas:

- (1) To provide a range in the number of units of 377 plus or minus 10%;
- (2) To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms elevators, provided that the variations do not change the exterior configuration of the building;
- (3) To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
- (4) To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the approved plans;
- (5) To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the approved plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- (6) To vary the color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the approved plans;
- (7) To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the IZ units will substantially conform to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;
- (8) To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- (9) To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by the order.

**Responses to Application**

Office of Planning (“OP”)

86. On December 7, 2018, OP submitted a report recommending setdown of the Application. (Ex. 11.) **[removed unnecessary defining of setdown report here]**
87. The OP Setdown Report stated that the Project “would generally not be inconsistent with the maps and written elements of the Comprehensive Plan.” (Ex. 11 at 1.) OP requested that the Applicant provide:
- a. An IZ unit location plan;
  - b. A proposed lighting and signage plan;
  - c. Detailed plans for the landscaped entry plaza; and
  - d. Additional information and specificity regarding the Applicant’s proffered public benefits and project amenities.
88. The Applicant provided the information and clarification requested in the OP Setdown Report in its Pre-Hearing Statement of February 25, 2019. (Findings of Fact [“FF”] at 35-42.)
89. On April 15, 2019, OP submitted a hearing report. (Ex. 29.) The OP Hearing Report determined that the PUD “would not be inconsistent with the Comprehensive Plan.” (Ex. 29 at 5.) The OP Hearing Report recommended approval of the Application and advised the Applicant:
- a. To submit a revised IZ unit location plan, which includes the median family income (“MFI”) levels for each IZ unit;
  - b. To reconsider the provision of vinyl windows; and
  - c. Indicate the material for the proposed signage. (Ex. 29.)
90. The OP Hearing Report noted that the Application was referred to DOEE, DDOT, DHCD, DPR, the Department of Public Works, the DC Public Schools, FEMS, the Metropolitan Police Department, the Washington Metropolitan Area Transit Authority, DC Water, the DC Public Library, OSSE, the Department of Aging and Community Living (“DACL”), and the Department of Employment Services.
91. Other than DDOT, which submitted its comments directly to the record, DHCD, and DACL, no District agency submitted comments expressing concerns regarding potential impacts of the project.

92. DHCD submitted two comments to OP that were appended to the OP Hearing Report. (Ex. 29, Appendix B.)
  - a. DHCD discussed the Applicant's IZ proffer and commented on the Applicant's commitment to providing three-bedroom IZ units; and
  - b. DHCD also requested that one of the "townhouse-style" units along 8<sup>th</sup> Street be reserved as an IZ unit.
93. DACL requested, in comments to OP, that an IZ unit be reserved for residents that are ages 65 years or older. (Ex. 29.)
94. The Applicant responded to the comments of OP and DHCD in its Supplemental Pre-Hearing Statement of April 25, 2019. The Applicant provided additional information regarding the location and MFI levels of the designated IZ units and clarified that the entry plaza is intended for more "passive uses" but that the Applicant will provide a water fountain for public use. (FF 45-46.)

Department of Transportation

95. On April 15, 2019, DDOT submitted a hearing report (the "DDOT Report"), which expressed no objection to the Application subject to the Applicant implementing the loading management plan proposed in the CTR and the Applicant enhancing the TDM measures to include the following elements: (Ex. 28.)
  - a. DHCD also requested that one of the "townhouse-style" units along 8<sup>th</sup> Street be reserved as an IZ unit;
  - b. Provide three charging stations in the garage for any additional electric vehicle ("EV") stations in the future;
  - c. The Applicant will not lease unused residential parking spaces to anyone aside from tenants of the building;
  - d. Install two expansion plates of four docks each to the Capital BikeShare station at 10th and Monroe, to bring it up to DDOT minimum size;
  - e. Distribute welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, Capital Bikeshare coupon or rack card, GRH brochure, and the most recent DC Bike Map;
  - f. Transportation Coordinators will receive TDM training from goDCgo to learn about TDM conditions for this project and available options for implementing the TDM Plan;

- g. Provide a Transportation Information Center Display that, at a minimum, should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;
  - h. Installation of Transportation Information Center Display screens in the lobbies of each of the two residential buildings;
  - i. Provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this in the future;
  - j. Transportation coordinator will subscribe to goDCgo's residential newsletter;
  - k. Long-term bicycle storage rooms should accommodate non-traditional-sized bikes including cargo, tandem, and kids' bikes;
  - l. Provide bicycle repair stations to be located within the bicycle storage room;
  - m. Provide one shopping cart (utility cart) for every 50 residential units to encourage residents to walk to the grocery shopping and run errands. The Applicant is recommended to provide seven carts for the development; and
  - n. Dedicate two parking spaces in the vehicle parking garage for carsharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy all of the dedicated spaces, the Applicant will provide a one-year Capital Bikeshare membership to each resident after the building has opened.
96. The Applicant responded to the DDOT Report by memorandum dated April 24, 2019, prepared by Gorove/Slade Associates and as supplemented by the testimony of Mr. Andres at the hearing. (Ex. 32-32A.) The Applicant agreed to all of DDOT's additional TDM measures except in lieu of providing carshare space within the Project's parking garage, the Applicant will offer a one-year Capital Bikeshare membership to each unit at the initial lease up.

#### **Advisory Neighborhood Commission**

97. ANC 5E submitted a resolution indicating that at a duly noticed public meeting on November 20, 2018, at which notice was properly given and a quorum was present, ANC 5E voted to support the Application subject to the provisions of the Community Benefits Agreement (the "ANC Report"). (Ex. 10.) The ANC Report did not state any issues or concerns with the Application.

#### **Edgewood Civic Association ("ECA")**

98. The ECA reviewed the Project and community benefits package at several meetings, including its September 24, 2018 and October 22, 2018 public meetings.
99. As noted in the ANC Report, at its October 22, 2018 public meeting, the ECA voted unanimously to support the Project and the community benefits proffered by the Applicant. (Ex. 10.)

#### **Persons in Support**

100. A total of 15 residents in the neighborhood surrounding the Property signed a letter in support of the Project. (Ex. 26.)

#### **Persons in Opposition**

101. Derek Schultz submitted a letter in opposition to the Project and noted his concerns including:
  - a. The overall height and massing of the Project;
  - b. The heights the proposed street trees and their interference with the overhead power lines;
  - c. Traffic calming measures along 8<sup>th</sup> Street; and
  - d. The proposed exterior materials and compatibility with the surrounding residential neighborhood. (Ex. 30.)

