

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council schedules a public roundtable on “Rock Creek Far West Livability Study Proposal for Bike Lanes on Dalecarlia Parkway”
- Board of Elections proposes polling place relocations in Ward 2, Precinct 14 and Ward 4, Precinct 54
- Department of Employment Services solicits partners to provide innovative workforce development solutions for District residents
- Department of Health Care Finance announces changes in the Medicaid reimbursement rates for Personal Care Aide (PCA) services and nine services for persons who are Elderly and individuals with Physical Disabilities (EPD)
- Department of Health seeks an organization to provide operational support for the District of Columbia Perinatal Quality Collaborative (PQC)
- D.C. Public Schools schedules a special community meeting to discuss the proposal to close Washington Metropolitan High School at the end of School Year 2019-2020

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

The District of Columbia Office of Documents and Administrative Issuances publishes the *District of Columbia Register* (ISSN 0419-439X) every Friday under the authority of the *District of Columbia Documents Act*, D.C. Law 2-153, effective March 6, 1979, D.C. Official Code § 611 *et seq.* (2012 Repl.). The policies which govern the publication of the *Register* are set forth in the Rules of the Office of Documents and Administrative Issuances (1 DCMR §§300, *et seq.*). The Rules of the Office of Documents and Administrative Issuances are available online at dcregs.dc.gov. Rulemaking documents are also subject to the requirements of the *D.C. Administrative Procedure Act*, D.C. Official Code §§2-501 *et seq.* (2012 Repl.).

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DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-166

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 25, 2019

To approve, on an emergency basis, Modification Nos. 11, 12, and 13 to Contract No. DCRL-2017-R-0049 with Lutheran Social Services of the National Capital Area to provide residential foster care and social services to unaccompanied refugee minors during option year two, and to authorize payment for the services received and to be received under these modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Contract No. DCRL-2017-R-0049 Modification Nos. 11, 12, and 13 with Lutheran Social Services of the National Capital Area Approval and Payment Authorization Emergency Act of 2019”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 11 and 12, and proposed Modification No. 13 to Contract No. DCRL-2017-R-0049 with Lutheran Social Services of the National Capital Area to provide residential foster care and social services to unaccompanied refugee minors in the total not-to-exceed amount of \$1,571,026.31 for services received and to be received under option year two of the contract.

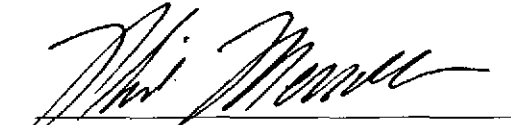
Sec. 3. Fiscal impact statement.

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


Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override that 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)).

ENROLLED ORIGINAL



Chairman
Council of the District of Columbia



Mayor
District of Columbia
APPROVED
November 25, 2019

ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-167

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 25, 2019

To approve, on an emergency basis, Modification No. M004 and proposed Modification No. M005 to Contract No. DCRL-2017-H-0091 with Innovative Life Solutions, Inc. to provide developmentally disabled services during option year one, and to authorize payment for the services received and to be received under these modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Modifications to Contract No. DCRL-2017-H-0091 Approval and Payment Authorization Emergency Act of 2019”.

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding the requirements of section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification No. M004 and proposed Modification No. M005 to Contract No. DCRL-2017-H-0091 with Innovative Life Solutions, Inc. to provide developmentally disabled services in the total not-to-exceed amount of \$1,077,264.58 for services received and to be received under these modifications.

Sec. 3. Fiscal impact statement.

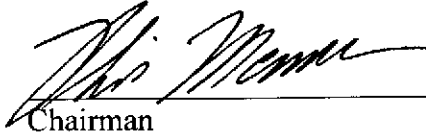
The Council adopts the fiscal impact statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

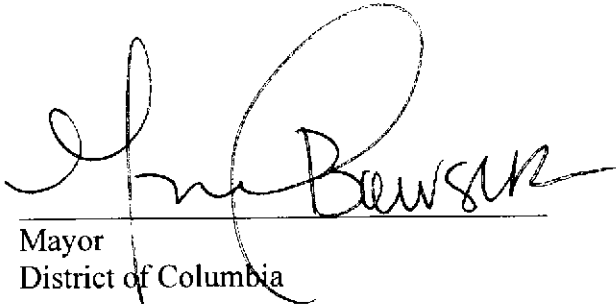
This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override that veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in

ENROLLED ORIGINAL

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED

November 25, 2019

ENROLLED ORIGINAL

AN ACT
D.C. ACT 23-168

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

NOVEMBER 25, 2019

To amend, on an emergency basis, the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982 to make it unlawful to deface or burn a religious or secular symbol on any property of another without permission or to place or display on such property a physical impression that a reasonable person would perceive as a threat to physically damage the property of another.

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

Sec. 2. Section 3(a) of the Anti-Intimidation and Defacing of Public or Private Property Criminal Penalty Act of 1982, effective March 10, 1983 (D.C. Law 4-203; D.C. Official Code § 22-3312.02(a)), is amended as follows:

(a) The lead-in language is amended by striking the phrase “private premises or property in the District of Columbia primarily used for religious, educational, residential, memorial, charitable, or cemetery purposes, or for assembly by persons of a particular race, color, creed, religion, or any other category listed in section 101 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1401.01),” and inserting the phrase “private property of another without the permission of the owner or the owner’s designee” in its place.

(b) Paragraph (3) is amended by striking the word “person” and inserting the phrase “person or property” 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).

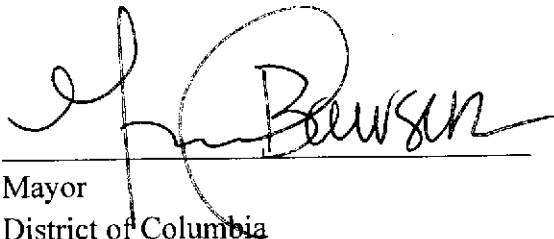
ENROLLED ORIGINAL

Sec. 4. Effective date.

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



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED
November 25, 2019

ENROLLED ORIGINAL

A RESOLUTION

23-202

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 17, 2019

To confirm the reappointment of Mr. Brian Cooper as a member of the Board of Industrial Trades.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Industrial Trades Brian Cooper Confirmation Resolution of 2019”.

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

Mr. Brian Cooper
49th Street, N.W.
Washington, D.C. 20016
(Ward 3)

as a licensed elevator contractor member of the Board of Industrial Trades, established by D.C. Official Code § 47-2853.06(d), for a term to end June 26, 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

23-203

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

September 17, 2019

To confirm the reappointment of Mr. Alvin D. Venson, Sr. as a member of the Board of Industrial Trades.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Board of Industrial Trades Alvin D. Venson, Sr. Confirmation Resolution of 2019”.

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

Mr. Alvin D. Venson, Sr.
Alabama Ave, S.E.
Washington, D.C. 20020
(Ward 7)

as a licensed refrigeration and air conditioning mechanic member of the Board of Industrial Trades established by D.C. Official Code § 47-2853.06(d), for a term to end June 26, 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

23-273

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 19, 2019

To declare the existence of an emergency with respect to the need to approve an agreement to enter into a long term subsidy contract for 15 years in support of the District's Local Rent Supplement Program to fund housing costs associated with affordable housing units for Contract No. 2018-LRSP-05A with Hill East Parcel F, LLC for program units at Hill East Parcel F-1, located at 1900 C Street, S.E.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Local Rent Supplement Program Contract No. 2018-LRSP-05A Approval and Payment Authorization Emergency Declaration Resolution of 2019".

Sec. 2. (a) In 2007, the District enacted the D.C. Housing Authority Rent Supplement Act of 2006, in Title II of the Fiscal Year 2007 Budget Support Act of 2006, effective March 2, 2007 (D.C. Law 16-192; 53 DCR 6899), ("BSA") to provide funding for affordable housing for extremely low-income households in the District. The passage of the BSA created the Local Rent Supplement Program ("LRSP"), a program designed to provide affordable housing and supportive services to extremely low-income District residents, including those who are homeless or in need of supportive services, such as elderly individuals or those with disabilities, through project-based, tenant-based, and sponsor-based LRSP affordable housing units. The BSA provided for the District of Columbia Housing Authority ("DCHA") to administer the LRSP on behalf of the District.

(b) The District's Department of Human Services ("DHS") receives specific allocations of tenant-based assistance under the LRSP. DHS seeks to use its specific DHS tenant-based LRSP allocation to support project-based assistance for the Hill East (formerly known as Reservation 13) project on Parcel F-1. The District's Office of the Deputy Mayor for Planning and Economic Development ("DMPED") previously issued a solicitation for development of the Hill East Parcel F-1. On September 23, 2013, DMPED selected a joint venture comprised of Donatelli Development and Blue Skye Development as the developer for the project, and conveyed Hill East Parcel F-1 to an affiliate of Donatelli Development/Blue Skye Development. DHS, with the support of DMPED, is seeking to work with the developer of the Hill East development on Parcel F-1. DHS seeks to have a 100-unit project developed for permanent supportive housing with referrals to be received directly from DHS. DCHA will convert 100

ENROLLED ORIGINAL

units of DHS's LRSP tenant-based assistance to LRSP project or sponsor-based assistance in support of the development on Hill East Parcel F-1. Upon approval of the contract by the Council, DCHA will enter into an agreement to enter into a long-term subsidy contract ("ALTSC") with the selected housing providers under the LRSP for housing services.

(c) There exists an immediate need to approve the long-term subsidy contract with Hill East Parcel F, LLC under the LRSP to provide long-term affordable housing units for extremely low-income households or residents experiencing homelessness for units located at 1900 C Street, S.E.

(d) The emergency legislation to approve the contract will authorize an ALTSC between DCHA and Hill East Parcel F, LLC with respect to the payment of a rental subsidy and allows the owner to lease the newly constructed units at Hill East Parcel F-1 and house extremely low-income households with incomes at 30% or less of the area median income or residents experiencing homelessness.

Sec. 3. The Council determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Local Rent Supplement Program Contract No. 2018-LRSP-05A 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

23-274

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 19, 2019

To declare the existence of an emergency with respect to the need to amend the Legalization of Marijuana for Medical Treatment Initiative of 1999 to remove the limit on the number of plants that a cultivation center may grow.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Medical Marijuana Plant Count Elimination Emergency Declaration Resolution of 2019”.

Sec. 2. (a) The Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.01 *et seq.*) (“Medical Marijuana Act”), established a medical marijuana program in the District. Pursuant to the Medical Marijuana Act, the Department of Health can register qualifying patients to receive access to medical marijuana without fear of government sanction, to the extent possible without a change in federal laws.

(b) Since passage of the Medical Marijuana Act, the Council and Executive have endeavored to improve access to medical marijuana for patients with the enactment of multiple bills and regulations including the Medical Marijuana Expansion Amendment Act of 2014, the Medical Marijuana Omnibus Amendment Act of 2016, the Medical Marijuana Certified Business Enterprise Preference Emergency Amendment Act of 2018, and most recently, the Student Medical Marijuana Patient Fairness Emergency Amendment Act of 2019.

(c) Current law limits the number of plants that a cultivation center may grow (“plant count limit”) to 1,000. This plant count limit was originally 95; the Council raised the limit to 500 plants in 2014 and to 1,000 in 2016.

(d) The rationale for the plant count limit was to protect the medical marijuana program from interference by the federal government, but federal budget language now prohibits the Department of Justice from interfering with state or territorial medical marijuana programs, including in the District.

(e) As a result, there is no longer a reason to maintain an arbitrary plant count limit rather than allow cultivation centers to grow what is required to meet the market need.

ENROLLED ORIGINAL

(f) To meet the needs of patients who seek specific strains of medical marijuana or who do not consume medical marijuana by smoking, a greater quantity of medical marijuana is required for the development and provision of unique strains and for production of tinctures, oils, edibles, and other products.

(g) The plant count limit unnecessarily creates a shortage of these products and limits the variety of strains available to patients.

(h) This lack of product puts District cultivators and dispensaries at a disadvantage in competition with both the underground market as well as neighboring states with larger medical marijuana programs.

(i) Therefore, there exists an immediate need to amend existing law to remove the arbitrary limit on the number of plants that a marijuana cultivation center may grow.

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 Medical Marijuana Plant Count Elimination 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.

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

- | | |
|---------|--|
| B23-556 | Business Development Omnibus Act of 2019

Intro. 11-22-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development |
| <hr/> | |
| B23-557 | Streetscape Business Development Relief Expansion Amendment Act of 2019

Intro. 11-22-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development |
| <hr/> | |
| B23-558 | Underground Springs and Streams Residential Real Property Disclosure Amendment Act of 2019

Intro. 10-22-19 by Councilmembers Cheh, Todd, Silverman, Grosso, Bonds, and Gray and referred to the Committee of the Whole with comments from the Committee on Transportation and the Environment |
-

PROPOSED RESOLUTIONS

PR23-563 Public Employee Relations Board Peter Winkler Confirmation Resolution of 2019

Intro. 11-21-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

PR23-566 Board of Trustees of the University of the District of Columbia Joshua Wyner Confirmation Resolution of 2019

Intro. 11-20-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR23-567 Board of Trustees of the University of the District of Columbia Dr. Esther Barazzone Confirmation Resolution of 2019

Intro. 11-20-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR23-568 Board of Trustees of the University of the District of Columbia Mr. Jerome Shelton Confirmation Resolution of 2019

Intro. 11-20-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee of the Whole

PR23-570 District of Columbia Public Health Nuisances and Rodent Control Infractions Approval Resolution of 2019

Intro. 11-22-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR23-571 District of Columbia Aquatic Facilities Infractions Approval Resolution of 2019

Intro. 11-22-19 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Health

PR23-574 West Dupont Circle Moratorium Zone Approval Resolution of 2019

Intro. 11-22-19 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 ON TRANSPORTATION & THE ENVIRONMENT
MARY M. CHEH, CHAIR

REVISED

NOTICE OF PUBLIC HEARING ON

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

Monday, December 16, 2019, at 12:30 PM
in Room 123 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Monday, December 16, 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 12:30 PM in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, DC 20004.

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. 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. 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

December 9, 2019, five business days before the hearing. We will make every effort to fulfill timely requests, however requests received after December 9, 2019, 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 or faxed to (202) 724-8118. The record will close at the end of the business day on December 30, 2019.

This hearing notice is revised to reflect that the hearing date and time have been moved from December 13, 2019, at 12 p.m., to December 16, 2019, at 12:30 p.m., and that the hearing location has been moved from Room 412 to Room 123. The revised notice also specifies the date by which requests for interpretation should be provided to the Committee.

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

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

**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**

**PR23-563, Public Employee Relations Board Peter Winkler
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 two measures. First, 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. Second, PR23-563, Public Employee Relations Board Peter Winkler Confirmation Resolution of 2019. The resolution would approve the nomination of Peter Winkler as a public member of the Public Employee Relations Board, replacing Charles Murphy, 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. ***This notice has been revised to add PR23-563 to the agenda for the roundtable.***

Those who wish to testify before the Committee are asked to contact Ms. Charnisa Royster at 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 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
COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT
MARY M. CHEH, CHAIR

NOTICE OF PUBLIC ROUNDTABLE ON

The Rock Creek Far West Livability Study Proposal for Bike Lanes on Dalecarlia Parkway

Wednesday, May 6th, 2020, at 11:00 AM
in Room 412 of the John A. Wilson Building
1350 Pennsylvania Avenue, NW, Washington, DC 20004

On Wednesday, May 6th, 2020, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public roundtable on the Rock Creek Far West Livability Study Proposal for Bike Lanes on Dalecarlia Parkway. The roundtable will begin at 11:00 AM in Room 412 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W. Washington, DC 20004.

The purpose of the roundtable is for the Committee to hear testimony from residents and the government regarding the proposed bike lane. The District Department of Transportation has the responsibility for determining where bike lanes are to be located.

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at abenjamin@dccouncil.us. Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to abenjamin@dccouncil.us. 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, which is April 29, 2020. 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 or faxed to (202) 724-8118. The record will close at the end of the business day on May 20, 2020.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF RE-REFERRED PROPOSED LEGISLATION

The following proposed legislation was published as referred sequentially to the Committee on Transportation and the Environment, and the Committee of the Whole but has now been re-referred to the Committee on Transportation and the Environment:

B 23-228, the “Legitimate Theater Sidewalk Café Authorization Amendment Act of 2019”.

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF RE-REFERRED PROPOSED LEGISLATION

The following proposed legislation was published as referred to the Committee of the Whole with comments from the Committee on Health but has now been re-referred sequentially to the Committee on Health and the Committee of the Whole:

B 23-546, the “Interstate Physical Therapy Compact Approval Act of 2019”.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Placard Posting Date: **November 29, 2019
Protest Petition Deadline: **January 13, 2020
Roll Call Hearing Date: **January 27, 2020
Protest Hearing Date: **March 18, 2020

License No.: ABRA-115606
Licensee: Laxmi DC, LLC
Trade Name: CHASQA
License Class: Retailer’s Class “C” Restaurant
Address: 2332 Wisconsin Avenue, N.W.
Contact: Dawa Tamang.: (202) 827-4904

WARD 3

ANC 3B

SMD 3B02

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 27, 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 18, 2020 at 1:30 p.m.**

NATURE OF OPERATION

A new Retailer’s Class C Restaurant with a seating capacity and Total Occupancy Load of 146.

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

Sunday through Thursday 11am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: **November 15, 2019
Protest Petition Deadline: **December 30, 2019
Roll Call Hearing Date: **January 13, 2020
Protest Hearing Date: **March 4, 2020

License No.: ABRA-115606
Licensee: Laxmi DC, LLC
Trade Name: CHASQA
License Class: Retailer’s Class “C” Restaurant
Address: 2332 Wisconsin Avenue, N.W.
Contact: Dawa Tamang.: (202) 827-4904

WARD 3

ANC 3B

SMD 3B02

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 13, 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 4, 2020 at 1:30 p.m.**

NATURE OF OPERATION

A new Retailer’s Class C Restaurant with a seating capacity and Total Occupancy Load of 146.

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

Sunday through Thursday 11am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: November 29, 2019
Protest Petition Deadline: January 13, 2020
Roll Call Hearing Date: January 27, 2020
Protest Hearing Date: March 18, 2020

License No.: ABRA-115588
Licensee: Chopsmith LLC
Trade Name: Chopsmith
License Class: Retailer's Class "D" Restaurant
Address: 11 District Square, S.W.
Contact: Brianna Keefe: (202) 484-5200

WARD 6

ANC 6D

SMD 6D04

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 27, 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 18, 2020 at 4:30 p.m.

NATURE OF OPERATION

A new Retailer's Class D Restaurant with a seating capacity of 27 and a Total Occupancy Load of 66. Sidewalk Café with 12 seats.

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

Sunday through Saturday 10am – 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****READVERTISEMENT**

Placard Posting Date: **November 29, 2019
Protest Petition Deadline: **January 13, 2020
Roll Call Hearing Date: **January 27, 2020
Protest Hearing Date: **March 18, 2020

License No.: ABRA-115533
Licensee: Mr. Chen's. Inc.
Trade Name: Mr. Chen's
License Class: Retailer's Class "C" Restaurant
Address: 3419 Connecticut Avenue, N.W.
Contact: Rita Hardy: (202) 327-3497

WARD 3

ANC 3C

SMD 3C04

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 27, 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 18, 2020 at 1:30 p.m.**

NATURE OF OPERATION

A new class C Restaurant serving organic Chinese cuisine. Seating Capacity of 70 and a Total Occupancy Load of 80.