#### **Setdown Meeting of December 17, 2018**

102. At the public meeting on December 17, 2018, OP presented the Application and recommended that the Commission set it down for a public hearing. OP noted that the proposal appeared to not be inconsistent with the proposed zoning district and with the CP. (Transcript of December 17, 2018 Public Meeting [“Mtg. Tr.”] at 33.)
103. Commissioners May and Turnbull noted their concerns regarding the Project’s material choices, including the “extensive use” of cementitious panels and with the use of vinyl windows. (Mtg. Tr. at 33-35.)
104. Commissioner Miller reiterated OP’s request that some of the three-bedroom units be designated as IZ units. (Mtg. Tr. at 34)
105. The Commission voted to set down the case for a hearing with its comments noted in the record. (Mtg. Tr. at 35.)

#### **Public Hearing of April 25, 2019**

106. The Applicant presented five principal witnesses at the hearing, including Dan Gordon, on behalf of the Applicant; Aaron Wilke, an expert in landscape architecture, on behalf of GWH Landscape Architects; Benjamin Kasdan, an expert in architecture, on behalf of

KTGY Architecture + Planning, the architects for the Project; Erwin N. Andres, an expert in transportation planning and analysis, on behalf of Gorove/Slade Associates, Inc.; and Shane L. Dettman, an expert in land use and zoning, on behalf of Holland & Knight LLP. Based upon their professional experience, as evidenced by the resumes submitted for the record, Mr. Wilke, Mr. Kasdan, Mr. Andres, and Mr. Dettman were qualified by the Commission as experts in their respective fields.

107. Anne Fothergill testified on behalf of OP in support of the Project. (Hrg. Tr. at 39) Ms. Fothergill reiterated that OP “recommend[s] approval of this PUD and related map amendment.” (Hrg. Tr. at 65.) Ms. Fothergill stated that “[OP] did raise some concerns and questions for clarification, and the applicant has mentioned that they have provided clarification and additional information that we requested.” (Hrg. Tr. at 65.)
108. Cynthia Lin of DDOT testified that “the [A]pplicant addressed all of the Comments in DDOT’s April 15, 2019, staff report.” (Hrg. Tr. at 67.) As a result, Ms. Lin testified that “DDOT has no objection to the approval of the consolidated PUD and related map amendment application.” (Hrg. Tr. at 68.)
109. ANC Commissioner Nick Cheolas (the Single Member District Representative) testified on behalf of ANC 5E and indicated that the ANC supported the Project, stating that “converting light commercial and industrial space into home for people, particularly in the Edgewood...is a good thing.” (Hrg. Tr. at 71.)
110. Gordon Chaffin also testified in support of the Project, specifically noting the need for new development providing IZ units. (Hrg. Tr. at 79-81.)
111. Derek Schultz testified in opposition to the Project and reiterated the concerns raised in his written testimony. (Hrg. Tr. at 82-85.)
112. In response to the issues regarding the height and massing of the project, the Applicant explained that the Project was in line with the recommendations of the SAP which recommended moderate density, infill development and that the use of setbacks was expected to mitigate impacts on the surrounding residential areas from the height of the new buildings. (Hrg. Tr. at 43-45.)
113. In response to Mr. Schultz’s testimony expressing concerns that the overhead electrical and telecommunications lines would prevent large shade trees from reaching full maturity and height and suggesting that the lines should be underground, Mr. Dan Gordon stated:

[T]he trunk line along 8th Street runs down the east side of the street, which is the side of the street on which we're building our building. There is no trunk line that runs down the west side of the street... In order to bury all of those we would have to tear up every single yard. We have to underground two different sets of transformers. We would have to get easements from the apartment building and all lived in different row

houses. We really did look at this and aesthetically we understand why the neighborhood wanted it. But it very honestly would be a logistical nightmare to try and do this. So, it's an unfortunate situation where it just would be a very, very challenging, close to impossible logistically to accomplish this.

(Hrg. Tr. at 50-51.)

114. In response to the concerns regarding the proposed building materials, the Applicant provided testimony clarifying the type of stucco to be used and provided additional information about the proposed vinyl windows. (Hrg. Tr. at 16-18.)
115. In response to the Commission's additional comments regarding the use of vinyl windows, Stephen Luna testified on behalf of the Applicant that the Applicant has used vinyl windows on many of their residential midrise projects and that "these windows are actually steel reinforced much like some of the commercial projects that you would get in a curtain wall." (Hrg. Tr. at 23.) Mr. Luna also testified that the use of steel helps with the rigidity of the windows, which allows for the incorporation of "larger glass windows..." and that the Applicant has not had any issues with vinyl windows "on a consistent basis." (*Id.* at 24-25.) Mr. Kasdan testified that the vinyl windows "are indistinguishable from an aluminum window from any kind of vantage point." (*Id.* at 18.) Moreover, the proposed vinyl windows are low-profile and a dark color. These modern vinyl windows are steel-reinforced, which allows for a slimmer profile than traditional vinyl windows and provides for increased durability. While the proposed windows are a dark color, technological advancements in vinyl window construction allow them to be fade- and scratch-resistant such that they are more durable than traditional white or beige vinyl windows.
116. The Commission requested additional information regarding whether specific IZ units could be set aside for senior housing. (Hrg. Tr. at 36-37.)
117. At the request of the Commission, OP stated that it would reach out to DHCD and DACL about the implementation of senior IZ units. (Hrg. Tr. at 65.)
118. At the conclusion of the hearing, the Commission took proposed action to approve the Application. The Commission left the record open for the Applicant's Post-Hearing Submission, as well as ANC 5E's, OP's, and DDOT's response to the Applicant's Post-Hearing Submission.

#### **Post Hearing Submissions**

119. The proposed action was referred to the National Capital Planning Commission ("NCPC") on April 30, 2019, pursuant to § 492 of the Home Rule Act. NCPC's Director of Urban Design and Plan Review, by letter dated May 28, 2019, found that the Project was exempt from NCPC review. (Ex. 45.)

120. On May 9, 2019, the Applicant submitted a Post-Hearing Submission in response to the Commission's comments at the hearing. (Ex. 41.) The Post-Hearing Submission included:
- a. Additional information regarding the Applicant's proffer to remove the PUD from the District's RPP program in order to address concerns raised by the community about potential on-street parking by residents of the Project;
  - b. Additional information on the provision of a senior IZ unit; and
  - c. A summary of how the Project complies with the PUD standards of Subtitle X § 304 and the Applicant's mitigations of the Project's adverse impacts.
121. The Applicant engaged with OP, DACL and DHCD to determine whether the Applicant can set aside one of the IZ units for senior residents. While the Applicant was prepared to make this commitment, as confirmed in the OP Supplemental Report, DHCD indicated that it is unable at this time to administer IZ units that are set aside for seniors because its rules only provide for certification as to income and household size. DACL also indicated that it does not currently have a program in place to administer affordable units that are set aside for seniors. Based on the discussions among the agencies and given the importance of senior housing in the District, DHCD and DACL indicated that they would work together to determine how to implement such programs going forward. However, at this time, the agencies agreed that without a program in place, the set aside for this project could not be administered. (Ex. 4, 43.)
122. As requested by the Commission, on May 16, 2019, OP submitted a supplemental report. (Ex. 43.) The OP Supplemental Report indicated that neither OP, nor DHCD, had any concerns regarding the Applicant's IZ unit location plan. In addition, the OP Supplemental Report again recommended approval of the Applicant.

### CONCLUSIONS OF LAW

1. Pursuant to Subtitle X § 300.1, 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.



2. Under the PUD process of the Zoning Regulations, the Commission has the authority to consider the Application as a consolidated 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.

### **Compliance with PUD Standards**

3. The Commission concludes that the Application complies with the standards for a PUD set forth in Subtitle X, Chapter 3.
4. The Property, of approximately 90,293 square feet, exceeds the minimum area requirements of 15,000 square feet for a PUD in the MU-4 zone. (Subtitle X § 303.1.)
5. In deciding a PUD application, the Commission must “judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.” (Subtitle X § 304.3.) Moreover, pursuant to Subtitle X § 304.4, the Commission must find that the proposed development:
  - a. Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;
  - b. Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and
  - c. Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.
6. The Commission concludes that the Project is of exceptional merit and in the best interest of the city. The Project will significantly improve the existing area by virtue of the exceptional architectural design and the replacement of an underutilized site with uses that are not inconsistent with the CP or the SAP. The Project offers a high level of public benefits and project amenities. The Commission concludes that with these benefits and amenities, when compared with the amount of development flexibility requested and project impacts, the Application satisfies the balancing test required in Subtitle X § 304.3, as is further discussed below.

### **Not Inconsistent with the Comprehensive Plan (“CP”)**

7. As set forth in the Applicant's Summary of Compliance with the CP and the reports of the OP, the Commission finds the Project not inconsistent with the objectives and policies of

the CP, including the land use designation assigned to the Property on the FLUM, and the general policy designation on the Generalized Policy Map (the “GPM”). (Ex. 2H, 11, 29.)

8. The purposes of the CP are six-fold:
  - a. To define the requirements and aspirations of District residents, and accordingly influence social, economic, and physical development;
  - b. To guide executive and legislative decisions on matters affecting the District and its citizens;
  - c. To promote economic growth and jobs for District residents;
  - d. To guide private and public development in order to achieve District and community goals;
  - e. To maintain and enhance the natural and architectural assets of the District; and
  - f. To assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Official Code §1-245(b).)
9. The Commission concludes that the Project significantly advances these purposes by promoting the social, physical and economic development of the District through the provision of two high-quality residential buildings on the Property. The proposed buildings will help improve the surrounding neighborhood through the replacement of incompatible industrial uses and will assist the District in achieving its housing and transportation goals by providing new housing, including affordable housing, and improvements to the public space adjacent to the Property. The Applicant is also working with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property.

Future Land Use Map (“FLUM”):

10. The FLUM, which represents the land use policies set forth in the Land Use Element, sets forth a generalized depiction of intended land uses over a period of approximately 20 years. (D.C. Official Code §1-306.02.) The Framework Element of the CP states that the FLUM is not a zoning map. (CP § 226.1(a); *see also* Z.C. Order No. 11-13, Z.C. Order No. 10-28.) Whereas zoning maps are parcel-specific and establish detailed requirements for setback, height, use, parking, and other attributes, the FLUM does not follow parcel boundaries and its categories do not specify allowable uses or dimensional standards. (*Id.*) By definition, the FLUM is to be interpreted broadly. (*Id.*) Decisions on requests for rezoning shall be guided by the FLUM read in conjunction with the text of the CP (Citywide and Area Elements) as well as SAP pertaining to the area proposed for rezoning. (*Id.* at § 226(1)(d).)

11. The FLUM designates the Property as Mixed Use (Low Density Commercial/Moderate Density Residential). A “Mixed Use” designation on the FLUM is not intended to be interpreted in terms of its separate land use designation. Rather, “Mixed Use” on the FLUM is a specific land use category unto itself and is assigned to areas where the mixing of two or more land uses is encouraged but is not mandatory. It is generally applied to:
- a. Established, pedestrian-oriented commercial areas that also include substantial amounts of housing;
  - b. Commercial corridors or districts which may not currently contain substantial amounts of housing but where more housing is desired, such as the Property; and
  - c. Large sites where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.

(CP § 225.18.)

12. The Low Density Commercial designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding zone districts are generally C-1 and C-2-A, although other districts may apply. (CP § 225.8.)<sup>1</sup>
13. The Moderate Density Residential designation is used to define the District’s row house neighborhoods and its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, two- to four-unit buildings, row houses, and low-rise apartment buildings. The R-3, R-4, and R-5-A Zone Districts are generally consistent with the Moderate Density Residential category; the R-5-B Zone District and other zones may also apply in some locations.(CP § 225.4.)<sup>2</sup>
14. The Commission finds that the Applicant’s proposal to rezone the Property to MU-4 is not inconsistent with the Mixed Use FLUM designation for the Property. For areas with a Mixed Use designation, the general density and intensity of development is determined by the specific mix of uses shown. If the desired outcome is to emphasize one use over the other, the FLUM may note the dominant use by showing it at a slightly higher density than the other use(s) in the mix. (CP § 225.19.) In this case, the Property is designated as

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<sup>1</sup> The current CP was adopted prior to the Zoning Regulations and thus refers to the zone districts contained in the 1958 Zoning Regulations. Under the Zoning Regulations, the zone districts that correspond to those identified in the Framework Element description of the Low-Density Commercial designation include MU-3 and MU-4.

<sup>2</sup> Under the Zoning Regulations, the corresponding zones would be R-3, RF-1, and RA-1, with RA-2 applying in some locations.

Mixed Use (Low Density Commercial/Moderate Density Residential); and therefore, the desired outcome favors greater residential use than commercial use.