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

Sunday 12pm – 10pm, Monday through Thursday 11am – 10:30pm,
Friday and Saturday 11am – 11pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

Placard Posting Date: **November 8, 2019
Protest Petition Deadline: **December 23, 2019
Roll Call Hearing Date: **January 6, 2020
Protest Hearing Date: **February 26, 2020

License No.: ABRA-115533
Licensee: Mr. Chen's. Inc.
Trade Name: Mr. Chen's
License Class: Retailer's Class "C" Restaurant
Address: 3419 Connecticut Avenue, N.W.
Contact: Rita Hardy: (202) 327-3497

WARD 3

ANC 3C

SMD 3C04

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 6, 2019 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on ****February 26, 2020 at 1:30 p.m.**

NATURE OF OPERATION

A new class C Restaurant serving organic Chinese cuisine. Seating Capacity of 70 and a Total Occupancy Load of 80.

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

Sunday 12pm – 10pm, Monday through Thursday 11am – 10:30pm,
Friday and Saturday 11am – 11pm

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, FEBRUARY 5, 2020
441 4TH STREET, N.W.
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH
WASHINGTON, D.C. 20001**

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

TIME: 9:30 A.M.

WARD THREE

17703C **Application of Sidwell Friends School**, pursuant to 11 DCMR
ANC 3F Subtitle Y § 704, for a modification of significance of BZA Order No. 17703 and BZA Order No. 17703-A to modify the campus plan of an existing education campus under the private school use permissions of Subtitle U § 203.1(l) and Subtitle X § 104, for additions and renovations of an existing education campus, and to modify the initial order conditions and revise the timeline of completion of the modification plan in MU-4/R-1-B Zones at premises 3825 Wisconsin Avenue, N.W. and 3720 Upton Street, N.W. (Square 1825, Lots 816 and 818).

WARD FOUR

20188 **Application of 609 Upshur, LLC**, pursuant to 11 DCMR Subtitle X,
ANC 4C Chapter 9 for a special exception under the residential conversion requirements of Subtitle U § 320.2, to construct a three-story rear addition and convert the existing principal dwelling unit to a three-unit apartment house in the RF-1 Zone at premises 609 Upshur Street N.W. (Square 3226, Lot 70).

WARD FOUR

20189 **Application of Ihab Mogassbi - Diamond Ridge LLC**, pursuant to 11
ANC 4C DCMR Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to convert a currently vacant attached building to a three-unit apartment house in the RF-1 Zone at premises 1422 Shepherd Street N.W. (Square 2693, Lot 18).

BZA PUBLIC HEARING NOTICE

FEBRUARY 5, 2020

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WARD SIX

20190
ANC 6A **Application of Joshua Ingber**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the residential conversion requirements of Subtitle U § 320.2, under Subtitle C § 1504 from the penthouse setback requirements of Subtitle C § 1502.1, and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to permit the construction of a fourth apartment and the installation of new rooftop mechanical equipments, in an existing three-unit apartment house in the RF-1 Zone at premises 653 8th Street, N.E. (Square 913, Lot 175).

WARD ONE

20192
ANC 1A **Application of Bernice Mellstrom**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the non-conforming structure requirements of Subtitle C § 202 and the lot occupancy requirements of Subtitle E § 304.1, and under Subtitle E § 5203.3 from the roof top architectural element requirements of Subtitle E § 206.1(a), to construct a new roof deck above the existing front porch of an attached principal dwelling unit in the RF-1 Zone at premises 617 Quebec Place N.W. (Square 3034, Lot 155).

WARD SIX

20195
ANC 6E **Application of Steven K. Neufeld**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot dimension requirements of Subtitle E § 201.1 and from the rear addition requirements of Subtitle E § 205.4, to construct a three-story rear addition and to convert the tax lot into record lot in the RF-1 Zone at premises 1615 6th Street N.W. (Square 477, Lot 837).

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.

BZA PUBLIC HEARING NOTICE

FEBRUARY 5, 2020

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

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

Do you need assistance to participate?

Amharic

ለሙከራ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ሙከራ ጎም)

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

0312 ወይም በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እነኚህ አገልግሎቶች የሙከራ በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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

French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

BZA PUBLIC HEARING NOTICE

FEBRUARY 5, 2020

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Vietnamese

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

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

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**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl. & 2019 Repl.)), and Mayor’s Order 2001-96, dated June 28, 2001, as revised by Mayor’s Order 2001-102, dated July 23, 2001, hereby gives notice of proposed rulemaking action to amend Chapters 1 (Provisions of General Applicability), 2 (License and Permit Categories), 4 (General Licensing Requirements), 5 (License Applications), 6 (License Changes), 7 (General Operating Requirements), 9 (Prohibited and Restricted Activities), 10 (Endorsements), 11 (Advertising), 12 (Records and Reports), 13 (Transport of Beverages), 15 (Applications: Notice of Hearings Involving Licenses), 16 (Contested Hearings, Non-contested Hearings, Protest Hearings, and Procedures), 17 (Procedural Requirements for Board Hearings), 18 (Petition Procedures), 19 (Complaints: Inquiries to the Board), and 20 (Caterer’s License) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Chapter 1 include revising the definition of the term “safekeeping hearings” in § 199. Chapter 2 is amended by repealing § 214 (Notice to Advisory Neighborhood Commissions) and moving it to Chapter 15 (Applications: Notice of Hearings Involving Licensees). Chapter 4 (General Licensing Requirements) is amended by replacing “voluntary agreement” with the phrase “settlement agreement” as it is used in Title 25 of the D.C. Official Code. Similar amendments were made throughout Title 23 to ensure obsolete terminology is no longer used. Additionally, Chapter 5 (License Applications) and Chapter 6 (License Changes) are revised to conform to D.C. Official Code § 25-402 as it relates to those members/owners of a licensed establishment that must comply with 23 DCMR and Title 25 of D.C. Official Code. Chapter 6 is further amended for purposes of recognizing limited liability companies.

Numerous amendments were made to Chapter 7 (General Operating Requirements). Section 703 (Temporary Operating Retail Permit) was amended to establish a ninety (90) day time limit for temporary operating retail permits, unless extended by the Board for good cause. Conforming amendments were made to § 705 (Hours of Sale and Delivery for Off-Premises Retail Licenses) to ensure that they are consistent with Title 25 of D.C. Official Code. Sections 706 (Locking of Beverages During Non-Sale Hours), 710 (Minimum Charge), and 712 (Pub Crawls) were amended to correct errors in the text. These revisions were more technical than substantive.

Chapter 7 is further amended by ensuring that statutory changes contained in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2018, effective October 30, 2018 (D.C. Law 22-165; D.C. Official Code §§ 25-101 *et seq.* (2012 Repl. & 2019 Supp.)) (“2018 Omnibus bill”) are also captured in the regulations. To that end, § 707.1 sets forth instances in which a licensed establishment is not required to have an owner or ABC Manager present on the licensed premises. Similarly, §§ 711, 712, 716, and 717 are amended to conform with Title 25 of the D.C. Official Code.

Specifically, § 711 (Retail Permits for Sampling of Alcoholic Beverages) is amended to allow holders of wholesaler licenses, manufacturer's licenses, and off-premises retailer licenses to offer tastings during specific hours. Section 716 (One Day Substantial Changes) is amended to allow manufacturers and off-premises retail licenses to apply for one-day substantial change permits. Section 717 (Corking Fee) is amended to allow holders of temporary and festival licenses to allow their customers to bring their own alcoholic beverages to their events. Lastly, a new § 722 (Self-Service Machines) is added to regulate and standardize the operations of self-serving machines that serve beer and wine.

The proposed rulemaking amends Chapter 9 (Prohibited and Restricted Activities) by amending § 904 so that its language is consistent with what is proscribed in § 903. The purpose of the amendment is to standardize the language in both sections. These changes are technical in nature and serve to eliminate any confusion that might exist.

The proposed rulemaking amends Chapter 10 (Endorsements) by amending § 1001 (Entertainment Endorsement Application) by replacing "voluntary agreement" with the phrase "settlement agreement". Further amendments to §§ 1002 and 1003 conform the language in the regulations to the Council's recent statutory amendments in the 2018 Omnibus bill. Specifically, § 1002 (Cover Charge) is amended to permit holders of manufacturer licenses as well as bed and breakfasts to charge a cover. Similarly, the amendments to § 1003 (One-Day Substantial Change Exception) allow licensed manufacturers and bed and breakfasts to apply for a one-day substantial change permit. Lastly, the amendments to § 1004 (Sidewalk Café or Summer Garden Endorsement) would allow manufacturers and bed and breakfasts to apply for sidewalk café and summer garden endorsements.

The proposed rulemaking amends Chapter 11 (Advertising) by amending § 1100 (Prohibited Statements) to remove all references to religious holidays.

The proposed rulemaking amends Chapter 12 (Records and Reports) by amending § 1202 (Wholesaler's Books, Records, and Reports) to remove the requirement that wholesalers submit annual reports to the Board. The Board no longer requires wholesalers to submit these reports and does not foresee reinstating this requirement.

Chapter 13 (Transport of Beverages) is amended by repealing § 1300 (Transport Permits for Alcoholic Beverages) and incorporating its requirements into § 1301 (Importation Permits for Retailers of Alcoholic Beverages) and § 1302 (Importation of Alcoholic Beverages for Private Use and Consumption). Sections 1301 and 1302 are revised so that they are consistent. Section 1303 is amended by subjecting wholesalers and manufacturers that ship alcoholic beverages in the District to the same standard as other licensees.

Chapter 15 (Applications: Notice of Hearings Involving Licenses) is amended by adding a new § 1505 (Notice to Advisory Neighborhood Commissions). This requirement was in § 214, which this rulemaking would repeal.

Chapter 16 (Contested Hearings, Non-contested Hearings, Protest Hearings, and Procedures) is amended by amending § 1600 (General Provisions) to clarify which hearings are contested and

non-contested. Section 1602 (Filing a Protest) is amended to require (1) only the chairman of the ANC, president of an organization, or other designated party can sign protest letters on behalf of their respective body and (2) to require protest groups to designate a representative for the group in their protest letter. Section 1605 (Party Standing of a Group of Five or More Residents or Property Owners) is amended to ensure that the requirements for protestant groups of five or more and protestant groups of three or more, if in a moratorium zone, are consistent. Additionally, § 1612 (Protest Hearings) is amended to ensure that what is required in Protest Hearings where there are two or more protestants is consistent in § 1612 and § 1714. The objective is to make the two sections harmonious. Lastly, § 1616 (Fact-Finding Hearings) is amended by clarifying (1) which hearings are closed to the public by operation of law and (2) that the Board can send an investigative report to OAG for show cause after a fact finding hearing.

Chapter 17 (Procedural Requirements for Board Hearings) is amended by amending § 1703 (Service of Papers) to make it clear that an investigator can serve the owner, the ABC manager or any employee of a licensed establishment. Sections 1706 (Appearance and Representation) and 1707 (Notice of Appearance) are amended to clarify what is required of lawyer and non-lawyer representatives appearing before the Board. Section 1708 (Inspection of Board Files) is amended to conform to the Council's statutory changes contained in the 2018 Omnibus bill to require that requests for documents be produced within three (3) business days. Section 1709 (Investigator Reports) is amended to make clear that all protest matters will be assigned to an investigator to produce a report prior to the protest hearing. Section 1714 is amended to conform its language with the amendments to § 1612. Section 1717 (Post-Hearing Submissions) is amended to clarify that Proposed Findings of Fact and Conclusions of Law are limited to the evidence submitted at the hearing, and that the parties cannot introduce any new evidence or arguments after the record closes.

Further amendments to Chapter 17 include revising § 1719 (Reconsideration, Rehearing, and Reargument) in its entirety, including renaming the section "Reconsideration, Rehearing, Reargument, and Stay". Section 1722 (Protest Information Form) is revised to conform to the Board's practice and to clarify the failure to file the PIF or an Exhibit Form may result in the dismissal of a party's case or the exclusion of evidence not disclosed prior to the hearing.

Chapter 18 (Petition Procedures) is amended by repealing § 1801 because it duplicates § 1602 (Filing a Protest). Chapter 19 (Complaints: Inquiries to the Board) is amended by replacing "voluntary agreement" with the phrase "settlement agreement" in § 1903.1.

Lastly, Chapter 20 (Caterer's License) is amended by revising § 2005 (Manager Attendance at Catered Events) in its entirety and amending § 2006 (Caterer's Report) by revising § 2006.1 in its entirety by eliminating the requirement that caterer's reports must be furnished to the Board under oath.

On September 11, 2019, by a vote of four (4) to zero (0), the Board approved the proposed rules. The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not fewer than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Further, the Board will transmit the proposed rulemaking to the Council of

the District of Columbia for a ninety (90)-day period of review in accordance with D.C. Official Code § 25-211(b)(2)(2012 Repl.).

Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 199, DEFINITIONS, Subsection 199.1, is amended by revising the definition of “Safekeeping hearing” to read as follows:

Safekeeping hearing – the proceeding held by the Board to determine whether reasonable cause exists to extend the period that a license is held in safekeeping or whether the license should be cancelled.

Chapter 2, LICENSE AND PERMIT CATEGORIES, is amended as follows:

Section 214, NOTICE TO ADVISORY NEIGHBORHOOD COMMISSIONS, is repealed so that the section reads as follows:

214 [REPEALED]

Chapter 4, GENERAL LICENSING REQUIREMENTS, is amended as follows:

Section 402, BOARD CHECK SHEET, is amended by striking “voluntary agreement” and replacing it with “settlement agreement” in § 402.1(e) so that it reads as follows:

402.1

...

(e) A copy of the establishment’s cooperative agreement or settlement agreement, if any.

Chapter 5, LICENSE APPLICATIONS, is amended as follows:

Section 502, POLICE CLEARANCE, is amended by striking the term “principal vice president” and inserting the term “vice president” in § 502.3, and striking the phrase “over twenty-five percent (25%)” and inserting the phrase “ten percent (10%) or more” in § 502.4, so that both subsections read as follows:

502.3 Each individual partner of a partnership, the president, vice president, and treasurer of a corporation and the managers of a limited liability company shall be required to comply with the provisions of this section.

502.4 Each stockholder, limited partner, or member of a limited liability company holding directly or indirectly ten percent (10%) or more of the stock of a corporation, partnership, or limited liability company shall be required to comply with the provisions of this section.

Chapter 6, LICENSE CHANGES, is amended as follows:

Section 601, CORPORATE AND PARTNERSHIP CHANGES, is amended by striking the phrase “twenty-five percent (25%)” and inserting the phrase “ten percent (10%)” in Subsection 601.1, and amending § 601.4 in its entirety, so that both subsections read as follows:

- 601.1 If there is a change in corporate officers, directors, limited or general partners in a partnership, or persons owning or controlling ten percent (10%) or more of the common stock of the corporate license, the corporation or partnership shall submit to the Board within fifteen (15) calendar days the minutes or other instrument giving the names and addresses of any new officer, director, partner, or person holding ten percent (10%) or more of the stock.
- 601.4 If there is a change in the general partners of a limited partnership or the members of a limited liability company, the partnership or limited liability company owning or controlling ten percent (10%) of the partnership interest shall submit to the Board in a timely manner, but no later than fifteen (15) calendar days after the changes has occurred, the instruments reflecting the change in partnership or membership interests.

Chapter 7, GENERAL OPERATING REQUIREMENTS, is amended as follows:

Section 703, TEMPORARY OPERATING RETAIL PERMIT, is amended by renumbering the current § 703.5 as § 703.6; striking the phrase “pursuant to § 703.5” and inserting the phrase “pursuant to § 703.6” in § 703.4; and creating a new § 703.5 which will allow the temporary operating retail permit to remain in effect for ninety (90) days, unless the Board grants an extension for good cause.

- 703.4 The permit shall be valid until the applicant’s transfer application is either granted or denied by the Board or until the permit is cancelled or suspended by the Board pursuant to § 703.6.
- 703.5 Notwithstanding § 703.4, no permit shall be valid for longer than ninety (90) calendar days unless extended by the Board for good cause.

Section 705, HOURS OF SALE AND DELIVERY FOR OFF-PREMISES RETAIL LICENSEES, is amended by repealing § 705.1; striking the phrase “cooperative/voluntary agreement” and inserting the phrase “cooperative/settlement agreement” in § 705.2; repealing § 705.3; striking the phrase “stated in” and inserting the phrase “provided by” in § 705.4, as well as adding the phrase “or as otherwise set forth in its license” after the phrase “of this title”; and inserting the phrase “provided by” after the phrase “during the hours of sale” in § 705.5. Each of the amended subsections shall read as follows:

- 705.1 [REPEALED].

- 705.2 The Board may, by written order, further limit the hours of sale and deliver set forth in D.C. Official Code § 25-722 on a case-by-case basis upon conclusion of a protest hearing or through Board approval of a cooperative/settlement agreement.
- 705.3 [REPEALED].
- 705.4 The holder of a Retailer's license Class A or Class B shall not sell or deliver alcoholic beverages during any hour or on any day other than during those days and during those hours provided by D.C. Official Code § 25-722 and § 705.2 of this title, or as otherwise set forth in its license.
- 705.5 The holder of a Retailer's license Class A may sell and deliver, during the hours of sale provided by D.C. Official Code § 25-722 and § 705.2 of this title, no less than six (6) miniatures of spirits or wine per purchase.

Section 706, LOCKING OF BEVERAGES DURING NON-SALE HOURS, is amended by striking the term, "department", and inserting the term, "compartment", in § 706.1 so that it reads as follows:

- 706.1 No holder of a Retailer's license Class A, B, C, or D who offers for sale on the licensed premises commodities other than alcoholic beverages shall remain open during hours when the sale of alcoholic beverages is prohibited unless the licensee keeps all of the alcoholic beverages upon the premises in a separate beverage compartment which is securely closed and locked or there is a licensed manager or owner on the premises during all hours when the sale of alcoholic beverages is prohibited.

Section 707, MANAGER'S LICENSE, is amended by amending § 707.1 and 707.2 in their entirety to read as follows:

- 707.1 An owner or the Board-approved manager shall be present at the licensed establishment during the hours in which alcoholic beverages may be sold, served, or consumed on the licensed premises.
- 707.2 Notwithstanding the requirements in § 707.1, neither the owner nor the Board-approved manager must be present at the licensed establishment when:
- (a) There are not any alcoholic beverages on the premises;
 - (b) The establishment is not open to the public;
 - (c) Alcoholic beverages are secure and not accessible to the public for sale, service, or consumption; or
 - (d) The license is in safekeeping pursuant to § 25-791.

Section 710, MINIMUM CHARGE, is amended by striking the term, “voluntary agreement” and inserting the term, “settlement agreement” in its place in § 710.3 so that the subsection reads as follows:

710.3 A minimum charge shall not be considered a cover charge and may be charged by an establishment without Board approval or an entertainment endorsement unless restricted by Board order or settlement agreement.

Section 711, RETAIL PERMITS FOR SAMPLING OF ALCOHOLIC BEVERAGES, is amended in its entirety to read as follows:

711.1 The holder of a Wholesaler’s licenses, Class A or B, Manufacturer’s License, Class A, B, or C, or an Off-premises Retailer’s License, Class A or B, may utilize a portion of the licensed premises for the sampling of alcoholic beverages. Containers of alcoholic beverages used for sampling purposes shall be labeled as such and may not be sold.

711.2 No licensee may use any portion of the licensed premises for the sampling of alcoholic beverages without a permit issued by the Board. A request for a permit shall be in writing and shall:

- (a) Include a diagram of the premises indicating the areas where the sampling is to take place; and
- (b) State the hours and days during which the sampling is to take place.

711.3 A permit issued under this section shall be valid for three (3) years. The permit shall expire on the same date as the applicant’s Wholesaler’s, Manufacturer’s, or Off-premises Retailer’s License.