15. The proposed MU-4 zoning is not only expressly identified as corresponding to the Low Density Commercial component of the Property's land use designation on the FLUM, but is also described within the Zoning Regulations as being "intended to permit moderate-density mixed-use development" and "be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops." (Subtitle G § 400.3.)
16. Furthermore, consistent with the FLUM's desired outcome for greater residential than commercial density on the Property, the MU-4 zone favors residential development by allowing all permitted density to be devoted to residential use while limiting the amount of density that can be devoted to non-residential use. (*See* Subtitle G § 400.3(a).) Since the PDR-1 zone would not permit residential use, the Commission finds the existing zoning is inconsistent with the FLUM designation.
17. In addition, the density and height permitted under the requested MU-4 zone do not substantially differ from the density and height permitted under existing zoning. Specifically, if the Applicant proposed a PUD within the existing PDR-1 zone, the maximum FAR would be 4.2 (for permitted uses) and the maximum building height would be 60 feet. The MU-4 zone permits a maximum overall density of 3.6 FAR, of which 2.01 FAR can be devoted to non-residential use, and a maximum building height of 65 feet. As a result, the maximum permitted density for a PUD in the MU-4 zone is less than that permitted under existing zoning, and the building height permitted for a PUD in the MU-4 zone is only five feet greater than what is permitted for a PUD under existing zoning.
18. Pursuant to the Home Rule Charter, zoning shall not be inconsistent with the CP. The existing PDR zoning of the Property is inconsistent with the Mixed Use designation on the FLUM. The Project will bring the zoning of the Property into conformance with the CP.
19. As shown on the 2006 version of the FLUM, the area between 8<sup>th</sup> Street, N.E. and the CSX/WMATA tracks from Monroe Street to Rhode Island Avenue was designated as PDR.

#### Brookland-CUA Small Area Plan

20. The CP requires zoning to be "interpreted in conjunction with...approved Small Area Plans." (CP § 266.1(d).) The CP also states that 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 CP and are not part of the legislatively adopted document." (CP § 104.2.) The SAP encourages moderate-density mixed-use development on vacant and underutilized properties and, consistent with the Upper Northeast Area Element, calls for long-term

land use changes on industrially zoned land in the station vicinity, particularly in the area to the southwest along 8<sup>th</sup> Street. (SAP at 11.)

21. In March 2009, the Council adopted the SAP in response to a 2006 Industrial Land Use Study prepared by OP titled “Industrial Land in a Post-Industrial City”. The SAP contains land use change recommendations for the area south of the Brookland-CUA Metrorail station, and specifically states that “development south of Kearny Street should consist of low to moderate density residential and limited commercial facilities.” (SAP at 52.)
22. The SAP generally references moderate-density development as having building heights between 60 and 70 feet, with appropriate heights to transition to adjacent lower-scale residential structures. (*Id.* at 47.) Moreover, the SAP specifically calls for building setbacks of ½ to one above 50 feet, which the Applicant is providing. (*Id.* at 52.)
23. As such, the Commission finds that the Applicant’s proposal, and specifically the proposed Zoning Map amendment, is consistent with the SAP since it consists of moderate-density zoning and development with limited commercial facilities.
24. The SAP also encourages “work with community residents and ANCs to address design and scale issues of new development through the PUD process.” (*See* SAP at p. A3, note 3.) The Commission concludes that the Applicant has engaged in extensive community outreach, which has informed elements of the Project’s design as well as the proffered public benefits and project amenities.
25. The PUD also includes the fulfillment of the Commercial Area South of Metro Station subarea’s “Framework Plan,” which calls for new residential infill development, improved streetscape, landscape and lighting, integration of MBT, and buffering and screening from tracks and PDR uses. In addition, the Applicant will contribute \$75,000 to Dance Place for their Energizers Program as detailed in the Applicant’s statement in support of the Application. This contribution will foster artistic uses in the neighborhood as called for in the SAP. (SAP at 52.)

Upper Northeast Area Element (“UNE”):

26. The Property is located within the boundaries of the Upper Northeast Area Element. The UNE calls for capitalization on the presence of the Metro station at Brookland-CUA to provide new transit-oriented housing. (*See* Policy UNE-1.1.3 Metro Station Development.)
27. The Project includes the creation of approximately 377 dwelling units, including approximately 47 IZ units, within 0.3 miles of the Brookland-CUA Metro station.
28. In addition, the UNE encourages compatible residential infill development that is consistent with the FLUM and includes housing for persons of low incomes. (*See* Policy UNE-1.1.2: Compatible Infill.)

29. As stated above, the proposed MU-4 is consistent with the FLUM and the PUD includes units that will be reserved for households at varying levels of MFI, including for households earning equal to or less than 30% MFI. The UNE also supports long-term land use changes on industrially zoned land in the station vicinity, particularly southwest of the Brookland-CUA Metro station along 8<sup>th</sup> Street. (*See* Policy UNE-2.6.3: Long-Term Land Use Changes.)
30. As a result, the Commission finds that the Project is not inconsistent with the policies of the UNE.

Generalized Policy Map (“GPM”):

31. The purpose of the GPM is to categorize how different parts of the District may change between 2005 and 2025. It highlights areas where more detailed policies are necessary, both within the CP and in follow-up plans, to manage this change. (CP § 223.1.) The GPM is intended to “guide land use decision-making in conjunction with the Comprehensive Plan text, the FLUM, and other Comprehensive Plan maps.” (*Id.* at § 223.2.) Boundaries on the map are to be interpreted in concert with these other sources, as well as the actual physical characteristics of each location shown. (*Id.*)
32. The GPM designates the Property as a Neighborhood Conservation Area. The guiding philosophy for Neighborhood Conservation Areas is to conserve and enhance established neighborhoods. The diversity of land uses and building types in these areas should be maintained and new development and alterations should be compatible with the existing scale and architectural character of each area. Densities in Neighborhood Conservation Areas are guided by the FLUM. (CP § 223.5.)
33. The proposed Zoning Map amendment will help implement the policies embodied in the GPM by allowing for a new residential development that is not inconsistent with the FLUM, is consistent with the height and density contemplated in the SAP, and fits in well with surrounding development patterns and land uses.

Compliance with Guiding Principles of the Comprehensive Plan:

34. Through its consistency with the policies of the citywide and area elements of the CP, the Commission finds the Project to be not inconsistent with the CP guiding principles relating to managing growth and change, creating successful neighborhoods, increasing access to education and employment, connecting the city, and building green and healthy communities, as follows:

Managing Growth and Change

35. The Project is consistent with several of the principles that focus on overcoming physical, social, and economic obstacles to ensure that the benefits and opportunities available to District residents are equitably distributed. Specifically, the CP encourages, 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.

36. The CP 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.
37. The Commission finds the Project will replace an underutilized industrial site that is incompatible with the surrounding residential community with two residential buildings including affordable housing units in proximity to public transportation. The proposed buildings will help grow the District's tax base and help reinvigorate the existing neighborhood fabric. The new residential units will greatly assist in addressing the continuing demand for additional housing, including affordable housing, in the District.

Creating Successful Neighborhoods:

38. 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.
39. 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 deepening of racial and economic divides in the city. Citizen participation and quality, 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 CP to implementation of the CP's elements.
40. The Application notes that the Applicant attended approximately nine community meetings to solicit feedback from the surrounding community prior to filing this Application. The Applicant also states that it will continue to work closely with ANC 5E, the ECA, and other neighborhood stakeholders and associations to ensure that the Project provides uses that respond to the neighborhood's current demands.
41. The Commission concludes that the Project responds to the community's input by providing a substantial number of additional residential units, including affordable units at various levels of MFI, within a walkable environment that is in close proximity to several modes of transit, including Metrorail and the MBT.

Increasing Access to Education and Employment:

42. The CP 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 for residents increases resident access to jobs within the District and the surrounding region.
43. The Project will advance the District's goals of improving access to jobs and education by redeveloping an underutilized site with two residential buildings that will provide a

substantial amount of new housing adjacent to the MBT, and in close proximity to other modes of 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

Connecting the City:

44. The Property is well served by public transportation, including numerous Metrobus routes and is in close proximity to the Brookland-CUA Metrorail station (0.3 miles).
45. The Project includes streetscape improvements that will improve mobility and circulation around the Property and throughout the neighborhood, including for students walking from the schools to the south of the Property to the after-school enrichment programs at Dance Place and the Metrorail station. The streetscape and landscape design for the Project fosters a pedestrian-friendly environment along the perimeter of the Property. The Applicant is also working with DDOT to ensure that the Project coordinates with potential future improvements to the MBT that are planned for 8<sup>th</sup> Street adjacent to the Property.

Building Green and Healthy Communities:

46. The Commission finds that the Project is consistent with the CP's guiding principles pertaining to building green and healthy communities.
47. 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.
48. The Project is designed to integrate a host of sustainable features including a minimum of 2,750 square feet of solar panels that are anticipated to generate approximately one percent of the energy for the Project.
49. In addition, the Project is designed to LEED-Gold standards under the LEED-v4 Multifamily Midrise standard and the Applicant intends to seek LEED certification for the Project.

CP Land Use Element:

50. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Land Use Element. (Ex. 2H, 11, 29.)
51. Specifically, the Commission finds that Project furthers the following policies and objectives of Land Use Element: Policy LU-1.3 Transit-Oriented and Corridor Development; Policy LU-1.3.1: Station Areas as Neighborhood Centers; Policy LU-1.3.2: Development Around Metrorail Stations; Policy LU-1.3.3: Housing Around



Metrorail Stations; Policy LU-1.3.4: Design to Encourage Transit Use; Policy LU-1.4.1: Infill Development; Policy LU-2.1.3: Conserving, Enhancing, and Revitalizing Neighborhoods; and Policy LU-2.2.4: Neighborhood Beautification.

CP Transportation Element:

52. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Transportation Element. (Ex. 2H, 11, 29.)
53. Specifically, the Commission finds that Project furthers the following policies and objectives of Transportation Element: Policy T-1.1.4: Transit-Oriented Development; Policy T-2.3.1: Better Integration of Bicycle and Pedestrian Planning; Policy T-2.3.3: Bicycle Safety; Policy T-2.4.1: Pedestrian Network; Policy T-2.4.2: Pedestrian Safety; and Policy T-3.1.1: Transportation Demand Management (TDM) Programs.

CP Housing Element:

54. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Housing Element. (Ex. 2H, 11, 29.)
55. Specifically, the Commission finds that Project furthers the following policies and objectives of Housing Element: Policy H-1.1.1: Private Sector Support; Policy H-1.1.3: Balanced Growth; Policy H-1.1.5: Housing Quality; and Policy H-1.2.3: Mixed Income Housing.

CP Environmental Protection Element:

56. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Environmental Protection Element. (Ex. 2H, 11, 29.)
57. Specifically, the Commission finds that Project furthers the following policies and objectives of Environmental Protection Element: Policy E-1.1.1: Street Tree Planting and Maintenance; Policy E-1.1.3: Landscaping Policy E-2.2.4: Alternative Energy Sources Landscaping; Policy E-3.1.2: Using Landscaping and Green Roofs to Reduce Runoff; and Policy E-3.2.1: Support for Green Building.

CP Urban Design Element:

58. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Urban Design Element. (Ex. 2H, 11, 29.)
59. Specifically, the Commission finds that Project furthers the following policies and objectives of Urban Design Element: Policy UD-2.2.1: Neighborhood Character and Identity; Policy UD-2.2.5: Creating Attractive Facades; Policy UD-2.2.7: Infill

Development; Policy UD-3.1.11: Private Sector Streetscape Improvements; and Policy UD-3.2.5: Reducing Crime Through Design.

CP Arts and Culture Element:

60. As set forth in the Applicant's Summary of Compliance with the CP and the reports of OP, the Commission finds the Project not inconsistent with the objectives and policies of the Arts and Culture Element. (Ex. 2H, 11, 29.)
61. Specifically, the Commission finds that Project furthers the following policies and objectives of Arts and Culture Element: Policy AC-1.1.1: Enhancement of Existing Facilities; and Policy AC-2.2.2: Neighborhood Fairs.

Contested Issues

62. With regard to the contested issues raised during the hearing, the Commission concludes as follows:
  63. With respect to the overall height and massing and the proposed exterior materials, the Commission finds that the proposed height and massing as well as the proposed exterior materials are consistent with the surrounding residential neighborhood. Specifically, each building includes a setback at approximately 50 feet as recommended in the SAP. Moreover, the buildings include courtyards at the third floor in order to break down the massing of each building. Finally, the building façade along 8<sup>th</sup> Street, N.E. has been designed such that it resembles townhomes with the inclusion of stoops, bays, and individual entrances, which are found throughout the surrounding residential neighborhood. As stated in the OP Hearing Report, “[t]he proposed buildings have been designed to provide a transition to the residential buildings of lower height and smaller scale and density across the street on the west side of 8<sup>th</sup> Street.” (Ex. 29 at 11.)
  64. With respect to the proposed materials, the Commission finds that all of the proposed materials are found in the immediate context, including stucco which is utilized on Dance Place directly to the north of the Property. While the proposed brick is not the exact color as the brick on the townhomes located across the street from the Property, the materials provided are complimentary to the surrounding residential community. Moreover, the Commission finds that the proposed design relates to the current industrial uses of the Property while providing for a design that is also compatible with the existing townhomes located across 8<sup>th</sup> Street from the Property.
  65. In response to the concerns about the presence of the existing above-ground power lines, the Commission credits the hearing testimony of Mr. Gordon and concludes that it would not be practical for the Applicant to underground the power lines. In addition, the provided streetscape trees will be in accordance with DDOT standards for trees located underneath power lines.
  66. With regards to the claims of existing unsafe speeds of cars traveling along 8<sup>th</sup> Street and the general hostile environment for pedestrians, the Commission acknowledges the