711.4 The annual fee for a permit issued under this section shall be one hundred thirty dollars (\$130). Payment shall be made at the same time that the second and third year fees or renewal fees are due.

711.5 The holder of a permit issued under this section shall be authorized to provide to one (1) customer in any one (1) day samples that do not exceed the following quantities:

- (a) Three ounces (3 oz.) of spirits;
- (b) Six ounces (6 oz.) of wine; and
- (c) Twelve ounces (12 oz.) of beer.

711.6 Unless otherwise restricted by Board order or settlement agreement:

- (a) The holder of an Off-premises Retailer's License, Class A or B, may hold public tastings during the hours it is permitted to sell and serve alcoholic beverages;
- (b) The holder of a Manufacturer's License, Class A, B, or C, possessing a tasting permit may hold public tastings between 8:00 a.m. and 12:00 a.m., seven (7) days a week; and
- (c) The holder of a Wholesaler's License, Class A or B, possessing a tasting permit may hold tastings between 8:00 a.m. and 12:00 a.m., seven (7) days a week; provided that the tastings are:
 - (1) Not open to the public;
 - (2) For purposes of educating staff and introducing products to licensees; and
 - (3) Limited to the following:
 - (A) Retailers;
 - (B) Manufacturers;
 - (C) Temporary and festival license holders;
 - (D) Solicitors; and
 - (E) Wholesaler staff.

711.7 Private collectors may obtain a tasting permit from the Board to conduct tastings in accordance with D.C. Official Code § 25-118(g), provided that the tastings are not open to the public. The private tastings may be held between the hours of 8:00 a.m. and 12:00 a.m., seven (7) days a week.

Section 712, PUB CRAWLS, is amended by amending § 712.5 in its entirety to read as follows:

- 712.5 No later than sixty (60) days prior to the scheduled date of the pub crawl event, the applicant must provide the Metropolitan Police Department, the D.C. Fire and Emergency Services, the Department of Public Works, and the Board with a Pub Crawl Event Form which shall include the following information:
- (a) The names and addresses of all licensed establishments which are expected to participate;
 - (b) The geographic area where the event will take place;

- (c) The anticipated number and maximum number of participants;
- (d) The actual hours of the event;
- (e) The operational plan and security plan;
- (f) The plan for litter prevention, control, and removal; and
- (g) The location of the designated registration area(s).

Section 716, ONE DAY SUBSTANTIAL CHANGE, is amended in its entirety to read as follows:

716.1 The holder of an on-premises retailer's license or manufacturer's license may file a one-day substantial change request with the Board to: (a) sell or serve alcoholic beverages; (b) provide entertainment; (c) extend its hours of operation; (d) require a cover charge; (e) allow for dancing; or (f) operate at a location not permitted by the applicant's license as a part of a specific event. The one-day substantial change request may be granted, in the Board's discretion, unless the activities sought by the applicant are otherwise prohibited by the applicant's ABC license or by the terms of a valid settlement agreement.

716.2 Such a request made pursuant to § 716.1 shall not be granted by the Board:

- (a) More than six (6) times in a calendar year for a holder of a retailer's license; or
- (b) More than twelve (12) times in a calendar year for a holder of a manufacturer's license.

Section 717, CORKING FEE, is amended in its entirety to read as follows:

717.1 The holder of an on-premises retailer, temporary, or festival license may permit a patron to bring to and consume on the licensed premises an alcoholic beverage that the licensee is permitted to sell or serve under its license; provided that, the alcoholic beverage is opened by an employee of the establishments or event. However, the license shall not permit any alcoholic beverage opened on the licensed premises to be removed.

717.2 The holder of an on-premises retailer, temporary, or festival license shall be permitted to charge a corking fee provided that the corking fee is disclosed to the patron prior to the opening of the alcoholic beverage.

A new Section 722, SELF-SERVICE MACHINES, is added to read as follows:

722 SELF-SERVICE MACHINES

- 722.1 No licensed establishment shall allow self-service machines to be used on the licensed premises without first complying with this section.
- 722.2 Any person who the licensed establishment has determined is at least twenty-one (21) years of age may purchase an access card that may be used to purchase beer or wine from a self-service machine.
- 722.3 Before selling a prepaid access card to a customer, the licensed establishment shall check the customer's valid government-issued identification to ensure that the customer is at least twenty-one (21) years of age.
- 722.4 Customers shall only be allowed to purchase one (1) drink at a time with their access card.
- 722.5 Licensed establishments shall not knowingly allow third parties to directly or indirectly purchase beer or wine from self-service machines with another customer's access card.
- 722.6 Each licensed establishment offering self-service machines shall ensure that:
- (a) Only persons who are least twenty-one (21) years of age are able to utilize the self-service machines;
 - (b) The prepaid access cards are programmed to allow the dispensing of no more than thirty-two ounces (32 oz.) of beer and fifteen ounces (15 oz.) of wine to a customer. Once the customer has dispensed the maximum amount of beer or wine, the access card shall be deactivated. The customer will need to provide the licensee or its designee with their identification before being allowed to add additional money on their access card;
 - (c) The licensed establishment shall assess customers seeking to add additional money on their access card for signs of intoxication. No customer that reasonably appears to be intoxicated shall be permitted to add additional funds to their access cards; and
 - (d) The licensed establishment shall retain control of the self-service machine.
- 722.7 All access cards shall be deactivated at the end of the licensed establishment's approved hours.

722.8 For purposes of this section, “self-service machine” shall mean any mechanized device that is capable of dispensing beer, wine, or both directly to a customer.

Chapter 9, PROHIBITED AND RESTRICTED ACTIVITIES, is amended as follows:

Section 904, GIFTS AND LOANS FROM WHOLESALER PROHIBITED, is amended by amending § 904.1 in its entirety to read as follows:

904.1 The five hundred dollar (\$500) limitation set forth in D.C. Official Code § 25-736 shall apply to each separate service or article of property for each individual transmittal being promoted by such service or article of property.

Chapter 10, ENDORSEMENTS, is amended as follows:

Section 1000, ENTERTAINMENT ENDORSEMENT, is amended by amending § 1000.1 and 1000.3 in their entirety to read as follows:

1000.1 No holder of a manufacturer’s license, class A, B, or C, holding an on-site sales and consumption permit or an on-premises retailer’s license, class C/R, D/R, C/H, D/H, C/T, D/T, C/B, or D/B, may have entertainment, dancing, or charge a cover without obtaining an entertainment endorsement.

1000.3 A holder of a manufacturer’s license, class A, B, or C, holding an on-site sales and consumption permit, or an off-premises retailer’s license, class C/R, D/R, C/H, D/H, C/T, D/T, C/B, or D/B that does not possess an entertainment endorsement shall not be permitted to position its furniture or otherwise create a dance floor or dance area on the licensed premises greater than one hundred forty square feet (140 ft.²) without an entertainment endorsement.

Section 1001, ENTERTAINMENT ENDORSEMENT APPLICATION, is amended by striking the term, “voluntary agreement” and inserting the term, “settlement agreement,” in its place in § 1001.6 so that the subsection reads as follows:

1001.6 The licensee under a license, class C/R, D/R, C/H, D/H, C/T, or D/T, may file a written request with the Board to amend its entertainment endorsement subject to the procedures set forth in §1001.3. An amendment to an entertainment endorsement shall not be required for changes to an establishment’s entertainment or dancing format if:

- (a) The licensee’s entertainment endorsement is approved for entertainment or dancing; and
- (b) The changes are not restricted by Board order or cooperative/settlement agreement

Section 1002, COVER CHARGE, is amended by amending § 1002.1 in its entirety to read as follows:

1002.1 The holder of a manufacturer's license, class A, B, or C, that possesses an on-site sales and consumption permit, or an on-premises retailer's license, class C/R, D/R, C/H, D/H, C/T, D/T, C/B, or D/B shall obtain an entertainment endorsement to have a cover charge. For purposes of this section, a cover charge is a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.

Section 1003, ONE-DAY SUBSTANTIAL CHANGE EXCEPTION, is amended by amending § 1003.1 and 1003.2 in their entirety to read as follows:

1003.1 The holder of a manufacturer's license, class A, B, or C, or retailer's license, class C/R, D/R, C/H, D/H, C/T, D/T, C/B, or D/B, who does not possess an entertainment endorsement may file a one-day substantial change request with the Board pursuant to § 716 for permission to have entertainment, a cover charge, or dancing if not otherwise permitted by one's license as part of a specific event. The one-day substantial change request may be granted, in the Board's discretion, unless the activities sought by the applicant are otherwise prohibited by the establishment's license.

1003.2 A request under § 1003.1, when considered together with § 716.1, shall not be granted by the Board:

- (a) More than six (6) times in a calendar year for retailer's licenses; or
- (b) More than twelve (12) times in a calendar year for manufacturer's licenses.

Section 1004, SIDEWALK CAFÉ OR SUMMER GARDEN ENDORSEMENT, is amended by amending § 1004.1 in its entirety to read as follows:

1004.1 No holder of a manufacturer's license, class A, B, or C, with an on-site sales and consumption permit or an on-premises retailer's license shall be permitted to sell, service, or permit the consumption of alcoholic beverages on either outdoor public or private space without obtaining a sidewalk café endorsement for outdoor public space or a summer garden endorsement for privately owned space. The sidewalk café or summer garden endorsement shall be placed by ABRA on the license.

Chapter 11, ADVERTISING, is amended as follows:

Section 1100, PROHIBITED STATEMENTS, is amended by repealing § 1100.2 as follows:

1100.2 [REPEALED].

Chapter 12, RECORDS AND REPORTS, of Title 23 DCMR is amended as follows:

Section, 1202, WHOLESALER'S BOOKS, RECORDS, AND REPORTS, is amended by repealing § 1202.4 as follows:

1202.4 [REPEALED].

Chapter 13, TRANSPORT OF BEVERAGES, is amended as follows:

Section 1300, TRANSPORT PERMITS FOR ALCOHOLIC BEVERAGES, is repealed.

1300 [REPEALED]

Section 1301, IMPORTATION PERMITS FOR RETAILERS OF ALCOHOLIC BEVERAGES, is amended by amending § 1301.1 in its entirety to read as follows:

1301.1 Pursuant to D.C. Official Code § 25-119, the Board may issue an importation permit to a holder of a retailer's license, Class A, B, C, or D, or any other entity authorized to obtain an importation permit in accordance with § 1302.4 to allow for the importation of alcoholic beverages bearing the same brand or trade name into the District of Columbia which are not obtainable by the retail licensee from a licensed manufacturer or wholesaler in the District of Columbia in sufficient quantity to reasonably satisfy the immediate needs of the retail licensee.

Section 1302, IMPORTATION OF ALCOHOLIC BEVERAGES FOR PRIVATE USE AND CONSUMPTION, is amended by renumbering the existing § 1302.2 through § 1302.4 as § 1302.3 through 1302.5.

Section 1302 is further amended by creating a new § 1302.2 to read as follows:

1302.2 Upon application made to the Board for an importation permit pursuant to § 1302.1, the applicant shall certify to the Board that the alcoholic beverages that are to be imported into the District of Columbia are not available from a licensed manufacturer or wholesaler in sufficient kind or quantity to reasonably satisfy the immediate needs of the licensee.

Section 1303, TRANSPORT OF BEVERAGES WITHIN THE DISTRICT OF COLUMBIA, is amended by amending § 1303.1 and 1303.2 in their entirety to read as follows:

1303.1 No licensee, or agent, or employee of a manufacturer, wholesaler, or retailer shall transport into or within the District of Columbia any of the following in a vehicle unless that vehicle bears upon the exterior of both sides of the vehicle, the name of the licensee and the kind and number of the licensee's beverage license in letters not less than three and one-half inches (3 ½ in.) high:

- (a) More than twelve (12) bottles of spirits or wine; or
- (b) More than forty-eight (48) bottles of beer.

1303.2 If more than twelve (12) containers of spirits or wine, or more than forty-eight (48) containers of beer, are transported in a vehicle not conforming with the requirements of § 1303.1, the person in charge of the transportation shall have in his or her possession a permit from the Board or a bill or memorandum issued by the seller of the alcoholic beverages, showing the following information:

- (a) The name and address of seller;
- (b) The date of the sale; and
- (c) The quantity and character of each beverage being transported.

Chapter 15, APPLICATIONS: NOTICE OF HEARINGS INVOLVING LICENSES, is amended by renumbering the existing § 1505, PRESUMPTIONS OF APPROPRIATENESS, as § 1506.

Chapter 15 is further amended by creating a new § 1505 to read as follows:

1505 NOTICE TO ADVISORY NEIGHBORHOOD COMMISSIONS

1505.1 Notice required to be provided by the Board to each ANC Office, ANC Chairperson, and ANC single member district Commissioner pursuant to D.C. Official Code § 1-309.10(c)(2)(A) shall be sent to the ANC address on file with the Office of Advisory Neighborhood Commissions.

Chapter 16, CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST HEARINGS, AND PROCEDURES, is amended as follows:

Section 1600, GENERAL PROVISIONS, is amended by striking the term “fact-finding hearing” wherever it appears in the section and replacing it with “fact finding hearing” and amending § 1600.3 and 1600.4 in their entirety, so that the section reads as follows:

1600 GENERAL PROVISIONS

1600.1 The provisions of this chapter shall govern the following items:

- (a) Roll call hearings, mediations, or status hearings regarding the issuance, transfer, or renewal of a license, or the making of substantial changes to a licensee's business operations under authority of the Act;
- (b) Protest hearings regarding the issuance, transfer or renewal of a license, or the making of substantial changes to a licensee's business operations under

authority of the Act;

- (c) Fact finding hearings on any matter governed by the Act regarding an applicant for a license or a licensee; and
- (d) Show cause hearings, summary suspension hearings or summary revocation hearings regarding the revocation or suspension of a license issued under the Act.

1600.2 The Board may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter which is not required by the Act in any proceeding after duly advising the parties of its intention to do so.

1600.3 The following hearings held before the Board shall be considered to be contested cases:

- (a) Protest hearings;
- (b) Show cause hearings;
- (c) Summary suspension or summary revocation hearings;
- (d) Cease and desist hearings;
- (e) Contested fact finding hearings in which the Board may suspend or revoke one's license;
- (f) Temporary Operating Retail Permit revocation hearings; and
- (g) Qualifications hearings.

1600.4 The following hearings held before the Board shall not be considered to be contested cases:

- (a) Uncontested fact finding hearing, including the request to extend a license safekeeping; and
- (b) Moratorium hearings and other rulemaking hearings.

1600.5 The provisions of this chapter are intended to be consistent with the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 *et seq.*). If there is any conflict between this chapter and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall govern.

1600.6 If there is any conflict within this chapter, provisions of specific application shall supersede those of general application.

Section 1602, FILING A PROTEST, is amended in its entirety to read as follows:

1602 FILING A PROTEST

1602.1 Only those individuals or entities listed in D.C. Official Code § 25-601 may file a protest against:

- (a) The issuance of a new license;
- (b) The renewal of an existing license;
- (c) The transfer of a license to a new location;
- (d) Substantial changes to the nature of the operations of a licensed establishment; and
- (e) Changes in license classes.

1602.2 All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title.

1602.3 Protests submitted by the ANC or a community or civic association, shall be signed by the presiding officer or any other authorized person in accordance with the entity's bylaws or other governing documents. The protest shall state the name and position of the designated representative who shall receive correspondence from the Board on behalf of the ANC or the community or civic association.

1602.4 Protests submitted by abutting property owners, protestant groups of five (5) or more residents or property owners, or a group of three (3) or more residents located in a moratorium zone, of the District sharing common ground shall be signed by all of the protestants and shall contain each protestant's full printed name, e-mail address, if any, and mailing address. The protest shall identify a designated representative(s) who shall represent the protestant group and receive correspondence from the Board on the protestant group's behalf.

1602.5 For purposes of § 1602.3, electronic signatures on protest letters are permitted.

1602.6 The Board may require protestants to appear in person before the Board for the purpose of determining that a sufficient number of individuals exist to have

standing pursuant to D.C. Official Code § 25-601.

Section 1605, PARTY STANDING OF A GROUP OF FIVE OR MORE RESIDENTS OR PROPERTY OWNERS, is amended by amending § 1605.2 and 1605.3 in their entirety, and by adding a new § 1605.4 to read as follows:

- 1605.2 Members of a protestant group of five (5) or more residents or property owners, or a protestant group of three (3) or more residents located in a moratorium zone, may submit written statements of designation of representation.
- 1605.3 A member of a protestant group of five (5) or more residents or property owners, or a protestant group of three (3) or more residents or property owners located in a moratorium zone, may be represented by a designated representative before the Board once the protestant group has been granted standing.
- 1605.4 A group of five (5) or more residents or property owners, or three (3) or more residents or property owners located in a moratorium zone, will be defined by the members set forth in the protest petition.

Section 1610, SETTLEMENT AGREEMENTS, is amended by amending § 1610.3 in its entirety to read as follows:

- 1610.3 A properly filed request to unilaterally terminate or amend a settlement agreement shall be considered by the Board pursuant to the substantial change and notice procedures set forth in D.C. Official Code §§ 25-404 and 25-762.

Section 1612, PROTEST HEARINGS, is amended by striking the phrase, “cross-examine the applicant’s witnesses”, and inserting the phrase, “and to examine and cross-examine witnesses”, in § 1612.8, so that the entire subsection reads as follows:

- 1612.8 In any case where there is more than one (1) protestant, the Board, in its discretion, may request that the protestants designate one (1) person to conduct the protestant’s case, to give opening and closing statements, and to examine and cross-examine witnesses.

Section 1616, FACT-FINDING HEARINGS, is amended in its entirety to read as follows:

1616 FACT FINDING HEARINGS

- 1616.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a non-evidentiary fact finding hearing to obtain further information from an applicant, licensee, witness, government official, or any other member of the public with the permission of the Board.
- 1616.2 A licensee shall not be fined or have its license suspended or revoked at an uncontested fact-finding hearing.

- 1616.3 Information provided at a fact finding hearing may result in the issuance of a show case notice pursuant to § 1611 or other enforcement action permitted under the Act or this title. The fact-finding hearing may also result in the Board initiating an action to deny, modify, place conditions, or approve an application, as well as any other action authorized by this title.
- 1616.4 At any time, in its discretion, the Board may limit or exclude the submission of evidence, statements, and testimony at the hearing.
- 1616.5 All fact-finding hearings shall be open to the public.
- 1616.6 Notwithstanding § 1616.5, a fact finding hearing may be closed to the public:
 - (a) For purposes of receiving testimony, discussing, or deliberating upon the criminal background of an applicant for a solicitor’s or ABC manager’s license; or
 - (b) Where closure is required by section 405 of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575).

Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, is amended as follows:

Section 1703, SERVICE OF PAPERS, is amended by amending § 1703.5(b), and § 1703.8 in its entirety, to read as follows:

- 1703.5
- ...
- (b) Leaving the paper at the licensed premises with the owner, ABC Manager, or other employee of the establishment;
- 1703.8 Service shall also be deemed proper upon a showing that the party actually received delivery of the notice or paper, irrespective of the delivery method.

Section 1706, APPEARANCE AND REPRESENTATION, is amended in its entirety to read as follows:

1706 APPEARANCE AND REPRESENTATION

- 1706.1 An individual may represent himself or herself in any proceeding before the Board.