- legitimate concerns regarding unsafe speeds, but concludes that this issue is not a result of the Project but is an existing condition of the neighborhood. The Commission also concludes that the TDM plan provided by the Applicant mitigates any potential adverse effects on the surrounding area from the Project. In addition, the Project includes substantial streetscape improvements adjacent to the Property, including the construction of sidewalks where none exist, which will help provide safe pedestrian access for students attending schools in the vicinity of the Project.
67. Development of the Property carries out the purposes of Subtitle X, Chapter 3, to encourage well-planned developments that will offer a variety of building types with more attractive and efficient overall planning and design, not achievable under matter-of-right development.
  68. Approval of the PUD is appropriate because the Project is consistent with the present character of the area and is not inconsistent with the CP. In addition, the Project will promote the orderly development of the Property 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.
  69. The Commission concludes that the Project complies with the applicable height, bulk, and density standards of the Zoning Regulations. The mix of uses for the Project is appropriate for the Property.
  70. The Commission concludes that the Applicant's requests for flexibility are not inconsistent with the CP. Moreover, the PUD benefits and amenities are reasonable tradeoffs for the requested development flexibility.
  71. As stated in the OP Hearing Report, the Application was referred to the DOEE, DDOT, DHCD, DPR, the Department of Public Works, the DC Public Schools, FEMS, the Metropolitan Police Department, WMATA, DC Water, the DC Public Library, OSSE, DACL/DCOA, and the Department of Employment Services. Other than DDOT, no District agency submitted comments expressing concerns regarding potential impacts of the project. (Ex. 29.)
  72. To the extent that the rezoning of the Project and the slight increase in height resulted in potential adverse impacts, the Applicant has mitigated such impacts by incorporating design gestures that are supported by the SAP, including building includes a setback at approximately 50 feet. Moreover, the buildings include courtyards at the third floor in order to break down the massing of each building from neighboring residential properties along 8<sup>th</sup> Street. Finally, the building façade along 8<sup>th</sup> Street, N.E. has been designed such that it resembles townhomes with the inclusion of stoops, bays, and individual entrances, which are found throughout the surrounding residential neighborhood.
  73. The Commission also notes that the monetary contributions proffered by the Applicant comply with the requirements of Subtitle X § 305.3(d) since the items or services funded

can be provided prior to the issuance of certificate of occupancy for the Project. With respect to the Applicant's contributions to Dance Place and the ECA, the first two years of the Applicant's contributions are public benefits since they will occur prior to the issuance of a certificate of occupancy for the Project in accordance with Subtitle X § 305.3(d). With respect to the Applicant's contributions to Beacon House, the Hope Community Charter School, the McKinley Tech Track Club, and 1way2rise, the Commission finds that these proffers comply with the requirements of Subtitle X § 305.3(d) since the items or services funded can be provided prior to the issuance of certificate of occupancy for the Project.

74. Given the minimal amount of impacts resulting from the rezoning, the public benefits and project amenities outweigh the degree of development incentives requested in this case.
75. The Application can be approved with conditions to ensure that any potential adverse effects on the surrounding area from the development will be mitigated.

**“Great Weight” to the Recommendations of OP**

76. Pursuant to § 13(d) 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)), the Commission must give “great weight” to the recommendation of OP.
77. As explained above, the Commission finds persuasive OP's recommendations, in its reports and testimony, to grant the Application subject to the conditions and concurs in that judgement.

**“Great Weight” to the Written Report of the ANC**

78. Pursuant to § 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)) and Subtitle Z §406.2, the Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC. To satisfy this great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978).)
79. As the ANC Report expressed no issues or concerns with the Application, there are no issues or concerns to which the Zoning Commission can give great weight. (*See Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

**DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and

therefore **APPROVES** the Application for a Consolidated PUD and the related Zoning Map amendment to rezone the Property from the PDR-1 zone to the MU-4 zone, subject to the following guidelines, conditions, and standards (whenever compliance is required prior to, on, or during a certain time, the timing of the obligation is noted in **bold and underlined text**):

**A. PROJECT DEVELOPMENT**

1. The PUD shall be developed in accordance with the plans titled “Hanover 8<sup>th</sup> Street,” prepared by KTG Architecture + Planning, dated April 4, 2019, and marked as Exhibits 25A1-25A6 of the record, as revised by the “Revised Signage Plan,” marked as Exhibit 33B of the record (collectively, the “Approved Plans”).
2. The Applicant is granted flexibility from the GAR requirements of the Zoning Regulations, consistent with the Approved Plans and as discussed in the Zoning Flexibility section of this Order.
3. The Applicant shall have flexibility with the design of the PUD in the following areas:
  - a. To provide a range in the number of units of 377 plus or minus 10%;
  - b. To vary the location and design of all interior components, including amenities, partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, elevators, escalators, and toilet rooms elevators, provided that the variations do not change the exterior configuration of the building;
  - c. To make refinements to the garage configuration, including layout, number of parking spaces, and/or other elements, so long as the number of parking spaces does not decrease below the minimum level required by the Zoning Regulations;
  - d. To vary the final selection of the colors of the exterior materials based on availability at the time of construction, provided such colors are within the color ranges proposed in the Approved Plans;
  - e. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
  - f. To vary the color of the proposed signage, provided that the maximum overall dimensions and signage materials do not change from those shown on the Approved Plans;
  - g. To vary the number and mix of inclusionary units if the total number of dwelling units changes within the range of flexibility requested, provided that the location

and proportionate mix of the inclusionary units will substantially conform to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;

- h. To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division; and
- i. To vary the approved sustainable features of the Project, provided the total number of LEED points achievable for the Project does not decrease below the minimum required for the LEED standard specified by the order.

**B. PUBLIC BENEFITS**

- 1. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall construct an approximately 5,150-square-foot landscaped, publicly-accessible entry plaza with improvements as shown on Sheets L08 through L09 of the Approved Plans. (Ex. 25A5.)
- 2. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall install a public drinking fountain in the entry plaza for use by runners, bikers, and pedestrians.
- 3. The Applicant shall provide the 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 set forth in the following chart:

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type
Total	294,347 (100%)	377	N/A	N/A	N/A
Market Rate	259,025 sf (87.9%)	341	Market Rate	N/A	Rental
IZ	4,592 sf (1.6%)	6*	Up to 80% MFI	Life of the project	Rental
IZ	23,666 sf (8%)	31*	Up to 60% MFI	Life of the project	Rental
IZ	4,945 sf (1.7%)	6*	Up to 50% MFI	Life of the project	Rental

Residential Unit Type	Net Residential Square Feet/ Percentage of Total	Units	Reserved for household earning equal to or less than	Affordable Control Period	Affordable Unit Type
IZ	2,119 sf (0.7%)	3*	Up to 30% MFI	Life of the project	Rental

\*The number of IZ units is approximate based on the current dwelling unit count and layout. In accordance with the flexibility requested by the Applicant, the mix of IZ units may change if the total number of dwelling units changes within the range of flexibility requested, provided that the location and proportionate mix of the inclusionary units substantially conforms to the layout shown on the IZ Unit Location Plan included as Exhibit 33A of the record;

- b. **For the life of the Project**, the Applicant shall reserve two of the three-bedroom units as IZ units;
  - c. **For the life of the Project**, the Applicant shall reserve one of the “townhouse style” units on the ground floor fronting on 8<sup>th</sup> Street, N.E. as an IZ unit; and
  - d. 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.
4. **The Applicant shall submit with its building permit application**, a checklist evidencing that the Project has been designed to LEED-Gold standards under the LEED-v4 Multifamily Midrise standard.
  5. **Prior to issuance of a final certificate of occupancy for the Project**, the Applicant shall provide a signed affidavit to the Zoning Administrator evidencing that the Applicant has registered the Project under the LEED-v4 for Multifamily Midrise standard. The signed affidavit shall also include the steps taken by the Applicant towards certification of the Project under the LEED- v4 for Multifamily Midrise standard.
  6. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall install approximately 2,750 square feet of solar panels on the building’s roof, as shown on Sheet A20 through A22 of the Approved Plans. (Ex. 25A3.)
  7. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall construct the streetscape and landscape improvements as shown on Sheets L02 through L10 of the Approved Plans. The sidewalk shall be 10 feet wide. All sidewalks and elements in public space shall be built to DDOT standards and shall be subject to DDOT approval. (Ex. 25A4-25A5.)

8. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall provide a one-foot clearance on both sides of the Property's proposed sidewalk, to accommodate the future design and location of the MBT.
9. **During the operation of the Project's buildings**, the Applicant shall include a rider in all residential leases that restricts residential tenants from obtaining RPPs. In an effort to monitor whether residents are abiding by this lease restriction, the Applicant shall require that the PUD's property manager submit a request pursuant to the Freedom of Information Act, DC Code §§ 2-531 to 2-539 to the District of Columbia Department of Motor Vehicles annually to confirm whether any building tenant has registered a vehicle at the address of the PUD. If the property manager determines that any car has been registered by a tenant and/or that the tenant has received an RPP, the property manager shall notify the tenant that it must surrender the RPP in accordance with the residential lease rider.
10. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute \$50,000 to Dance Place, which represents two years of the Applicant's contribution. The Applicant's contribution of \$25,000 per year shall fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project**.
11. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has created an escrow account and funded it with \$25,000, which represents the third year of the Applicant's contribution. The escrow account shall be structured such that the funds shall be released to the Dance Place to fund eight scholarships for camp, 20 weeks of job training for 14 teenagers, and five scholarships for the Energizers Afterschool Program.
12. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute \$10,000 to the Beacon House to support the Beacon House's summer camp. The Applicant's contribution shall fund the cost of attendance for at least eight campers in the Beacon House's 2020 summer camp program. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being **provided prior to the issuance of a final certificate of occupancy for the Project**.
13. **Prior to the issuance of a final certificate of occupancy for the Project**, the Applicant shall contribute at least \$16,000 to the Edgewood Civic Association, which represents two years of the Applicant's contribution. The Applicant's contribution (anticipated to be approximately \$8,000 per year) shall fund various elements of the Edgewood Street Festival, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits. The Applicant shall provide



proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

14. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall demonstrate to the Zoning Administrator that it has created an escrow account and contributed the remaining funds, up to a total contribution of \$24,000. The escrow account shall be structured such that the funds shall be released to the Edgewood Civic Association to fund various elements of the third year of the Edgewood Street Festival, including but not limited to, the cost of an event coordinator, equipment rental, food and beverage services, activities, and required permits.
15. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$20,000 to a nonprofit organization that supports the McKinley Tech Track Club (Fast Lane), which shall fund the following:
  - a. \$5,200 for the Track Club's participation in the Penn Relays Meet including bus transportation and lodging costs;
  - b. \$10,750 for the Track Club's participation in the National Capitol Invitational Meet including a timer, security, officials, venue fees, clerks, and a starter;
  - c. \$1,850 for uniforms and equipment; and
  - d. \$2,200 for other meet and administrative fees.

In the event that there are excess funds, those funds shall be devoted to additional meet and administrative fees. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

16. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$20,000 to 1way2rise, which shall fund the following:
  - a. \$14,500 for educational supplies and programming for the afterschool youth and teen tutoring services, which may include but not be limited to book bags, pens, pencils, composition books, flash drives, lecturer and workshop fees, facility rental fees, and volunteer expenses;
  - b. \$4,000 for sporting equipment, which may include but not be limited to rugby equipment, tennis equipment, lacrosse equipment, and chess equipment; and
  - c. \$1,500 for STEM/robotics supplies and equipment, which may include but not be limited to scientific calculators.

In the event that there are excess funds, those funds shall be used for miscellaneous educational expenses related to the afterschool program or a scholarship for one senior at McKinley Technology High School who is pursuing post-secondary education. In the event 1way2rise is unable to administer these services, the Applicant shall contribute \$20,000 to Beacon House for the provision of similar services. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the items described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

17. **Prior to the issuance of a final certificate of occupancy for the Project,** the Applicant shall contribute \$50,000 to the Hope Community Charter School, which shall fund the following:

- a. \$30,000 to resurface, seal, and paint blacktop on the north side of the Hope Community Charter School building;
- b. \$5,000 to remove the concrete platform in front of the Hope Community Charter School building entrance that has been an ongoing safety concern;
- c. \$4,000 to purchase and install two in ground basketball hoops;
- d. \$600 to purchase and install a bicycle rack;
- e. \$3,000 to purchase large planters, supplies, and tools to create a garden space for the STEAM program;
- f. \$6,600 to repair and improve fencing on north side of the school building; and
- g. \$1,400 for minor landscaping on west side of the Hope Community Charter School building.