- 1706.2 An attorney may represent any party before the Board by submitting a Notice of Appearance or completing ABRA's Attorney/Representative Designation Form to the Board.
- 1706.3 In addition to these regulations, the District of Columbia Rules of Professional Conduct shall govern the conduct of all attorneys appearing before the Board.
- 1706.4 A non-lawyer representative may represent any party before the Board by submitting a written consent of the party or ABRA's Attorney/Representative Designation Form to the Board.
- 1706.5 An authorized officer, director, partner, or employee may represent a corporation, partnership, limited partnership, or other legal entity before the Board. Parties appearing before the Board pursuant to this section may be required to demonstrate that authority.
- 1706.6 Any party appearing before the Board in any proceeding may bring an interpreter of his or her choice.
- 1706.7 If it appears to the Board that the facts of issues in a matter before it are so intricate or involved that, in the interests of justice, of conserving time, or of facilitating preparation of an adequate record, a party ought to be represented by an attorney, the Board may urge the party to obtain counsel and shall allow the party a reasonable time, not to exceed fourteen (14) calendar days, to do so, as long as the rights of the other parties to the hearing are not substantially and adversely affected.
- 1706.8 Any person authorized to appear pursuant to this section may sign any paper required or permitted by statute, regulation, or this chapter to be filed with the Board.

Section 1707, NOTICE OF APPEARANCE, is amended in its entirety to read as follows:

1707 NOTICE OF APPEARANCE

- 1707.1 A non-lawyer representative shall submit a signed statement containing that person's name, address, e-mail address, telephone number, and the nature of the representation, or ABRA's Attorney/Representative Designation Form prior to appearing before the Board.
- 1707.2 The written statement or the Attorney/Representative Designation Form required under § 1707.1 shall be made a part of the Board's record of the proceeding and shall be served on all parties to the proceeding.
- 1707.3 Any attorney appearing as counsel in any proceeding shall submit a Notice of Appearance containing his or her name, e-mail address, office address, office

telephone number, D.C. Bar number, and nature of the representation or ABRA's Attorney/Representative Designation Form to the Board.

- 1707.4 In the case of law students who appear before the Board under the direction of an accredited law school clinical program, the supervising attorney shall register with the Board.

Section 1708, INSPECTION OF BOARD FILES, is amended by amending § 1708.1 in its entirety, to read as follows:

- 1708.1 The records of the Board shall be available for inspection and copying as soon as practicable, but no longer than three (3) business days from the date that the request is made by any interested party or member of the public, except as otherwise provided in this section.

Section 1709, INVESTIGATOR REPORTS, is amended in its entirety to read as follows:

- 1709.1 All applications scheduled for a protest hearing shall be assigned for investigation by the Board and the investigator report shall be considered part of the Board's protest hearing record.
- 1709.2 The Board shall make investigator report available to the parties of a contested case at least two (2) days prior to the date of the protest hearing or catered site protest hearing.

Section 1714, EXAMINATION OF WITNESSES, is amended by renumbering existing § 1714.2 through 1714.5 as § 1714.3 through 1714.6.

Section 1714 is further amended by amending § 1714.1 in its entirety, and adding a new § 1714.2 to read as follows:

- 1714.1 In any proceeding before the Board, each party shall have the right to present in person or by counsel or designated representative, the party's case or defense, including oral and documentary evidence, to submit rebuttal evidence, and to cross-examine witnesses, unless the matter at issues has been dismissed by the Board.
- 1714.2 In a protest hearing in which there is more than one (1) protest, and the Board has required the protestants to designate one (1) person to conduct the protestant's case pursuant to § 1612.8, the designated individual shall present the protestant's case, give the opening and closing statements, and examine and cross-examine witnesses on behalf of the protestants.

Section 1717, POST-HEARING SUBMISSIONS, is amended by amending § 1717.6 in its entirety to read as follows:

1717.6 Proposed Findings of Fact and Conclusions of Law shall be limited to the record and shall include new legal issues that were not raised during the hearing.

Section 1719, RECONSIDERATION, REHEARING, AND REARGUMENT, is amended in its entirety to read as follows:

1719 RECONSIDERATION, REHEARING, REARGUMENT, AND STAY

1719.1 A motion for reconsideration, rehearing, reargument, or stay of a decision or order of the Board filed pursuant to D.C. Official Code § 25-433(d) shall be filed with the Board, and a copy shall be served on each party and intervenor.

1719.2 A motion for reconsideration shall state briefly the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought.

1719.3 If a motion is based in whole or in part on a new matter, that new matter shall be set forth in the motion stating that the petitioner could not by due diligence have known or discovered the new matter prior to the date the case was presented to the Board for a decision.

1719.4 The Board may, in its discretion, permit or require oral argument upon a motion filed under this section.

Section 1722, PROTEST INFORMATION FORMS is amended in its entirety to read as follows:

1722 PROTEST INFORMATION FORMS AND EXHIBIT FORMS

1722.1 All parties to a protest hearing shall file a Protest Information Form (PIF) and an Exhibit Form.

1722.2 The PIF shall identify the following specific items:

- (a) Agreements made by the parties as to any protest issues which limit the issues for hearing to those not disposed of or resolved by mediation;
- (b) Unresolved issues that remain the subject of the protest hearing;
- (c) Witnesses who are expected to testify;
- (d) Exhibits the party intends to offer into evidence, the completed Exhibit Form, and copies of the exhibits;

- (e) List of material facts or the contents or authenticity of any document to which the parties have agreed to stipulate; and
 - (f) The relief sought.
- 1722.3 The PIF must be signed by the party’s representative or by the party if the party is proceeding *pro se*.
- 1722.4 The exhibit form shall list each of the exhibits the party intends to introduce at the protest hearing, along with copies of the exhibits.
- 1722.5 The PIF shall contain a copy of the résumé for any witnesses for whom a party intends to call as an expert.
- 1722.6 The Board may exclude at the hearing any witnesses or exhibits not disclosed on the PIF or the Exhibit Form if the Board finds that the opposing party has been prejudiced by the failure to disclose or if there has been a knowing failure to disclose.
- 1722.7 The Board shall have the discretion to receive documentary evidence from the parties not already listed or attached to the PIF or the Exhibit Form upon a finding of good cause.
- 1722.8 The PIF and Exhibit Form and any attachments shall be served on all parties and ABRA’s Office of General Counsel seven (7) calendar days prior to the hearing.
- 1722.9 The Board may allow a party to submit their PIF and Exhibit Form, or amend their PIF and Exhibit Form, after the submission deadline set forth in § 1722.8 for good cause.
- 1722.10 Failure to file a PIF and Exhibit Form pursuant to this section may result in the exclusion of evidence, the dismissal of the license application or protest, unless in the discretion of the Board, good cause is shown for the party’s failure to file.

Chapter 18, PETITION PROCEDURES, is amended as follows:

Section 1801, PROTEST PETITIONS, is repealed.

Chapter 19, COMPLAINTS: INQUIRIES TO THE BOARD, is amended as follows:

Section 1903, DECLARATORY ORDERS, is amended by striking the term, “voluntary”, and inserting the term, “settlement”, in § 1903.1 so that the subsection reads as follows:

- 1903.1 Any licensee or applicant for a license may make a written request to the Board to issue a declaratory order, as provided in D.C. Official Code § 2-508, regarding the applicability of Title 25 of the D.C. Official Code, this title, or any other statute

enforceable by the Board, to terminate a controversy other than a contested case or to remove uncertainty regarding a specific factual situation. Any request filed with the Board that involves an existing settlement agreement shall be considered a contested case by the Board and not subject to the issuance of a declaratory order.

Chapter 20, CATERER'S LICENSE, is amended as follows:

Section 2005, MANAGER ATTENDANCE AT CATERED EVENTS, is amended in its entirety to read as follows:

2005 MANAGER ATTENDANCE AT CATERED EVENTS

- 2005.1 Either the holder of a caterer's license or a designated manager shall remain on the premises for the duration of the catered event.
- 2005.2 The holder of a caterer's license, or the designated manager, shall keep a copy of the caterer's license on his or her person during the catered event and make it available for inspection by an ABRA investigator upon request.

Section 2006, CATERER'S REPORT, is amended by amending § 2006.1 in its entirety to read as follows:

- 2006.1 Licensees subject to this section shall, semiannually, furnish to the Board, on a form to be prescribed by the Board, a report that includes the following information:
- (a) The quantity of alcoholic beverages sold by the licensee in gallons during the preceding six (6) months for beverage purposes;
 - (b) The total dollar amount of receipts for the sale of alcoholic beverages and food;
 - (c) Of the total in paragraph (b) above, the amount received for the sale of alcoholic beverages and the amount received for the sale of food, and the percentages of the total receipts represented by the respective amounts;
 - (d) The amount expended for alcoholic beverages and the amount expended for food, and the percentages of the total expenditures represented by the respective amounts;
 - (e) The method used to compute the amounts and percentages; and
 - (f) A statement executed by an individual licensee, partner of an applicant partnership, or the appropriate officer of an applicant corporation, attesting to the truth of the statement.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to martha.jenkins@dc.gov.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Consumer and Regulatory Affairs, pursuant to the authority set forth in Section 6 (1)(A) of the Residential Real Property Seller Disclosure, Funeral Services Date Change, and Public Service Commission Independent Procurement Authority Act of 1998, effective April 20, 1999 (D.C. Law 12-263; D.C. Official Code § 42-1305(1)(A) (2012 Repl. & 2019 Supp.)), and Mayor's Order 99-82, dated May 21, 1999, hereby gives notice of the intent to adopt the following amendments to Section 2708 (Real Property Seller's Disclosure Statement) of Chapter 27 (Real Estate Practice and Hearings), Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

This proposed rulemaking would amend the Real Property Seller's Disclosure Statement to include disclosure information related to lead plumbing and water systems, which is a requirement of Section 4 of The Lead Water Service Line Replacement and Disclosure Amendment Act of 2018, effective March 13, 2019 (D.C. Law 22-241; D.C. Official Code § 42-1305 (2019 Supp.)). The Real Property Seller's Disclosure Statement would also include new disclosures related to vacant and blighted buildings meant to protect homebuyers from unknowingly purchasing a property that has a temporary vacant or blighted building exemption that will expire after the sale, causing the buyer's taxes and mortgage payments to unexpectedly rise.

The process for submitting comments on the proposed rulemaking is detailed on the final page of this Notice.

Chapter 27, REAL ESTATE PRACTICE AND HEARINGS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 2708, REAL PROPERTY SELLER'S DISCLOSURE STATEMENT, is amended as follows:

Subsection 2708.13 is amended to read as follows:

2708.13

SELLER'S DISCLOSURE STATEMENT

Instructions to the Seller for Seller's Disclosure Statement:

These Instructions are to assist the Seller in completing the required Seller's Disclosure Statement in order to comply with the District of Columbia Residential Real Property Seller Disclosure Act.

- 1. Who must complete the Seller's Disclosure Statement?** The Seller, not the broker and not the management company, condominium association, cooperative association or homeowners association.
- 2. In what types of transactions must the Seller provide the Seller's Disclosure Statement to the Purchaser?** The Act applies to the following types of transfers or sales of District of Columbia real estate:

- (a) where the property consists of one to four residential dwelling units; and;
- (b) the transaction is a sale, exchange, installment land contract, lease with an option to purchase, or any other option to purchase; and;
- (c) the purchaser expresses, in writing, an interest to reside in the property to be transferred.

However, the Act does not apply to:

- (a) court ordered transfers;
- (b) transfers to a mortgagee by a mortgagor in default;
- (c) transfers by sale under a power of sale in a deed of trust or mortgage or any foreclosure sale under a decree of foreclosure or deed in lieu of foreclosures;
- (d) transfers by a non-occupant fiduciary administering a decedent's estate, guardianship, conservatorship or trust;
- (e) transfers between co-tenants;
- (f) transfers made to the transferor's spouse, parent, grandparent, child, grandchild or sibling (or any combination of the foregoing);
- (g) transfer between spouses under a divorce judgment incidental to such a judgment;
- (h) transfers or exchanges to or from any governmental entity; and
- (i) transfers made by a person of newly constructed residential property that has not been inhabited.

3. When does the Seller's Disclosure Statement have to be provided to the Purchaser? In a sale, before or at the time the prospective transferee executes a purchase agreement with the transferor. In an installment sales contract (where a binding purchase contract has not been executed), or in the case of a lease with no option to purchase, before or at the time the prospective transferee executes the installment sales contract or lease with the transferor.

4. What information must the Seller disclose? Answer ALL questions on the Seller's Disclosure Statement. If some items do not apply to your property, check "N/A" (not applicable). If you do not know the facts, check "UNKNOWN". Report actually known conditions referred to in the questions. Each disclosure must be made in "good faith" (honesty in fact in the making of the disclosure). Attach additional pages with your signature if additional space is required.

The Seller of a condominium unit, cooperative unit, or a lot in a homeowners association, is to provide information only as to the Seller's unit or lot, and not as to any common elements, common areas or other areas outside of the unit or lot.

5. What is the remedy if the Seller does not provide the Seller's Disclosure Statement to the Transferee? If the Seller's Disclosure Statement is delivered after the purchaser executes the purchase agreement, installment sales contract or lease with an option to purchase, the purchaser may terminate the transaction by written notice to the seller not more than five (5) calendar days after receipt of the Seller's Disclosure Statement by the purchaser, and the deposit must be returned to the purchaser. The right to terminate is waived if not exercised

before the earliest of:

- (a) the making of an application for a mortgage loan (if the lender discloses in writing that the right to rescind terminates on submission of the application);
- (b) settlement or date of occupancy in the case of a sale; or
- (c) occupancy in the case of a lease with an option to purchase.

6. If the Seller finds out different information after providing the Seller’s Disclosure Statement to the Purchaser, how does this impact a ratified contract? If information becomes inaccurate after delivery of the disclosure form, the inaccuracy shall not be grounds for terminating the transaction.

7. How must a Seller deliver the Seller’s Disclosure Statement to the Transferee? The Seller’s Disclosure Statement must be delivered by personal delivery, facsimile delivery, or by registered mail to the transferee. Execution by the transferor of a facsimile is considered execution of the original.

SELLER’S PROPERTY CONDITION STATEMENT
For Washington, DC

Property
 Address: _____

Is the property included in a:

condominium association?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
cooperative?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
homeowners association with mandatory participation and fee?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

If this is a sale of a condominium unit or cooperative unit, or in a homeowners association, this disclosure form provides information only as to the unit (as defined in the governing documents of the association) or lot (as defined in the covenants applicable to the lot), and not as to any common elements, common areas or other areas outside of the unit or lot.

Purpose of Statement: This Statement is a disclosure by the Seller of the defects or information actually known by the Seller concerning the property, in compliance with the District of Columbia Residential Real Property Seller Disclosure Act. Unless otherwise advised, the Seller does not possess an expertise in construction, architecture, engineering, or any other specific area related to the construction of the improvements on the property or the land. Also, unless otherwise advised, the Seller has not conducted any inspection of generally inaccessible areas such as the foundation or roof. **THIS STATEMENT IS NOT A WARRANTY OF ANY KIND BY THE SELLER OR BY ANY AGENT REPRESENTING THE SELLER IN THIS TRANSACTION, AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THE BUYER MAY WISH TO OBTAIN.**

Seller Disclosure: The Seller discloses the following information with the knowledge that, even though this is not a warranty, the Seller specifically makes the following statements based on the seller’s actual knowledge at the signing of this document. Upon receiving this statement from the Seller, the Seller’s agent is required to provide a copy to the Buyer or the agent of the Buyer. The Seller authorizes its agent (s) to provide a copy of this statement to any prospective buyer or agent of such prospective buyer in connection with any actual or anticipated sale of property. The following are statements made solely by the Seller and are not the statements of the Seller’s agent (s), if any. This information is a disclosure only and is not intended to be a part of any contract between Buyer and Seller.

The seller(s) completing this disclosure have owned the property from _____ to _____
 The seller(s) completing this disclosure have occupied the residence from _____ to _____

A. Structural Conditions

1. Roof

Roof is a common element maintained by condominium or cooperative (no further roof disclosure required)

Age of Roof 0-5 years 5-10 years 10-15 years 15+ years Unknown

Does the seller have actual knowledge of any current leaks or evidence of moisture from roof?

Yes No If yes,

comments: _____

Does the seller have actual knowledge of any existing fire retardant treated plywood?

Yes No If yes,

comments: _____

2. Fireplace/Chimney(s)

Does the seller have actual knowledge of any defects in the working order of the fireplaces?

Yes No No fireplace(s) If yes,

comments: _____

Does the seller know when the chimney(s) and/or flue were last inspected and/or serviced?

Yes No No chimneys or flues

If yes, when were they last serviced or inspected?

3. Basement

Does the seller have actual knowledge of any current leaks or evidence of moisture in the basement?

Yes No Not Applicable

If yes,

comments: _____

Does the seller have actual knowledge of any structural defects in the foundation?

Yes No

If yes,

comments: _____

4. Walls and floors

Does the seller have actual knowledge of any structural defects in walls or floors?

Yes No

If yes,

comments: _____

5. Insulation

Does the seller have actual knowledge of presence of urea formaldehyde foam insulation?

Yes No

If yes,

comments: _____

6. Windows

Does the seller have actual knowledge of any windows not in normal working order?

Yes No

If yes,

comments: _____

B. Operating Condition of Property Systems

1. Heating System

Heating system is a common element maintained by condominium or cooperative

(no further disclosure on heating system required)

Type of system Forced Air Radiator Heat Pump
 Electric baseboard Other
 Heating Fuel Natural Gas Electric Oil Other
 Age of system 0-5 years 5-10 years 10-15 years
 Unknown

Does the seller have actual knowledge that heat is not supplied to any finished rooms?
 Yes No

If yes,
 comments: _____

Does the seller have actual knowledge of any defects in the heating system?
 Yes No

If yes,
 comments: _____

Does the heating system include:

Humidifier Yes No Unknown
 Electronic air filter Yes No Unknown

If installed, does the seller have actual knowledge of any defects with the humidifier and electronic filter?

Yes No Not Applicable

If no,
 comments: _____

2. Air Conditioning System

Air conditioning is a common element maintained by condominium or cooperative (no further disclosure on air conditioning system required).

Type of system: Central AC Heat Pump
 Window/wall units
 Other Not Applicable
 Air Conditioning Fuel Natural Gas Electric Oil Other
 Age of system 0-5 years 5-10 years 10-15 years
 Unknown

If central AC, does the seller have actual knowledge that cooling is not supplied to any finished rooms? Yes No Not Applicable

If yes,
 comments: _____

Does the seller have actual knowledge of any problems or defects in the cooling system?

Yes No Not Applicable

If yes,
 comments: _____

3. Plumbing System

Type of material(s) used (check all that apply): Copper Galvanized
 Iron Plastic Polybutelene Lead Brass PVC Unknown
 Water Supply: Public Well
 Sewage Disposal Public Septic Tank Cesspool Onsite Treatment
 Water Heater Fuel Natural Gas Electric Oil Other

Does the seller have actual knowledge of any defects with the plumbing system?
 Yes No

If yes,

comments: _____

4. Water System

Does the seller have actual knowledge of the results of any lead tests conducted on the water supply of the property?

Yes No

If yes, please provide test results:

Does the seller have actual knowledge of any lead-bearing plumbing, including the water service line servicing the property?

Yes, there is a lead service line servicing the property.

Yes, there is lead bearing plumbing on the property.

No

Comments:

If there is a lead service line servicing the property, does the seller have actual knowledge that any portion of the lead water service line has been replaced? This applies to portions of the service line on private property and in public space.

Yes No N/A

If yes, please provide date(s) of replacement(s):

Does the seller have actual knowledge that the property has been included on the DC Water service line map website (<https://www.dewater.com/leadmap>, as of August 2019) as a property with a lead water service line on the private property or in public space?

Yes No

If yes,

comments: _____

5. Electrical System

Does the seller have actual knowledge of any defects in the electrical system, including the electrical fuses, circuit breakers, outlets, or wiring?

Yes No

If yes,

comments: _____

C. Appliances and Fixtures

Does the seller have actual knowledge of any defects with the following appliances?

- | | | | |
|---------------------|------------------------------|-----------------------------|---|
| Range/Oven | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Dishwasher | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Refrigerator | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Range hood/fan | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Microwave oven | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Garbage Disposal | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Sump Pump | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| Trash compactor | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |
| TV antenna/controls | <input type="checkbox"/> Yes | <input type="checkbox"/> No | <input type="checkbox"/> Not Applicable |

Central vacuum	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Ceiling fan	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Attic fan	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Sauna/Hot tub	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Pool heater & equip	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Security System	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Intercom System	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Garage door opener & remote controls	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Lawn sprinkler system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Water treatment system	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Smoke Detectors	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Carbon Monoxide detectors	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable
Other Fixtures or Appliances	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Not Applicable

If yes to any of the above, describe defects:

D. Exterior/Environmental Issues

1. Exterior Drainage

Does the seller have actual knowledge of any problem with drainage on the property?

Yes No

If yes,
comments:

2. Damage to property

Does the seller have actual knowledge whether the property has previously been damaged by:

Fire Yes No
Wind Yes No
Flooding Yes No

If yes,
comments:

3. Wood destroying insects or rodents

Does the seller have actual knowledge of any infestation or treatment for infestations?

Yes No

If yes, comments: _____

Does the seller have actual knowledge of any prior damage or repairs due to a previous infestation?

Yes No

If yes, comments: _____

4. Does the seller have actual knowledge of any substances, materials or environmental hazards (including but not limited to asbestos, radon gas, lead based paint, underground storage tanks, formaldehyde, contaminated soil, or other contamination) on or affecting the property?

Yes No

If yes, comments: _____

5. Does the seller have actual knowledge of any zoning violations, nonconforming uses, violation of

building restrictions or setback requirements, or any recorded or unrecorded easement, except for utilities, on or affecting the property?

Yes No

If yes, comments: _____

6. Does the seller have actual knowledge that this property is a D.C. Landmark, included in a designated historic district or is designated a historic property?

Yes No

If yes, comments: _____

7. Has the property been cited for a violation of any historic preservation law or regulation during your ownership?

Yes No

If yes, comments: _____

8. Does the seller have actual knowledge if a facade easement or a conservation easement has been placed on the property?

Yes No

If yes, comments: _____

9. Does the seller have actual knowledge that the property is currently designated as a vacant or blighted building?

Yes No

If yes, comments: _____

10. Does the seller have actual knowledge that the property has received a vacant or blighted building exemption?

Yes No

If yes, please state the type of exemption, and when the exemption will expire:

The seller(s) certifies that the information in this statement is true and correct to the best of their knowledge as known on the date of signature.

Seller Date

Seller Date

Buyer(s) have read and acknowledge receipt of this statement and acknowledge that this statement is made based upon the seller's actual knowledge as of the above date. This disclosure is not a substitute for any inspections or warranties which the buyer(s) may wish to obtain. This disclosure is NOT a statement, representation, or warranty by any of the seller's agents or any sub-agents as to the presence or absence of any condition, defect or malfunction or as to the nature of any condition, defect or malfunction.

Buyer Date

Buyer Date

All persons desiring to comment on these proposed regulations should submit comments in

writing to Jonathan Kuhl, Chief of External Affairs, Department of Consumer and Regulatory Affairs, 1100 Fourth Street, SW, 5th Floor, Washington, D.C. 20024 or via e-mail at Jonathan.Kuhl1@dc.gov, not later than thirty (30) days after publication of this notice in the *D.C. Register*. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8945. Copies of the proposed rules can be obtained at www.dcregs.dc.gov, or from the address listed above.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and 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 an amendment to Section 903 (Outpatient and Emergency Room Services) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rule will extend DHCF's authority to make supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program through September 30, 2029. The estimated increase in aggregate Medicaid expenditures associated with the extension of the supplemental payments is approximately seventeen million, six hundred and twenty-two thousand and seven dollars (\$17,622,007) in Fiscal Year 2020.

These rules correspond to a State Plan Amendment (SPA), which must be approved by the Centers for Medicare and Medicaid Services (CMS). Accordingly, the extension of supplemental payments to eligible District hospitals proposed in these rules shall become effective on or after October 1, 2019, or on an alternative effective date established by CMS in its approval of the corresponding SPA, whichever is later. Once approved by CMS, the corresponding SPA will be added to the District's Medicaid State Plan, which can be found on DHCF's website at <https://dhcf.dc.gov/page/medicaid-state-plan>.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare to ensure that eligible hospitals, located within the District and participating in the District Medicaid program, can continue delivering critically important healthcare services to vulnerable District Medicaid beneficiaries on an outpatient basis without interruption.

These emergency rules were adopted on November 19, 2019 and shall become effective on October 1, 2019, contingent upon approval of the corresponding SPA by CMS. The emergency rules will remain in effect for one hundred and twenty (120) days or until March 18, 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:

Subsection 903.31 of Section 903, OUTPATIENT AND EMERGENCY ROOM SERVICES, is amended to read as follows:

903.31 Beginning FY 2020, each eligible hospital shall receive a supplemental hospital access payment calculated as set forth below:

- (a) For visits and services beginning October 1, 2019 and ending on September 30, 2029, quarterly access payments shall be made to each eligible private hospital;
- (b) Each payment shall be in an amount equal to each hospital's outpatient Medicaid payments for the three (3) District Fiscal Years prior to the current District Fiscal Year, divided by the total in-District private hospital outpatient Medicaid payments for the same District Fiscal Year, multiplied by one fourth (1/4th) of the total outpatient private hospital access payment pool.
- (c) The total outpatient private hospital access payment pool shall be equal to the total available spending room under the private hospital outpatient Medicaid upper payment limit for the corresponding District year, as determined by the State Medicaid agency;
- (d) Applicable private hospital outpatient Medicaid payments shall include all outpatient Medicaid payments to Medicaid participating hospitals located within the District of Columbia except for the United Medical Center; and
- (e) For visits and services beginning October 1, 2019 and ending on September 30, 2029, quarterly access payments shall be made to the United Medical Center as follows:
 - (1) Each payment shall be equal to one fourth (1/4th) of the total outpatient public hospital access payment pool; and
 - (2) The total outpatient public hospital access payment pool shall be equal to the total available spending room under the District-operated hospital outpatient Medicaid upper payment limit for the corresponding District Fiscal Year;
- (f) Payments shall be made fifteen (15) business days after the end of the quarter for the Medicaid visits and services rendered during that quarter; and

- (g) For purposes of this section, the term District Fiscal Year shall mean dates beginning on October 1st and ending on September 30th.

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 4th Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in Section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131 (2019 Supp.)), and Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of adoption, on an emergency basis, of the following amendments to Chapter 2 (Communicable and Reportable Diseases) of Title 22 (Health), Subtitle B (Public Health and Medicine) 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 rules would add reporting requirements and procedures for reporting all maternal mortalities, defined as pregnancy-associated and pregnancy-related deaths (as defined in Section 2 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 (2019 Supp.)), as well as deaths resulting from Severe Maternal Morbidity (as defined in Section 299 of the rulemaking). Severe Maternal Morbidities include twenty-one specific morbidities identified by the U.S. Centers for Disease Control and Prevention.

This emergency rulemaking is necessary to immediately implement efforts to reduce maternal mortalities by providing better and more timely data to the Maternal Mortality Review Committee established by Section 3 of the Maternal Mortality Review Committee Establishment Act of 2018 (D.C. Official Code § 7-671.02), and to Department of Health officials responsible for reducing all maternal mortalities, including pregnancy-associated deaths, pregnancy-related deaths, and deaths from Severe Maternal Morbidity.

This emergency rulemaking was adopted on July 25, 2019, and became effective immediately on that date. The emergency rulemaking will expire one hundred twenty (120) days from the date of adoption (*i.e.*, on November 22, 2019), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended as follows:

Chapter 2, COMMUNICABLE AND REPORTABLE DISEASES, is amended by adding a new Section 219 as follows:

219 MATERNAL MORTALITY REPORTING

- 219.1 Each health care facility shall report to the Department all maternal mortalities, as defined in § 299.1.
- 219.2 All health care facilities shall report all maternal mortalities required by § 219.1 in writing within five (5) days after death and before final disposition of the corpse.

Section 299, DEFINITIONS, Subsection 299.1, is amended by adding the following definitions:

Maternal Mortality:

- (a) A pregnancy-associated death or pregnancy-related death, as those terms are defined in section 2 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)); or
- (b) A death of a woman that resulted from Severe Maternal Morbidity.

Severe Maternal Morbidity – unexpected outcomes of labor and delivery that result in significant short-term consequences or long-term consequences to a woman’s health that include at least one of the following twenty-one specific morbidity indicators specified by the U.S. Centers for Disease Control and Prevention:

- (a) Acute myocardial infarction,
- (b) Acute renal failure,
- (c) Adult respiratory distress syndrome,
- (d) Amniotic fluid embolism,
- (e) Aneurysm,
- (f) Cardiac arrest/ventricular fibrillation,
- (g) Disseminated intravascular coagulation,
- (h) Eclampsia,
- (i) Heart failure/arrest during surgery or procedure,
- (j) Puerperal cerebrovascular disorders,
- (k) Pulmonary edema/acute heart failure,
- (l) Severe anesthesia complications,
- (m) Sepsis,
- (n) Shock,
- (o) Sickle cell disease with crisis,
- (p) Air and thrombotic embolism,
- (q) Blood transfusion,
- (r) Conversion of cardiac rhythm,
- (s) Hysterectomy,
- (t) Temporary tracheostomy, and
- (u) Ventilation.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at Angli.Black@dc.gov, (202) 442-5977.

OFFICE OF ADMINISTRATIVE HEARINGS**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF****NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that it will meet to interview candidates for vacant administrative law judge positions. These interviews will be closed the public pursuant to D.C. Code § 2-575(b)(10) as they involve confidential personnel matters.

The interviews will be conducted on Monday, December 11, 2019 beginning at 10:00 a.m. The interviews will be conducted at the following location:

Office of Administrative Hearings
441 Fourth Street NW, Suite 450 North
Washington, DC 20001

For further information, please contact Louis Neal at Louis.Neal@dc.gov or 202-724-3672.

AGENDA

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Executive Session (non-public). Vote to enter closed session to conduct business regarding personnel pursuant to D.C. Official Code § 2-575(b)(10) – specifically, to interview candidates for administrative law judge positions.**
 - a) Interviews of administrative law judge candidates**
- V. Resumption of Public Meeting**
- VI. Adjournment (Board Chair)**

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

WEDNESDAY, DECEMBER 4, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson

Members: James Short, Bobby Cato, Rema Wahabzadah, Rafi A. Crockett

Protest Hearing (Status) 9:30 AM
Case # 19-PRO-00112; BL 1701 14th DC, LLC, t/a Bluestone Lane, 1701 14th Street NW, License #114952, Retailer CR, ANC 2F
Application for a New License

Show Cause Hearing (Status) 9:30 AM
Case # 19-CC-00016; Hope Lounge, LLC, t/a Medusa Lounge (Formerly-Peace Lounge), 2632 Georgia Ave NW, License #106785, Retailer CT, ANC 1B
Sale to Minor Violation, No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM
Case # 19-CC-00036; DC Market, Inc., t/a DC Food Market, 2200 16th Street SE, License #106962, Retailer B, ANC 8A
Sale to Minor Violation, No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM
Case # 19-CIT-00355; Mezze and More, LLC, t/a Zaytinya, 701 9th Street NW License #60438, Retailer CR, ANC 2C
No ABC Manager on Duty

Show Cause Hearing (Status) 9:30 AM
Case # 19-CMP-00079; Jayhawk Lessee, LLC, t/a Monaco & Dirty Habit Restaurant, 700 F Street NW, License #85256, Retailer CH, ANC 2C
Exceeded Summer Garden Capacity

Show Cause Hearing (Status) 9:30 AM
Case # 19-CC-00093; Miku, LLC, t/a J & D Market, 2201 Minnesota Ave SE License #103723, Retailer B, ANC 8A
Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal Drinking Age

Board's Calendar
December 4, 2019

Show Cause Hearing (Status) **9:30 AM**
Case # 19-CMP-00038; BBDC 1, LLC, t/a Bareburger, 1647 20th Street NW
License #102759, Retailer CR, ANC 2B
No ABC Manager on Duty, Failed to Post Window Lettering

Fact Finding Hearing* **9:30 AM**
Juanita's Inc., t/a Juanita's Restaurant; 3521 14th Street NW, License #91432
Retailer CT, ANC 1A
Request to Place License in Safekeeping

Show Cause Hearing* **10:00 AM**
Case # 19-CC-00087; Hard Rock Café International (STP), Inc., t/a Hard Rock
Café, 999 E Street NW, License #14130, Retailer CR, ANC 2C
**Sale to Minor Violation, Failed to Take Steps Necessary to Ascertain Legal
Drinking Age**

Show Cause Hearing* **11:00 AM**
Case # 19-CMP-00043; Neighborhood Restaurant Group, XIII, LLC, t/a
Bluejacket/The Arsenal, 300 Tingey Street SE, License #90281, Retailer CR
ANC 6D
No ABC Manager on Duty

Show Cause Hearing* **11:00 AM**
Case # 19-CMP-00050; SST Management, LLC, t/a BIN-1301, 1301 U Street
NW, License #91682, Retailer CT, ANC 1B
Substantial Change without Board Approval (Increase in Occupancy)

BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM

Protest Hearing* **1:30 PM**
Case # 19-PRO-00101; Town2.0, LLC, t/a (To Be Determined), 1001 North
Capitol Street NE, License #114559, Retailer CN, ANC 6C
Application for a New License

Protest Hearing* **1:30 PM**
Case # 19-PRO-00052; Whole Foods Market Group, Inc., t/a Whole Foods
Market, 1440 P Street NW, License #86071, Retailer DR, ANC 2F
Application to Renew the License
*This hearing has been continued to February 12, 2020 at 1:30 pm., at the
request of the Parties.*

Board's Calendar
December 4, 2019

Protest Hearing*

4:30 PM

Case # 19-PRO-00084; Upshur Burger Concepts, LLC, t/a Lucky Buns, 2000
18th Street NW, License #107929, Retailer CR, ANC 1C
Application to Renew the License

**The Board will hold a closed meeting for purposes of deliberating these hearings pursuant to D.C. Official Code §2-574(b)(13).*

**This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.*

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS
CALENDAR

THURSDAY, DECEMBER 5, 2019
2000 14TH STREET, N.W., SUITE 400S
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson
Members: James Short, Bobby Cato, Rema Wahabzadah, Rafi A. Crockett

Protest Hearing*

10:00 AM

Case # 19-PRO-00050; Betty's Gojo Restaurant and Lounge, LLC, t/a Betty's
Gojo, 7616 Georgia Ave NW, License #102500, Retailer CR
ANC 4A

Application to Renew the License

**BOARD RECESS AT 12:00 PM
ADMINISTRATIVE AGENDA
1:00 PM**

**The Board will hold a closed meeting for purposes of deliberating these
hearings pursuant to D.C. Official Code §2-574(b)(13).*

**This meeting is governed by the Open Meetings Act. Please address any
questions or complaints arising under this meeting to the Office of Open
Government at opengovoffice@dc.gov*

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF MEETING
INVESTIGATIVE AGENDA**

**WEDNESDAY, DECEMBER 4, 2019
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

On Wednesday, December 4, 2019 at 4:00 pm., the Alcoholic Beverage Control Board will hold a closed meeting regarding the matters identified below. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will be closed “to plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations.” “This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.”

1. Case# 19-CMP-00196, Bareburger, 1647 20th Street N.W., Retailer CR, License # ABRA-102759

2. Case# 19-CMP-00195, The Salt Line, 79 Potomac Avenue S.E., Retailer CR, License # ABRA-102592

3. Case# 19-CMP-00182, Bluejacket, 300 Tingey Street S.E., Retailer CATERER, License # ABRA-103546

4. Case# 19-CMP-00199, Sheffield Wine and Liquors, 5025 Connecticut Avenue N.W., Retailer A, License # ABRA-060563

5. Case# 19-CMP-00194, Public Bar, 1214 A 18th Street N.W., Retailer CT, License # ABRA-081238

6. Case# 19-CMP-00192, Hiwot Ethiopian Restaurant & Market, 5333 Georgia Avenue N.W., Retailer CR, License # ABRA-100297

7. Case# 19-CMP-00181, Nile Ethiopian Restaurant and Nile Market, 7815 Georgia Avenue N.W., Retailer CR, License # ABRA-060432

8. Case# 19-251-00157, Assets, 1805 Connecticut Avenue N.W., Retailer CN, License # ABRA-113585

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING
LICENSING AGENDA

WEDNESDAY, DECEMBER 4, 2019 AT 1:00 PM
2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 2B. SMD 2B05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *TBD (Jemal's Dupont Hotel, LLC)*, 1733 N Street NW, Retailer CH, License No. 115679.

2. Review Request to Extend Safekeeping of License – Fourth Request. Original Safekeeping Date: 3/1/2017. ANC 1B. SMD 1B02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Climax Restaurant & Hookah Lounge*, 900 Florida Avenue NW, Retailer CT, License No. 088290.

3. Review Request to Extend Safekeeping of License – First Request. Original Safekeeping Date: 7/24/2019. ANC 1A. SMD 1A09. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *St. Vincent Wine*, 3212 Georgia Avenue NW, Retailer CT, License No. 114428.

4. Review Request to increase approved Sidewalk Café seating from 28 to 31, as allowed on Certificate of Occupancy. ANC 6B. SMD 6B02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Le Pain Quotidien*, 666 Pennsylvania Avenue SE, Retailer DR, License No. 080832.

5. Review request for approval to provide a gift of Thursday Night Football tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Breakthru Beverage*, 2800 V Street NE, Wholesaler A, License No. 060518.

6. Review request for approval to provide a gift of Capitals versus Pittsburgh tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

7. Review request for approval to provide a gift of Capitals versus Tampa tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

8. Review request for approval to provide a gift of Capitals versus New Jersey tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

9. Review request for approval to provide a gift of Capitals versus Montreal tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

10. Review request for approval to provide a gift of Capitals versus Chicago tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

11. Review request for approval to provide a gift of Capitals versus St. Louis tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Breakthru Beverage**, 2800 V Street NE, Wholesaler A, License No. 060518.

12. Review request for approval to provide a gift of Capitals versus New York Islanders tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Breakthru Beverage*, 2800 V Street NE, Wholesaler A, License No. 060518.

13. Review request for approval to provide a gift of Capitals versus Boston Bruins tickets that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Breakthru Beverage*, 2800 V Street NE, Wholesaler A, License No. 060518.

14. Review request for approval to provide a gift of 6 bottle wine fridges that do not exceed \$500 in value to various licensed DC Retailers. ANC 5C. SMD 5C04. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Breakthru Beverage*, 2800 V Street NE, Wholesaler A, License No. 060518.

***In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend. This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.**

**DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH
BEHAVIORAL HEALTH PLANNING COUNCIL
NOTICE OF CLOSED MEETING**

December 11, 2019
11:00 a.m.
Conference Room 284e
64 New York Ave NE
Washington, D.C 20002

On Wednesday, December 11, 2019, at 11:00 a.m., the District of Columbia Department of Behavioral Health, Behavioral Health Planning Council (BHPC) will hold a closed meeting for the purpose of speaking with the Mental Health Block Grant Project Officer from the Substance Abuse Mental Health Services Administration.

The meeting will be held in Conference Room 284e at 64 New York Ave, N.E., Washington, D.C. 20002.