In the event that there are excess funds, those funds shall be used to paint an artistic mural on the front entrance side of the Hope Community Charter School building. The Applicant shall provide proof to the Zoning Administrator that the funds have been donated and that the services described in this condition have been or are being provided **prior to the issuance of a final certificate of occupancy for the Project.**

18. **During the operation of the Project (unless otherwise noted),** the Applicant shall provide a TDM Plan as follows:

- a. The Applicant shall identify a TDM Leader (for planning, construction, and operations) at the Project, who will act as a point of contact with DDOT/Zoning Enforcement with annual updates. The TDM Leader shall work with residents to distribute and market various transportation alternatives and options. The TDM

Leader shall receive training from goDCgo to learn about TDM conditions for the Project and available options for implementing the TDM Plan. The TDM Leader shall also subscribe to goDCgo's residential newsletter;

- b. The Applicant shall share the full contact information of the TDM Leaders for the Project with DDOT and goDCgo (info@godcgo.com);
- c. The Applicant shall provide TDM materials to new residents in the Residential Welcome Package materials, which at a minimum shall the Metrorail pocket guide, Capital Bikeshare coupon or rack card, Guaranteed Ride Home ("GRH") brochure, and the most recent DC Bike Map;
- d. The Applicant shall work with DDOT and goDCgo (DDOT's TDM program) to implement TDM measures at the Property;
- e. The Applicant shall post all TDM commitments online for easy reference;
- f. The Applicant shall exceed Zoning requirements by providing 125 long-term bicycle parking spaces in the Project's garage. The long-term bicycle storage room shall accommodate non-traditional bicycles including, but not limited to cargo, tandem, and children's bicycles;
- g. The Applicant shall provide 20 short-term bicycle parking spaces along 8<sup>th</sup> Street, N.E. adjacent to the Property;
- h. All parking on Property shall be priced at market rates, at minimum, defined as the average cost for parking in a quarter-mile radius from the Property;
- i. The Applicant shall unbundle the cost of residential parking from the cost of lease or purchase of each unit.
- j. The Applicant shall provide a \$100 SmarTrip Card for the first two years of occupancy of the Project to each incoming unit. A proactive marketing strategy shall be provided to ensure residents are aware of this benefit;
- k. The Applicant shall provide a bicycle repair station to be located in the bicycle storage room;
- l. The Applicant shall provide an on-site business center to residents with access to internet services;
- m. The Applicant shall install a Transportation Information Center Display (electronic screen) within the residential lobby of each building of the Project. At a minimum, the Transportation Information Center Display shall include information about nearby Metrorail stations and schedules, Metrobus stops and

schedules, car  
indicating the availability of bicycles;

-sharing loca

- n. The Applicant shall provide at least seven shopping carts in each building of the Project for residents to use for running errands and grocery shopping;
  - o. The Applicant shall provide at least three vehicle charging stations within the Project's garage;
  - p. The Applicant shall not lease unused residential parking spaces to anyone aside from Project's tenants;
  - q. The Applicant shall install two expansion plates of four docks each to the Capital BikeShare station at 10<sup>th</sup> and Monroe Streets, N.E. The maximum amount the Applicant will pay for this benefit is \$12,000;
  - r. The Applicant shall offer a one-year Capital Bikeshare membership to each unit during the initial lease up; and
  - s. The Applicant shall provide residents who wish to carpool with detailed carpooling information and will refer them to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this in the future.
19. **During the operation of the Project**, the Applicant shall provide a Loading Management Plan as follows:
- g. A loading dock manager shall be designated by the Project's management. The dock manager shall coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
  - h. All residents shall be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;
  - i. The dock manager(s) shall schedule deliveries for trucks using the loading berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver shall be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
  - j. The dock manager(s) shall monitor inbound truck maneuvers and shall ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering the loading facilities;

- k. Trucks using the loading dock shall not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to Title 20, Chapter 9, Section 900 (Engine Idling) of the DCMR, the regulations set forth in DDOT's Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System; and
- l. The dock manager(s) shall be responsible for disseminating suggested truck routing maps to residents and to drivers from delivery services that frequently utilize the loading dock. The dock manager(s) will also distribute flyers materials as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws. The dock manager(s) shall also post these documents in a prominent location within the service area.

#### **D. MISCELLANEOUS**

1. **During construction of the Project**, the Applicant shall abide by the terms of the Construction Management Plan. (Ex. 2K.)
2. No building permit shall be issued for the PUD 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 Property in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
3. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
4. 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.

## Proposed Action

**VOTE (April 25, 2019):** 5-0-0 (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

## Final Action

**VOTE (June 10, 2019):** 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on November 22, 2019.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**NOTICE OF FILING**  
**Z.C. Case No. 19-25**  
**(Airdome, LLC – Map Amendment @ Square 982)**  
**November 6, 2019**

**THIS CASE IS OF INTEREST TO ANC 6A**

On October 28, 2019, the Office of Zoning received an application from Airdome, LLC (the “Applicant”) for approval of a map amendment for the above-referenced property.

The property that is the subject of this application consists of Lots 57, 65, 68, 70, and 823 in Square 982 in northeast Washington, D.C. (Ward 6), on property located at 1101-1125 H Street, N.E. The property is currently zoned NC-16 and MU-4. The Applicant is proposing a map amendment to rezone the property to the NC-17 zone.

The MU-4 zone is intended to: permit moderate-density mixed-use development; provide facilities for shopping and business needs, housing, and mixed uses for large segments of the District of Columbia outside of the central core; and be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops, and include office employment centers, shopping centers, and moderate bulk mixed-use centers. The MU-4 zone allows a maximum height of 50 feet; maximum lot occupancy of 60% (70% for Inclusionary Zoning [“IZ”]); maximum density of 2.5 floor area ratio (“FAR”) (3.0 FAR for IZ and 1.5 FAR for non-residential<sup>1</sup>).

The H Street Northeast Neighborhood Mixed-Use (“NC”) zones were established to encourage a neighborhood-serving retail shipping district from 7<sup>th</sup> Street to 12<sup>th</sup> Street, N.E.

- The NC-16 zone is intended to permit mixed-use development at a moderate-density with an emphasis on the provision of retail uses. The NC-16 zone allows a maximum height of 50 feet and maximum density 2.5 FAR (3.0 FAR for IZ and 1.5 FAR for non-residential).
- The NC-17 zone is intended to permit mixed-use development at a moderate- to medium-density with an emphasis on the provision of retail uses. The NC-17 zone allows a maximum height of 65 feet (70 feet with IZ) and maximum density of 3.5 FAR (4.2 FAR for IZ and 1.5 non-residential).

This case was filed electronically through the Interactive Zoning Information System (“IZIS”), which can be accessed through <http://dcoz.dc.gov>. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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<sup>1</sup> In the MU-4 and MU-5 zones, an existing building on a lot with an area 10,000 sq. ft. or less, may have a maximum density of 2.0 FAR for non-residential uses, provided the uses are located in the ground story and the story directly above the ground story. For new construction, any additional use is limited to 0.5 FAR.

**District of Columbia REGISTER – November 22, 2019 – Vol. 66 - No. 48 015334 – 015697**