For additional information, please contact J. Route, Strategic Planning, Policy and Engagement Officer at (202) 671-3204 or jocelyn.route@dc.gov

**DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH**

BEHAVIORAL HEALTH PLANNING COUNCIL

NOTICE OF RESCHEDULING OF PUBLIC MEETING

64 New York Ave, NE
WASHINGTON, D.C. 20002

The regular November meeting of the Behavioral Health Planning Council of the District of Columbia Department of Behavioral Health (“DBH”) previously scheduled for Friday, November 29, 2019 at 10:00 am, has been rescheduled as follows:

Wednesday, December 11, 2019
64 New York Ave NE 284e
10:00-11:00 am

Below is the draft agenda for this meeting.

If any council member or public attendee needs an accommodation, please contact Ms. J. Route, Strategic Planning and Policy Officer, at Office: (202) 671-3204 Cell: (202) 236-4555 prior to the meeting date.

DRAFT AGENDA

1. Call to Order, Welcome, Introductions and Roll
2. Introduction of newly appointed members
3. Approvals of Agenda & Minutes
4. Department of Behavioral Health Updates
5. Old Business: Review final BHPC annual work plan & committee updates
6. Announcements, Public Comments
7. Adjournment

**DISTRICT OF COLUMBIA
DEPARTMENT OF BEHAVIORAL HEALTH**

BEHAVIORAL HEALTH PLANNING COUNCIL

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64 New York Ave, NE
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DRAFT AGENDA

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2. Introduction of newly appointed members
3. Approvals of Agenda & Minutes
4. Department of Behavioral Health Updates
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6. Announcements, Public Comments
7. Adjournment

**BRIYA PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

Briya PCS solicits proposals for the following:

- **Phone System**

Full RFP(s) by request. Proposals shall be submitted as PDF documents no later than 5:00 PM on Tuesday, January 6, 2020. Contact: bids@briya.org

DEPARTMENT OF ENERGY AND ENVIRONMENT
DISTRICT OF COLUMBIA COMMISSION ON CLIMATE CHANGE AND
RESILIENCY

NOTICE OF PUBLIC MEETING

The Commission meeting will be held on Wednesday December 11, 2019 from 4:00 p.m. to 6:00 p.m. The meeting will be held at the Department of Energy and Environment's offices at 1200 First St NE, 5th Floor, Washington, DC 20002. The final agenda will be posted on the Commission website at <https://doee.dc.gov/publication/commission-climate-change-and-resiliency>.

For additional information, please contact: Melissa Deas, Climate Program Analyst, at (202) 671-3041 or Melissa.deas@dc.gov.

Draft Meeting Agenda

1. Call to Order
2. Announcement of a Quorum
3. Approval of the Agenda
4. Approval of Minutes
5. Updates from DOEE
6. Updates from OCA
7. Commission Report Next Steps
8. Calendar Year 2020 meeting schedule
9. Adjournment

OFFICE OF THE DEPUTY MAYOR FOR EDUCATION
NOTICE OF PUBLIC MEETING
COMMISSION ON OUT OF SCHOOL TIME GRANTS AND YOUTH
OUTCOMES

Commission on Out of School Time Grants and Youth Outcomes (OST Commission) Public Meeting

Washington, DC – The Commission on Out of School Time Grants and Youth Outcomes will hold a public meeting on Thursday, December 12, 2019 from 7:00 pm to 8:30 pm at One Judiciary Square, 441 4th Street NW, Room 1107 South. The OST Commission will hear updates from the Office of Out of School Time Grants and Youth Outcomes and the Needs Assessment Committee. Finally, the Commission will hear updates from the OST Commission’s committees.

Individuals and representatives of organizations who wish to comment at a public meeting are asked to notify the OST Office in advance by phone at (202) 481-3932 or by email at learn24@dc.gov. Individuals should furnish their names, addresses, telephone numbers, and organizational affiliation, if any, and if available, submit one electronic copy of their testimony by the close of business on Tuesday, December 10th at 5:00 pm.

Below is the draft agenda for the meeting.

- I. Call to Order
- II. Public Comment
- III. Announcement of a Quorum
- IV. Approval of the Agenda
- V. Approval of Minutes
- VI. Updates: Office of Out of School Time Grants and Youth Outcomes
- VII. Update on Needs Assessment Committee
- VIII. Committee Update
- IX. Adjournment

The Office of Out of School Time Grants and Youth Outcomes (OST Office) and the OST Commission support the equitable distribution of high-quality, out-of-school-time programs to District of Columbia youth through coordination among government agencies, grant-making, data collection and evaluation, and the provision of technical assistance to service providers. The OST Commission’s purpose is to develop a District-wide strategy for equitable access to out-of-school-time programs and to facilitate interagency planning and coordination for out-of-school time programs and funding.

Date: December 12, 2019
Time: 7:00 p.m. – 8:30 p.m.
Location: One Judiciary Square
Room 1107 South
441 4th Street, NW
Washington, DC 20001

Contact: Debra Eichenbaum
Grants Management Specialist
Office of Out of School Time Grants and Youth Outcomes
Office of the Deputy Mayor for Education
(202) 478-5913
Debra.eichenbaum@dc.gov

BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there are vacancies in five (5) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 1B07, 3F07, 4A05, 5A04 and 7F07

Petition Circulation Period: **Monday, December 2, 2019 thru Monday, December 23, 2019**

Petition Challenge Period: **Friday, December 27, 2019 thru Friday, January 3, 2019**

Candidates seeking the Office of Advisory Neighborhood Commissioner, or their representatives, may pick up nominating petitions at the following location:

**D.C. Board of Elections
1015 - Half Street, SE, Suite 750
Washington, DC 20003**

For more information, the public may call **727-2525**.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its November 14, 2019 meeting in relocating Precinct #14, Ward 2 Polling Place.

The public is advised that the proposed voting area for Precinct #14 will be changed from:

**M.A.A. Carriage House Meeting Space
1781 Church Street, N.W.
“Meeting Room”**

and moved to:

**St. Thomas Episcopal Church Parish
1517 18th Street, N.W.
“Multi-Purpose Room”**

This relocation was proposed because the Board learned that the facility would be available for use on the dates requested due to completed renovations.

Please note that the relocation will be effective beginning with the upcoming June 2, 2020, Presidential Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, December 2, 2019** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, December 4, 2019. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

Public Notice of Proposed Polling Place Relocation

The Board of Elections hereby gives public notice, in accordance with D.C. Official Code § 1-309.10, of proposed action taken at its November 14, 2019 meeting in relocating Precinct #54, Ward 4 Polling Place.

The public is advised that the proposed voting area for Precinct #54 will be changed from:

**West Education Campus
1338 Farragut Street, N.W.
“Gymnasium”**

and moved to:

**St. Luke Baptist Church
1415 Gallatin Street, N.W.
“Church Hall”**

This relocation was proposed because the Board learned that the facility would not be available for the Presidential Primary and General Elections in 2020 because of scheduled renovations and construction.

Please note that the relocation will be effective beginning with the upcoming June 2, 2020, Presidential Primary Election. If you have any comments on this matter, please contact Mr. Arlin Budoo at 727-5704 **no later than Monday, December 2, 2019** so that they may be considered before official notice is given to registered voters in the precinct. The Board will take final action on this matter at its regular board meeting scheduled for 10:30 a.m. Wednesday, December 4, 2019. The Board will individually notify all registered voters in the precinct of this change, subsequent to the Board’s final action.

For further information, members of the public may contact the Board of Elections at 727-2525.

DEPARTMENT OF EMPLOYMENT SERVICES
NOTICE OF FUNDING AVAILABILITY (NOFA)

FISCAL YEAR 2020 (FY20)

The District of Columbia Department of Employment Services (DOES) is issuing this Notice of Funding Availability (NOFA) to announce its intent to solicit multiple grant applications for opportunities to support Workforce Development Innovation Initiatives. The purpose of the grants are to support innovative workforce development solutions for residents of the District of Columbia (District) to increase their success rate of entering in and sustaining employment that forges a path to the middle class and further stimulates the District's economy.

Eligibility: Applicants shall be a Non-Profit, For-Profit, or Institutions of Higher Education that are eligible to do business with the District government. Additional eligibility requirements will be detailed in the individual Request for Applications (RFA) and in the Notice of Grant Award. Where applicable, the individual RFAs will be released via the ARIBA e-Sourcing system, through the online Grants Management System or online on the DOES website.

Award Period: The grant period will be determined and established in each individual RFA or by DOES.

Available Funding: DOES has identified up to \$3,000,000 in available local and federal funding and anticipates awarding multiple grants.

Selection Process: Pursuant to the "Workforce Job Development Grant-Making Authority Act of 2012" and Chapter 50 of the District of Columbia Municipal Regulations, DOES may award grants/subgrants through competitive, sole-source and unsolicited proposals.

Reservations: DOES reserves the right to issue amendments subsequent to the issuance of this NOFA or individual RFA or to rescind the NOFA or individual RFA.

If you have any questions about this NOFA, please contact:

Anthony Gamblin
Program Manager
Office of Grants Administration and Resource Allocation
Department of Employment Services
4058 Minnesota Avenue, NE, Suite 5300
Washington, DC 20019
Email: OGAGrants@dc.gov

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue air quality permits (Nos. 7241 through 7243) to the National Gallery of Art to operate three (3) Non-Auto Body Paint Spray Booths at the National Gallery of Art, located at 4th Street and Constitution Avenue NW, Washington, DC 20565. The contact person for the applicant is Robert A. Casper, Environmental Health & Safety Manager, at (202) 842-6558.

The following table describes the units to be permitted:

Location	Description	Permit Number
National Gallery of Art – West Building, Room CLB-37	Global Finishing Solutions Model IDBG-080806-NF-S Industrial Open Face Booth	7241
National Gallery of Art – West Building, Room G-158A	Paasche Airbrush Co. Model FABF Surface Mounted Booth	7242
National Gallery of Art – West Building, Room G-115	Grapek Custom Industrial Booth Model 1-10104	7243

The proposed overall emission limits for the equipment are as follows:

- a. No person shall discharge into the atmosphere more than fifteen (15) pounds of volatile organic compound (VOC) emissions in any one (1) day, nor more than three pounds (3 lb.) in any one (1) hour, from any combination of articles, machines, units, equipment, or other contrivances at a facility, unless the uncontrolled VOC emissions are reduced by at least ninety percent (90%) overall capture and control efficiency. [20 DCMR 700.2]
- b. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited [20 DCMR 903.1]
- c. Visible emissions shall not be emitted into the outdoor atmosphere from the paint spray booths. [20 DCMR 107 and 606]

Maximum potential emissions from the units are expected to be as follows:

Pollutant	Estimated Maximum Annual Emissions (tons/yr)
Volatile Organic Compounds (VOC)	0.206
Total Hazardous Air Pollutants (HAP)	0.124

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permit.

Comments on the draft permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after December 30, 2019 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT**PUBLIC NOTICE**

Notice is hereby given that, pursuant to 20 DCMR §210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, intends to issue permits (Nos. 7270-7275) to the National Gallery of Art to construct and operate six (6) natural gas-fired Fulton Vantage VTG-6000 condensing boilers to be located at the National Gallery of Art, 6th Street and Constitution Avenue NW, Washington DC. The contact person for the facility is Clayton Limbaugh, Deputy Chief of Risk Management, at (202) 842-6898.

The following boilers are to be permitted:

Emission Unit ID	Model Number	Natural Gas Rating (MMBTU/hr)	Permit Number
Boiler 1 - B1	Fulton Vantage VTG-6000	6.0	7270
Boiler 2 - B2	Fulton Vantage VTG-6000	6.0	7271
Boiler 3 - B3	Fulton Vantage VTG-6000	6.0	7272
Boiler 4 - B4	Fulton Vantage VTG-6000	6.0	7273
Boiler 5 - B5	Fulton Vantage VTG-6000	6.0	7274
Boiler 6 - B6	Fulton Vantage VTG-6000	6.0	7275

Emissions:

The estimated maximum annual emissions from the six 6.0 MMBTU/hr natural gas-fired boilers are expected to be as follows:

Pollutant	Maximum Annual Emissions (tons/yr)	
	Each Boiler	Boilers (Sum)
Total Particulate Matter (PM Total)	0.20	1.17
Sulfur Dioxide (SO ₂)	0.02	0.09
Nitrogen Oxides (NO _x)	0.96	5.74
Volatile Organic Compounds (VOC)	0.14	0.87
Carbon Monoxide (CO)	0.97	5.83

The proposed emission limits are as follows:

- a. Each of the six (6) 6.0 MMBTU per hour natural gas fired boilers shall not emit pollutants in excess of those specified in the following table [20 DCMR 201]:

Boiler Emission Limits	
Pollutant	Short-Term Limit (lb/hr)
Carbon Monoxide (CO)	0.22
Oxides of Nitrogen (NO _x)	0.22
Total Particulate Matter (PM Total)	0.05
Sulfur Dioxide (SO ₂)	0.004

*PM Total includes both filterable and condensable fractions.

- b. Visible emissions shall not be emitted into the outdoor atmosphere from the boilers, except that discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, adjustment of combustion controls, or malfunction of the equipment [20 DCMR 606.1]
- c. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]
- d. Total suspended particulate matter (TSP) emissions from each of the boilers shall not exceed 0.11 pound per million BTU. [20 DCMR 600.1]

The applications to construct and operate the boilers and the draft permits and supporting documents are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments or may request a hearing on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. All relevant comments will be considered in issuing the final permits.

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington, DC 20002
stephen.ours@dc.gov

No comments or hearing requests submitted after December 30, 2019 will be accepted.
For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT

PUBLIC NOTICE

Notice is hereby given that, pursuant to 20 DCMR § 210, the Air Quality Division (AQD) of the Department of Energy and Environment (DOEE), located at 1200 First Street NE, 5th Floor, Washington, DC, is proposing to issue permit Nos. 7277 and 7278 to Bardon, Inc. dba Aggregate Industries to construct and operate one crusher/screener and a separate stacking conveyor (both described in the table below) for processing waste concrete from the ready-mix concrete manufacturing process. The proposed equipment will be located at the Bardon, Inc. dba Aggregate Industries, ready-mix concrete production facility, located at 5001 Fort Totten Drive NE. The contact person for applicant is Tim Bevard, Land Manager, at (301) 982-1485. The applicant’s mailing address is 6401 Golden Triangle Drive, Suite 400, Greenbelt, MD 20770.

Equipment Type	Equipment Description	Permit No.
McCloskey International Model I54Rv3 Crusher/Screener	One (1) 300 ton per hour Crusher with one (1) built-in Belt Conveyor powered by a 510 Hp, Tier 4f, diesel fired engine coupled with a two deck screener with top deck dimensions 4 X 7.75feet with three (3) built-in belt conveyors.	7277
McCloskey International Model ST80T Stacking Conveyor	Stacking conveyor powered by a 50 Hp, Tier 4f, diesel fired engine.	7278

Emissions Estimate:

The total potential emissions from the crusher/screener and the stacking conveyor, in total, have been estimated to not exceed those specified in the following table [20 DCMR 201]:

Pollutant	Maximum Annual Emissions* (ton/yr)
Carbon Monoxide (CO)	4.55
Oxides of Nitrogen (NO _x)	0.99
Coarse Particulate Matter (PM10)	0.99
Volatile Organic Compounds (VOC)	0.31
Sulfur Dioxide (SO ₂)	0.01

*These emissions estimates are based on maximum allowable operation of the units under the terms of the permits, incorporating limits on operating hours limiting operations to 50 weeks per year, 6 days per week, and 10 hours per day.

Emissions Limits:

The proposed overall emission limits for the equipment are as follows:

- a. Emissions of dust shall be minimized in accordance with the requirements of 20 DCMR 605 and the “Operational Limitations” of this permit.

- b. The emission of fugitive dust from any material handling, screening, crushing, grinding, conveying, mixing, or other industrial-type operation or process is prohibited. [20 DCMR 605.2]
- c. Emissions from the engine powering each crusher/screener shall not exceed those achieved by proper operation of the equipment in accordance with manufacturer's specifications.
- d. Visible emissions shall not be emitted into the outdoor atmosphere from stationary sources; provided, that the discharges not exceeding forty percent (40%) opacity (unaveraged) shall be permitted for two (2) minutes in any sixty (60) minute period and for an aggregate of twelve (12) minutes in any twenty-four hour (24 hr.) period during start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction of the equipment. [20 DCMR 606.1]
- e. In addition to Condition (d), emissions from grinding mills, screening operations, bucket elevators, transfer points on belt conveyors, bagging operations, storage bins, enclosed truck or railcar loading stations shall not exceed 7% opacity. Emissions from crushers shall not exceed 12% opacity. [40 CFR 60, Subpart OOO, Table 3]
- f. An emission into the atmosphere of odorous or other air pollutants from any source in any quantity and of any characteristic, and duration which is, or is likely to be injurious to the public health or welfare, or which interferes with the reasonable enjoyment of life or property is prohibited. [20 DCMR 903.1]

The permit applications and supporting documentation, along with the draft permits are available for public inspection at AQD and copies may be made available between the hours of 8:15 A.M. and 4:45 P.M. Monday through Friday. Interested parties wishing to view these documents should provide their names, addresses, telephone numbers and affiliation, if any, to Stephen S. Ours at (202) 535-1747.

Interested persons may submit written comments on this subject within 30 days of publication of this notice. The written comments must also include the person's name, telephone number, affiliation, if any, mailing address and a statement outlining the air quality issues in dispute and any facts underscoring those air quality issues. .

Comments on the proposed permit and any request for a public hearing should be addressed to:

Stephen S. Ours
Chief, Permitting Branch
Air Quality Division
Department of Energy and Environment
1200 First Street NE, 5th Floor
Washington DC 20002
Stephen.Ours@dc.gov

No comments or hearing requests submitted after December 30, 2019 will be accepted.

For more information, please contact Stephen S. Ours at (202) 535-1747.

DEPARTMENT OF ENERGY AND ENVIRONMENT**NOTICE OF FILING OF A
VOLUNTARY CLEANUP ACTION PLAN****1100 Eastern Avenue, NE
Case No. VCP2018-060**

Pursuant to § 601 of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312, as amended April 8, 2011, D.C. Law 18-369; D.C. Official Code §§ 8-636.01), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received a Voluntary Cleanup Action Plan (VCAP) requesting to perform a remediation action. The applicant for real property located at 1100 Eastern Avenue NE, Washington, DC 20019, is 1100 Eastern LLC, 3232 Georgia Avenue NW, Suite 100, Washington DC 20010.

The application identifies impacted soil and groundwater associated with petroleum and chlorinated solvents. The proposed redevelopment involves limited excavation for the purpose of constructing a multi-story mixed use building. The applicant intends to perform remediation action to address the site-specific chemicals of concern.

Pursuant to D.C. Official Code § 8-636.01(b), this notice will also be mailed to the Advisory Neighborhood Commission (ANC-7C04) for the area in which the property is located. The VCAP is available for public review at the following location:

Voluntary Cleanup Program
Department of Energy and Environment (DOEE)
1200 First Street NE, 5th Floor
Washington, DC 20002

Interested parties may also request a copy of the application by contacting the Voluntary Cleanup Program at the above address or by calling (202) 499-0437. An electronic copy of the application may be viewed at <http://doee.dc.gov/service/vcp-cleanup-sites>.

Written comments on the Voluntary Cleanup Action Plan must be received by the VCP at the address listed above within twenty one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2018-060 in any correspondence related to this application.

**GIRLS GLOBAL ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

Girls Global Academy PCS solicits proposals for the following:

Start-up services consulting around finance, HR, and student data infrastructure and processes, training and ongoing reporting throughout its planning year.

Proposals shall be submitted as PDF documents no later than 5:00 PM on Friday, December 6, 2019. Contact: info@girlsglobalacademy.org

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

**MEDICAID FEE SCHEDULE UPDATES FOR PERSONAL CARE AIDE (PCA)
SERVICES**

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR §§ 988.4 and 5015.3, announces changes to the Medicaid reimbursement rates for PCA services provided by Home Health Agencies. The changes to the rates will become effective on January 1, 2020.

The PCA services reimbursement rates are adjusted to reflect the annual rate changes to the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.* (2012 Repl.)).

The table below provides a listing of both the billing codes and new rates for PCA services.

<u>Code</u>	<u>Service Description</u>	<u>Reimbursement Rate</u>
T1019-NP	State Plan	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-UT	Personal Care Aide Services	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-52	Personal Care Service Per 15 Min	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-U3	EPD Waiver Services Per 15 Min	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-NP-U3	EPD Waiver Services Per 15 Min	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-UT-U3	ASSESSED AND SERVICES BEING TERMINATED	\$ 21.33 Per Hour, \$5.33 per 15 minutes
T1019-52-U3	ASSESSED AND SERVICES BEING REDUCED	\$ 21.33 Per Hour, \$5.33 per 15 minutes

The PCA rates will be included on the Medicaid Fee Schedule and will become effective January 1, 2020. The Medicaid Fee Schedule for the PCA services is located on the DHCF website at <https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload>.

If you have any questions, please contact Andrea Clark, Reimbursement Analyst, Office of Rates Reimbursement and Financial Analysis, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, or email at andrea.clark@dc.gov or (202) 724-4096.

DEPARTMENT OF HEALTH CARE FINANCE

PUBLIC NOTICE

MEDICAID FEE SCHEDULE UPDATES FOR THE HOME AND COMMUNITY-BASED SERVICES WAIVER FOR PERSONS WHO ARE ELDERLY AND INDIVIDUALS WITH PHYSICAL DISABILITIES (EPD)

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in 29 DCMR §§ 988.4 and 4209.7, announces changes to the Medicaid reimbursement rates for EPD waiver services. The changes to the rates will become effective on January 1, 2020.

The EPD reimbursement rates are adjusted to reflect the annual rate changes to the Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code 2-220.01 *et seq.* (2012 Repl.)).

DHCF is increasing the reimbursement rates for nine (9) EPD Waiver services as follows: (1) Case Management Services, 29 DCMR § 4210; (2) Personal Care Aide (PCA) Services, 29 DCMR § 4211; (3) Respite Services, 29 DCMR § 4213; (4) Homemaker Services, 29 DCMR § 4214; (5) Chore Aide Services, 29 DCMR § 4215; (6) Assisted Living Services, 29 DCMR § 4216; (7) Adult Day Health Services, 29 DCMR § 4218; (8) Physical Therapy Services, 29 DCMR § 4219; and (9) Occupational Therapy Services, 29 DCMR § 4220. For Personal Emergency Response Service (PERS), 29 DCMR § 4212; Environmental Accessibility Adaptations Services, 29 DCMR § 4217 and Community Transition Services, 29 DCMR § 4221, DHCF has not changed the reimbursement rates.

These reimbursement rates for each service will be included on the Medicaid Fee Schedule for the EPD Waiver and will become effective on January 1, 2020. The Medicaid Fee Schedule for the EPD Waiver is located on the DHCF website at <https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload>.

If you have any questions, please contact Andrea Clark, Reimbursement Analyst, Office of Rates Reimbursement and Financial Analysis, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, or email at andrea.clark@dc.gov or (202) 724-4096.

**DEPARTMENT OF HEALTH
HEALTH PROFESSIONAL LICENSING ADMINISTRATION**

NOTICE OF MEETING

Board of Medicine

December 11, 2019

On DECEMBER 11, 2019 at 8:30 am, the Board of Medicine will hold a meeting to consider and discuss a range of matters impacting competency and safety in the practice of medicine.

The meeting will be open to the public from 8:30 am to 10:30 am to discuss various agenda items and any comments and/or concerns from the public.

In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, the meeting will then move to Closed Session from 10:30 am until 4:45 pm to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The meeting location is 899 North Capitol Street NE, 2nd Floor, Washington, DC 20002.

Meeting times and/or locations are subject to change – please visit the Board of Medicine website www.doh.dc.gov/bomed and select BoMed Calendars and Agendas to view the agenda and any changes that may have occurred.

Executive Director for the Board – Frank B. Meyers, JD

**DEPARTMENT OF HEALTH (DC Health)
 COMMUNITY HEALTH ADMINISTRATION (CHA)
 NOTICE OF FUNDING AVAILABILITY (NOFA)
 RFA# CHA-PQC-12.13.19
 Perinatal Quality Collaborative**

The District of Columbia, Department of Health (DC Health) is soliciting applications from qualified applicants to services in the program and service areas described in this Notice of Funding Availability (NOFA). This announcement is to provide public notice of the Department of Health's intent to make funds available for the purpose described herein. The applicable Request for Applications (RFA) will be released under a separate announcement with guidelines for submitting the application, review criteria and DC Health terms and conditions for applying for and receiving funding.

General Information:

Funding Opportunity Title:	Perinatal Quality Collaborative
Funding Opportunity Number:	FO-CHA-PG-00011-002
Program RFA ID#:	CHA-PQC-12.13.19
Opportunity Category:	Competitive
DC Health Administrative Unit:	Community Health Administration (CHA)
DC Health Program Bureau	Family Health
Program Contact:	Jean Gamble 202/442-9352
Program Description:	DC Health is soliciting applications to fund an organization to provide operational support for a District of Columbia perinatal quality collaborative (PQC). The PQC will convene a team of perinatal care providers and public health professionals working to improve health outcomes for women and newborns through continuous quality improvement. The grant award will be made annually with up to four (4) additional years, contingent upon awardee performance and the availability of funds. The initial budget period will be prorated to approximately seven months beginning March 1, 2020. The first full 12 month budget period will begin October 1, 2020.
Eligible Applicants	Not- for profit, public and private organizations located and licensed to conduct business within the District of Columbia and experienced in providing operational support for clinical quality improvement initiatives.

Anticipated # of Awards:	1
Anticipated Amount Available:	\$350,000
Floor Award Amount:	\$200,000
Ceiling Award Amount:	\$350,000

Funding Authorization

Legislative Authorization	Fiscal Year 2019 Budget Support Act of 2018
Associated CFDA#	NA
Associated Federal Award ID#	NA
Cost Sharing / Match Required?	No
RFA Release Date:	December 13 th , 2019
Pre-Application Meeting (Date)	December 20th, 2019
Pre-Application Meeting (Time)	10:00am to 12:00pm
Pre-Application Meeting (Location/Conference Call Access)	899 North Capitol Street, NE Washington, DC 20002
Letter of Intent Due date:	Not applicable
Application Deadline Date:	January 24, 2020
Application Deadline Time:	6:00 PM
Links to Additional Information about this Funding Opportunity	DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse . DC Health EGMS https://dcdoh.force.com/GO_ApplicantLogin2

Notes:

1. DC Health reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.
2. Awards are contingent upon the availability of funds.
3. Individuals are not eligible for DC Health grant funding.
4. Applicants must have a DUNS #, Tax ID#, be registered in the federal Systems for Award Management (SAM) and the DC Health Enterprise Grants Management System (EGMS)
5. Contact the program manager assigned to this funding opportunity for additional information.
6. DC Health is located in a secured building. Government issued identification must be presented for entrance.

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 and Chest Clinic located at 77 P Street, NE, Washington, DC 20002 on Friday, December 6, 2019 at 12 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.

**INGENUITY PREP PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

Ingenuity Prep PCS solicits proposals for the following:

- **Special Education Services**

Full RFP(s) by request. Proposals shall be submitted as PDF documents no later than 5:00 PM on Wednesday, December 10, 2019. Contact: bids@ingenuityprep.org

DEPARTMENT OF INSURANCE, SECURITIES AND BANKING**DISTRICT OF COLUMBIA FINANCIAL SERVICES REGULATORY SANDBOX AND
INNOVATION COUNCIL****NOTICE OF PUBLIC MEETING**

The District of Columbia Financial Services Regulatory Sandbox and Innovation Council, established pursuant to Mayor's Order 2019-003, will hold its inaugural meeting on Wednesday, December 18, 2019 from 3:00 pm – 5:00 pm. The meeting will be held at the offices of the District of Columbia Department of Insurance, Securities and Banking, 1050 First Street, NE, 8th Floor Large Conference Room, Washington, DC 20002. Below is the draft agenda for this meeting. A final agenda will be posted to the Department of Insurance, Securities, and Banking's website at <http://disb.dc.gov>. Please RSVP to Christian Washington, christian.washington@dc.gov, and for additional information, call (202) 442-7754 or e-mail christian.washington@dc.gov.

DRAFT AGENDA

- I.** Call to Order
- II.** Welcoming Remarks
- III.** Council Member Introductions
- IV.** Goals and Expectations of the Council
- V.** Announcement of a Quorum
- VI.** New Business
 - Review and Vote on Bylaws
 - Review Proposed Schedule and Topics
- VII.** Adjournment

KIPP DC PUBLIC CHARTER SCHOOLS**REQUEST FOR PROPOSALS****E-Procurement System**

KIPP DC is soliciting proposals from qualified vendors for an E-Procurement System. The RFP can be found on KIPP DC's website at www.kippdc.org/procurement. Proposals should be uploaded to the website no later than 5:00 PM ET on December 13, 2019. Questions can be addressed to Tania.Honig-Silbiger@kippdc.org.

**THE NOT-FOR-PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING**

LARUBY Z. MAY, BOARD CHAIR

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at 12:00 p.m. on Wednesday, December 4, 2019. The meeting will be held at the United Medical Center, 1310 Southern Ave., SE, Washington, DC 20032 in the Ground Floor Conference Rooms. Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation’s website (www.united-medicalcenter.com).

DRAFT AGENDA

- I. CALL TO ORDER**
- II. DETERMINATION OF A QUORUM**
- III. APPROVAL OF AGENDA**
- IV. READING AND APPROVAL OF MINUTES**
October 30, 2019
- V. CONSENT AGENDA**
 - A. Dr. Raymond Tu, Chief Medical Officer
 - B. Dr. Marilyn McPherson – Corder, Medical Chief of Staff
- VI. EXECUTIVE MANAGEMENT REPORT**
Ira Gottlieb, Interim Chief Executive Officer
- VII. COMMITTEE REPORTS**
 - Patient Safety and Quality Committee
 - Finance Committee
 - Mazars Accountability Committee
- VIII. PUBLIC COMMENT**
- IX. OTHER BUSINESS**
 - A. Old Business
 - B. New Business
- X. ANNOUNCEMENTS**

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close the meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2 -575(b)(2)(4A)(5),(9),(10),(11),(14).

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)	
)	
Andebrhan Berhe)	
)	PERB Case No. 19-U-05
Complainant)	
)	Opinion No. 1722
	v.)	Motion for Reconsideration
)	
District of Columbia Public)	
Schools)	
)	
Respondent)	
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DECISION AND ORDER

I. Statement of the Case

Before the Board is a Motion for Reconsideration (Motion) filed by Andebrhan Berhe, *pro se*, (Complainant). The Complainant, a former employee of the District of Columbia Public Schools (DCPS), requests that the Board overturn the Executive Director’s April 8, 2019, administrative dismissal of the Complainant’s unfair labor practice complaint (Complaint). The Executive Director dismissed the Complaint for lack of standing. The Motion requests the Board’s review in light of newly submitted evidence and documents.

For reasons stated herein, the Board dismisses the Complaint with prejudice.

II. Background

On December 7, 2018, the Complainant filed an unfair labor practice complaint, alleging that DCPS committed unfair labor practices in violation of D.C. Official Code § 1-617.04(a)(1) and (3). The Complaint alleged that Complainant was a part of the class of probationary teachers represented by Washington Teachers’ Union (WTU) against DCPS in PERB Case 14-U-02, and that Complainant was entitled to relief in accordance with the Board’s decision in that case.

Decision and Order
PERB Case No. 19-U-05
Page 2

On January 25, 2019, the Respondent filed an Answer, asserting the affirmative defense that the Complaint was untimely filed. On April 8, 2019, the Executive Director issued an administrative dismissal.

III. Analysis

The Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.¹ The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by PERB precedent.² After reviewing the pleadings, the Board does not reach the merits of the Motion, as the Board finds that the Complaint is untimely.

Board Rule 520.4 requires an unfair labor practice complaint be filed no later than 120 days after the complainant first knew or should have known of the acts giving rise to the alleged violations.³ The Board has held that filing deadlines established by the Board's rules are claim-processing rules that may be waived.⁴ The Board may waive the deadline to allow a case to proceed, if a filer can demonstrate good cause as to why the filing should not be dismissed.⁵

In the present case, the Complaint states that DCPS' unfair labor practice violation occurred on March 27, 2018.⁶ The Complaint's filing date of December 7, 2018, is well beyond 120 days of March 27, 2018. In its Answer, the Respondent asserts that the Complaint is untimely.⁷ The Complainant has not provided any reason for the Complaint's untimely filing. Therefore, the Board finds that the Complainant does not demonstrate good cause for failing to meet the 120-day filing deadline of Board Rule 520.4.

IV. Conclusion

The Board finds that the Complaint is untimely, and dismisses the Complainant's unfair labor practice complaint with prejudice. The Motion for Reconsideration is rendered moot by the Board's dismissal of the underlying Complaint.⁸

¹ *Kenneth Johnson v. D.C. Gov't and D.C. Metro. Police Dep't*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 1, PERB Case No. 15-U-40 (2016).

² *Id.*

³ *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at p. 2, PERB Case No. 17-U-26 (2018) (citing *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009)).

⁴ *Jenkins v. Dep't of Corrections*, 65 D.C. Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (January 18, 2018). See also *Metro. Police Dep't v. Metro. Police Dep't Labor Comm.*, 65 D.C. Reg. 11111, Slip Op. No. 1678, PERB Case No. 18-A-05 (2018).

⁵ *Metro. Police Dep't*, Slip Op. No. 1678.

⁶ The Board notes that the Complaint does not indicate exactly what violation took place on this date.

⁷ Answer at 3.

⁸ The Board will not address the merits of the Complainant's Motion for Reconsideration, as it has been rendered moot by not meeting the Board's claim-processing requirements. See *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 60 D.C. Reg. 5322, Slip Op. No 1372, PERB Case No 11-U-52(a) (2013).

Decision and Order
PERB Case No. 19-U-05
Page 3

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is denied.
2. The Complainant's unfair labor practice complaint is dismissed.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Boar Chairperson Charles Murphy and Members Mary Anne Gibbons, Ann Hoffman, and Douglas Warshof

Washington, D.C.

September 12, 2019

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-U-05, Opinion No. 1722 was sent by File and ServeXpress to the following parties on this the 12th day of September, 2019.

Andebrhan Berhe
16356 Gangplank Lane
Woodbridge, VA 22191

Dion E. Black, Esq.
D.C. Office of Labor Relations and
Collective Bargaining
441 4th Street, N.W., Suite 820 North
Washington, D.C. 20001

/s/ Alexis Anderson, Esq.

Attorney Advisor

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)
)
Andebrhan Berhe)
)
Complainant)
)
	v.)
)
Washington Teachers' Union)
)
Respondent)
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PERB Case No. 19-U-08
Opinion No. 1723
Motion for Reconsideration

DECISION AND ORDER

I. Introduction

Before the Board is a Motion for Reconsideration (Motion) filed by Andebrhan Berhe, *pro se*, (Complainant) filed on August 5, 2019. The Complainant, a former employee of the District of Columbia Public Schools (DCPS) and former member of the Washington Teachers' Union (WTU), requests that the Board overturn the Executive Director's July 8, 2019, administrative dismissal of the Complainant's unfair labor practice complaint (Complaint). The Executive Director dismissed the Complaint for untimeliness. The Motion seeks the Board's reconsideration, asserting there is additional evidence to support his Complaint. WTU opposes the Motion.

For reasons stated herein, the Board denies the Complainant's Motion.

II. Background

On April 15, 2019, the Complainant filed a Complaint,¹ alleging that WTU committed unfair labor practices in violation of D.C. Official Code § 1-617.04(a)(1), (2), (3), and (5). The Complaint alleges that WTU refused to represent the Complainant as a part of the class of probationary teachers represented by WTU against DCPS in PERB Case 14-U-02. The

¹ The Complainant filed an Amended Complaint on May 30, 2019, in order to submit new evidence.

Decision and Order
PERB Case No. 19-U-08
Page 2

Complaint also alleges that after WTU attorney Danny Rosenthal told the Complainant in an email on September 7, 2018, that he would work on the Complainant's case, Rosenthal refused to respond to the Complainant's eleven (11) subsequent emails. On May 6, 2019, WTU moved to dismiss the Complaint for untimeliness.² On July 8, 2019, the Executive Director dismissed the Complaint as untimely, pursuant to Board Rule 520.4, which requires that an unfair labor practice complaint be filed no later than 120 days after the complainant first knew or should have known of the acts giving rise to the alleged violations.³

In the present Motion, the Complainant offers purportedly new evidence in the form of an email to support his assertion that the Complaint was timely filed. The email from Rosenthal is dated March 22, 2019, and states, in pertinent part, "As we previously told you, WTU has determined that you are not one of the teachers covered by this case." The Motion asserts that before receiving this email, the Complainant thought WTU was representing him. The Complainant contends that the Complaint was filed within 120 days of WTU's March 22, 2019 email.

WTU opposes the Complainant's Motion (Opposition) on several grounds. First, WTU asserts that Board precedent prohibits the Board from considering newly submitted evidence as a basis for reversing the Executive Director's administrative dismissal. Second, WTU contends that the Complainant has not provided any legal argument for reversing the Executive Director's decision. Finally, WTU argues that the newly submitted evidence does not make the Complaint timely, as WTU previously told the Complainant, more than 120 days before the Complaint was filed, of WTU's determination that the Complainant was not a probationary teacher represented by WTU.

III. Analysis

The Board will not grant a motion for reconsideration that does not assert any legal grounds that would compel overturning an Executive Director's dismissal.⁴ The Board will uphold an Executive Director's dismissal where the decision is reasonable and supported by PERB precedent.⁵

A. Newly submitted evidence

In the present Motion, the Complainant offers purportedly new evidence and raises a new argument to support his assertion that the Complaint was timely filed. The Board has repeatedly held that it will not consider evidence presented for the first time or new arguments raised in a motion for reconsideration to serve as a basis for reconsidering the Executive Director's

² WTU filed an amended Motion to Dismiss and Answer to Amended Complaint on June 14, 2019.

³ *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at p. 2, PERB Case No. 17-U-26 (2018) (citing *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009)).

⁴ *Kenneth Johnson v. D.C. Gov't and D.C. Metro. Police Dep't*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 1, PERB Case No. 15-U-40 (2016).

⁵ *Id.*

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PERB Case No. 19-U-08
Page 3

dismissal when the Complainant failed to provide any evidence at the afforded time.⁶ The Board will only consider the evidence and arguments raised in the Complaint and Amended Complaint. The Board will not consider the Complainant's evidence submitted with his Motion as a basis for reversing the Executive Director's determination that the Complaint was untimely filed.

B. Timeliness

The Board finds that the Complaint was untimely filed. Board Rule 520.4 requires that an unfair labor practice complaint be filed within 120 days from when the complainant first knew or should have known of the acts giving rise to the alleged violations.⁷ The Board has held that filing deadlines established by the Board's rules are claim-processing rules that may be waived.⁸ The Board may waive the filing deadline to allow a case to proceed, if a filer can demonstrate good cause as to why the filing should not be dismissed.⁹

The Complaint alleged that WTU agreed to represent the Complainant, but then WTU refused to respond to eleven (11) subsequent emails that the Complainant submitted to WTU and its attorneys between September 7, 2018 and November 8, 2018. The filing date of April 15, 2019, is well beyond 120 days of November 8, 2018. The Board notes that the Complaint's exhibits include an email that the Complainant sent to WTU on March 22, 2019. Notwithstanding this email, which is dated within 120 days of the Complaint's filing date, the Board finds that the Complainant's allegation that WTU refused to represent him is untimely.

In its Motion to Dismiss, WTU asserted that the Complaint was untimely filed and presented evidence that WTU informed the Complainant that he was not a part of the class of probationary teachers three times: an email dated June 27, 2018, an email dated August 28, 2018, and a formal letter dated November 30, 2018. WTU submitted copies of this correspondence in support of its Motion to Dismiss. The Complainant did not dispute this evidence in the Complaint or Amended Complaint.

As stated above, Board Rule 520.4 requires an unfair labor practice complaint be filed within 120 days from when the complainant first knew or should have known of the acts giving rise to the alleged violations. The Board finds that Complainant knew or should have known that WTU would not represent the Complainant prior to Rosenthal's March 22, 2019 email. The undisputed evidence shows he had notice of the acts giving rise to the alleged violations at the latest, on or about November 30, 2018, when WTU sent Complainant the last of three letters, refusing to represent him. The Complaint's April 15, 2019, filing date was well beyond the

⁶ *Kenneth Johnson v. D.C. Gov't and Metro. Police Dep't*, 63 D.C. Reg. 6485, Slip Op. No. 1567 at 2, PERB Case No. 15-U-40 (2016).

⁷ *Fraternal Order of Police/Metro. Police Dep't Labor Comm. v. Metro. Police Dep't*, 65 D.C. Reg. 6430, Slip Op. No. 1661 at p. 2, PERB Case No. 17-U-26 (2018) (citing *Pitt v. D.C. Dep't of Corr.*, 59 D.C. Reg. 5554, Slip Op. No. 998 at p. 5, PERB Case No. 09-U-06 (2009)).

⁸ *Jenkins v. Dep't of Corrs.*, 65 D.C. Reg. 4046, Slip Op. No. 1652, PERB Case No. 15-U-31 (2018). *See also Metro. Police Dep't v. Metro. Police Dep't Labor Comm.*, 65 D.C. Reg. 11111, Slip Op. No. 1678, PERB Case No. 18-A-05 (2018).

⁹ *Metro. Police Dep't*, Slip Op. No. 1678.

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PERB Case No. 19-U-08
Page 4

required 120 days. The Complainant did not provide a reason for the Complaint's untimely filing.

As the Complainant has not provided a reason for his delay in filing the Complaint, the Board finds that the Complainant does not demonstrate good cause for not meeting the 120-day deadline in Board Rule 520.4. The Board finds that the Complaint was untimely filed.

IV. Conclusion

The Board finds the Executive Director's determination that the Complaint was untimely is reasonable and supported by PERB precedent. The Motion for Reconsideration is denied.

ORDER

IT IS HEREBY ORDERED THAT:

1. The Complainant's Motion for Reconsideration is denied.
2. The Complainant's unfair labor practice complaint is dismissed.
3. Pursuant to Board Rule 559.1, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By the unanimous vote of Board Chairperson Charles Murphy and Members Mary Anne Gibbons, Ann Hoffman, and Douglas Warshof.

Washington, D.C.

September 12, 2019

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-U-08, Opinion No. 1723 was sent by File and ServeXpress to the following parties on this the 16th day of September, 2019.

Andebrhan Berhe
16356 Gangplank Lane
Woodbridge, VA 22191

Daniel M. Rosenthal, Esq.
James & Hoffman, P.C.
1130 Connecticut Avenue, NW, Suite 950
Washington, D.C. 20036

/s/ Alexis Anderson, Esq. _____
Attorney Advisor

Government of the District of Columbia
Public Employee Relations Board

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In the Matter of:)
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District of Columbia)
Metropolitan Police Department)
)
	Petitioner)
)
	v.)
)
Fraternal Order of Police/)
Metropolitan Police Department)
Labor Committee)
)
	Respondent)
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PERB Case No. 19-A-08

Opinion No. 1724

DECISION AND ORDER

I. Statement of the Case

On June 6, 2019, the District of Columbia Metropolitan Police Department (MPD) filed this Arbitration Review Request (Request) of an arbitration award (Award) that sustained the grievance filed by the Fraternal Order of Police/Metropolitan Police Department Labor Committee (FOP).¹ The Arbitrator found that MPD failed to timely commence an adverse action against Officer Jose Mendoza (Grievant) within ninety (90) days of when MPD knew or should have known of the Grievant’s alleged misconduct in violation of D.C. Official Code § 5-1031(a). MPD asserts that the Award, on its face, is contrary to law and public policy, and requests the Board to set aside the Award and remand the matter to the Arbitrator.

In accordance with D.C. Official Code § 1-605.02(6), the Board is permitted to modify, set aside, or remand an arbitration award in three narrow circumstances: (1) if the arbitrator was without, or exceeded his or her jurisdiction; (2) if the award, on its face, is contrary to law and public policy; or (3) if the award was procured by fraud, collusion or other similar and unlawful means.²

¹ Request at 2.

² D.C. Official Code § 1-605.02(6).

Decision and Order
PERB Case No. 19-A-08
Page 2

Having reviewed the Arbitrator's conclusions, the pleadings of the Parties and applicable law, the Board concludes that the Award is not, on its face, contrary to law and public policy. For the reasons stated herein, the Board denies MPD's request.

II. Background and Arbitrator's Award

On January 12, 2015, MPD issued a Notice of Proposed Adverse Action (proposed suspension notice) to the Grievant, proposing a 30-day suspension based on an incident in which the Grievant failed to pay the fare aboard an Amtrak train.³ On March 19, 2015, MPD issued a Final Notice suspending the Grievant for thirty (30) days.⁴ Although the Grievant stated that he would accept the suspension, on March 30, 2015, he sent the Chief of Police a letter asking her to consider a shorter suspension. On April 24, 2015, the Chief of Police declined to reduce the suspension, and remanded the case for reconsideration of the appropriate penalty to be imposed.⁵

On May 15, 2015, the Grievant received a new notice of proposed adverse action (proposed termination notice), which included the same specifications and charges as the suspension notice, but increased the penalty to termination.⁶ Thereafter, an MPD Hearing Panel recommended sustaining all charges against the Grievant and that termination was the appropriate penalty. On November 10, 2015, Acting Director Lennie Moore, the deciding official, accepted the Panel's recommendations, and issued the Grievant a Final Notice of Adverse Action, terminating him effective January 15, 2016.⁷

FOP appealed Grievant's termination to the Chief of Police, asserting that the proposed termination notice exceeded the 90-day requirement set forth in D.C. Official Code § 5-1031.⁸ MPD denied the Grievant's appeal, and FOP filed for arbitration.

The Arbitrator considered two issues: (1) whether MPD violated the 90-day time limit for taking corrective action, as set forth in D.C. Official Code § 5-1031; and (2) whether MPD had just cause to terminate the Grievant, and if not, what was the appropriate remedy?⁹ The Arbitrator determined that MPD violated the 90-day rule and reversed the Grievant's discipline.¹⁰

The Arbitrator concluded that the proposed termination notice was untimely. In considering the issue, the Arbitrator determined that the 90-day rule and the D.C. Municipal Regulation (DCMR) governing the proposed termination notice were enacted to "end the uncertainty inherent in the investigation process."¹¹

³ Award at 8.

⁴ Award at 9.

⁵ Award at 9.

⁶ Award at 10.

⁷ Award at 10.

⁸ Award at 10.

⁹ Award at 2.

¹⁰ Award at 28-29.

¹¹ Award at 18.

Decision and Order
PERB Case No. 19-A-08
Page 3

MPD argued that a criminal investigation tolled the 90-day time period for proposing the termination. The Arbitrator found that MPD failed to provide sufficient evidence of a criminal investigation, and concluded that there was no criminal investigation that would toll the time period for proposing an adverse action.

The Arbitrator further determined that, even if a criminal investigation occurred as MPD asserted, the proposed termination notice was untimely.¹² The Arbitrator found that MPD had exceeded the 90-day rule when eighty-five (85) days had passed between the date MPD asserted the criminal investigation concluded and the date MPD proposed Grievant's suspension, and fifteen (15) days had elapsed between the Chief of Police's remand and the issuance of the termination notice.

The Arbitrator, having determined that MPD violated the 90-day rule, then considered whether the 90-day rule is directory or mandatory. The Arbitrator compared conflicting case law on the matter. The Arbitrator concluded that the 90-day rule is mandatory, but considered MPD's argument that it was directory and applied the *JBG Properties, Inc. v. D.C. Office of Human Rights* balancing test.¹³ The Arbitrator considered the Parties' arguments and evidence, and found that, even if the 90-day rule was directory, MPD failed to meet its burden under the balancing test that the delay did not substantially prejudice the Grievant.¹⁴ Therefore, the Arbitrator concluded that, even if the 90-day rule was directory, MPD would still be liable for the violation.

Finally the Arbitrator considered whether FOP waived its right to raise a violation of the 90-day rule with respect to the proposed suspension notice. MPD argued that the 90-day rule is directory and FOP could not assert a violation at arbitration because FOP was required to raise the issue at the administrative stage. The Arbitrator concluded that the 90-day rule is mandatory and jurisdictional and thus FOP had the right to raise the issue at arbitration, even if it had failed to raise the issue previously.¹⁵

Notwithstanding his determination that the 90-day rule is mandatory and jurisdictional, the Arbitrator nevertheless considered MPD's argument that the 90-day rule is directory, and still found that FOP did not waive its right to raise the issue, because FOP had raised the issue in its appeal of the proposed termination notice to the Chief of Police.¹⁶ The Arbitrator found that MPD was on notice that FOP might raise an argument concerning tolling, and concluded that FOP's argument had not been waived.¹⁷

The Arbitrator sustained the grievance, because "MPD violated the 90-day time limit for taking corrective action as set forth in D.C. Code § 5-1031."¹⁸ As a remedy, the Arbitrator

¹² Award 17.

¹³ Award 23-24.

¹⁴ Award at 24.

¹⁵ Award at 25.

¹⁶ Award at 25.

¹⁷ Award at 26.

¹⁸ Award at 28. The Arbitrator noted that "MPD had just cause to terminate the Grievant."

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PERB Case No. 19-A-08
Page 4

ordered MPD to reinstate the Grievant to his former position, subject to meeting all applicable fitness for duty requirements. The Arbitrator also ordered MPD to make Grievant whole for any loss in pay or benefits, such amount to be offset by any interim earnings, and for the Grievant's personnel file to reflect rescission of his termination.

III. Discussion

In its Request, MPD argues that the Award is contrary to law and public policy, on the grounds that (1) the Arbitrator misapplied the provision of the 90-day rule related to tolling for a criminal investigation; (2) the remand period for the proposed termination notice should not have been included in the calculation of the 90-day period for commencing an adverse action; and (3) the Arbitrator improperly determined that the 90-day rule is mandatory. FOP filed an opposition to the MPD's arbitration review request, asserting that MPD's arguments are a mere disagreement with the Arbitrator's findings and conclusions.

In the absence of a clear violation on the face of the award, the Board may not modify or set aside an award as contrary to law and public policy.¹⁹ MPD has the burden to demonstrate that the award itself violates established law or compels an explicit violation of a "well-defined public policy grounded in law or legal precedent."²⁰

A. Tolling because of the Criminal Investigation

The Board finds that the Arbitrator's determination of whether a criminal investigation in this case tolled the 90-day rule was a factual determination. In its Request, MPD asserts that the Arbitrator misapplied the tolling provision of the 90-day rule by conducting an improper inquiry into the substance of the investigation.²¹ MPD argues that it provided evidence of the beginning of the criminal investigation, as well as the end of the investigation, which the Arbitrator was bound to accept.²²

Before the Arbitrator, MPD argued that an investigation began on July 2, 2014, the day it became aware of the incident, and ended on September 8, 2014, the day MPD received the United States Attorney's Office (USAO) letter from the US Attorney's Office stating that it declined to prosecute the Grievant. However, the Arbitrator stated that the July 2, 2014 Incident Summary Sheet provided by MPD listed the incident as "officer misconduct" and the allegations as "abuse of authority."²³ The Arbitrator found that these entries could indicate commencement of an administrative investigation. They did not on their face prove the commencement of a criminal investigation.²⁴ Further, the Arbitrator noted that MPD did not provide evidence to the Hearing Panel regarding when the investigation began. For all of these reasons, the Arbitrator

¹⁹ *FOP/Dep't of Corr. Labor Comm. v. PERB*, 973 A.2d 174, 177 (D.C. 2009).

²⁰ *American Postal Workers Union, AFL-CIO V. United States Postal Service*, 789 F.2d 1, 8 (D.C. Cir. 1986).

²¹ Request at 10-11.

²² Request at 10-11.

²³ Award at 27.

²⁴ Award at 27-28.

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ruled that MPD failed to meet its burden of proof to establish the start and end dates of a criminal investigation.²⁵

MPD's arguments in its Request concerning tolling are mere disagreements with the factual determinations of the Arbitrator. A disagreement with an arbitrator's factual determinations is not a basis for overturning an award.²⁶ The Board has long held that it does not act as a finder of fact nor does it substitute its judgment for that of the arbitrator on credibility determinations and the weight afforded to evidence.²⁷ By submitting a matter to arbitration, the parties agree to be bound by the Arbitrator's interpretation of the parties' agreement, related rules and regulations, as well as the evidentiary findings on which the decision is based.²⁸ The Board may not modify or set aside an award because MPD disagrees with the Arbitrator's evidentiary finding. MPD has failed to meet its burden that the Award is contrary to law and public policy.

B. Timeliness of the Proposed Termination Notice

The Arbitrator's calculation of lapsed time relative to the 90-day rule is not contrary to law and public policy. In its Request, MPD argues that the Arbitrator incorrectly determined that the 90 days included the fifteen days between when the Chief of Police remanded the proposed suspension notice and the issuance of the proposed termination notice.²⁹

The Arbitrator considered the language of the 90-day rule, which states in pertinent part:

Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Metropolitan Police Department had notice of the act or occurrence allegedly constituting cause.³⁰

The statute is silent as to the computations for the 90-day period in situations where the penalty is remanded.

In determining whether the remand period should be included in the computation of the 90 days, the Arbitrator considered 6B DCMR § 1618.2, which identifies the information that

²⁵ Award at 26.

²⁶ *FOP/Dep't of Corrections Labor Comm. v. D.C. Dep't of Corrections*, Slip Op. No. 1271, PERB Case No. 10-A-20, at p. 6 (May 12, 2012).

²⁷ *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 11295, Slip Op. No. 1491 at 4, PERB Case No. 09-A-14(R) (2014); *See also AFSCME, District Council 20, Local 2743, AFL-CIO v. D.C. Dep't of Consumer and Regulatory Affairs*, 38 D.C. Reg. 5076, Slip Op. No. 281, PERB Case No. 90-A-12 (1991).

²⁸ *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 47 DC Reg. 7217, Slip Op. No. 633 at 3, PERB Case No. 00-A-04 (2000); *MPD and FOP/Metro. Police Dep't Labor Comm. (Grievance of Angela Fisher)*, 51 DC Reg. 4173, Slip Op. No. 738, PERB Case No. 02-A-07 (2004).

²⁹ Request at 13.

³⁰ D.C. Official Code § 5-1031(a-1(1)).

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must be included in a notice of proposed adverse action.³¹ He noted that the regulation does not state that the notice of the charges and specifications is more important than the notice of the penalty, and that the regulation lists all those elements as co-equal notice requirements.³² Based on this reasoning, the Arbitrator found that if changes to the charges or specifications affect the 90-day period, as MPD admitted, then so did a change to the penalty.³³ The Arbitrator found that the Grievant resumed a period of uncertainty as to what discipline would be imposed after the Chief of Police remanded the proposed suspension notice. The Arbitrator determined that the remand period must be included in the 90-day calculation.³⁴

As stated above, by submitting a matter to arbitration, parties are bound by the arbitrator's interpretation of the collective bargaining agreement, related rules and regulations, and evidentiary and factual findings. In this case, MPD has failed to point to any specific law or public policy violated by the Award. Accordingly, the Board finds that MPD's request is merely a disagreement with the Arbitrator's evidentiary findings and conclusions.

C. Mandatory v. Directory

The Board finds that the Arbitrator's conclusions regarding the 90-day rule are not contrary to law and public policy.

Addressing MPD's argument that the Arbitrator improperly found that the 90-day rule is mandatory,³⁵ the Board notes that since the *Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Best)* decision, the Board has applied the Superior Court decision that the 90-day rule is directory, not mandatory.³⁶ Notwithstanding, the Board does not have original jurisdiction over the statute establishing the 90-day rule. The Superior Court has rendered conflicting opinions as to whether the 90-day rule is mandatory or directory.³⁷ Until the Court of Appeals has made a final determination on the issue, an award cannot be contrary to law and public policy, on its face, whether an arbitrator determines the 90-day rule is mandatory or directory. Therefore, the Board finds that the Award is not contrary to law and public policy.

MPD argues that the Arbitrator did not correctly apply the balancing test to the 90-day rule. Even though he determined that the 90-day rule is mandatory, the Arbitrator considered

³¹ Award at 18.

³² Award at 19.

³³ Award at 19.

³⁴ Award at 18.

³⁵ Award at 22. Based on the Board's interpretation of the 90-day rule in previous Decisions and Orders the Arbitrator concluded that the 90-day rule is mandatory.

³⁶ See *FOP/Metro. Police Dep't Labor Comm. v. MPD*, 63 D.C. Reg. 14526, Slip Op. 1595, PERB Case No. 15-A-12 (2016); *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 64 D.C. Reg. 10152, Slip Op. No. 1639, PERB Case No. 16-A-12 (2017); *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 64 D.C. Reg. 2012, Slip Op. No. 1606, PERB Case No. 16-A-19 (2016).

³⁷ *MPD v. PERB*, Case No. 2012 CA 007805 P(MPA) (D.C. Sup. Ct. July 17, 2014); *FOP/MPD Labor Comm. v. PERB*, Case No. 2015 CA 0006517 P(MPA) (D.C. Sup. Ct. Sept. 13, 2016); *FOP/MPD Labor Comm. v. PERB and MPD*, Case No. 003948 P(MPA) (D.C. Sup. Ct. May 1, 2019).

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MPD's actions under a directory statutory interpretation of the 90-day rule. The Arbitrator applied the balancing test set forth in *JBG Properties, Inc.*, and found that MPD failed to meet its burden of proof.³⁸ Specifically, before the Arbitrator MPD argued that in termination cases, a delay is not prejudicial, if it does not undermine the officer's defense and the officer kept his job during the delay period. The Arbitrator rejected this argument, finding that MPD's interpretation would effectively eliminate the 90-day notice requirement from most termination cases.³⁹ MPD also argued that the Grievant was not prejudiced by MPD's delay, because he was on notice that he would be served with a notice of adverse action 90-days after the USAO's declination letter. The Arbitrator rejected this argument, stating that putting the Grievant on notice that a notice would be delivered by a date past the 90-day requirement did not alleviate the prejudice caused by the additional period of uncertainty.⁴⁰ Finally, MPD argued that it needed to ensure that officers were not kept on the force due to a technicality. The Arbitrator rejected MPD's argument. The Arbitrator relied upon the D.C. Council Committee report, and found that the Chief of Police had made a similar argument before the D.C. Council Committee, and that "[t]he Committee acknowledged her [the Chief of Police's] concern but emphasized that the value in an expeditious and efficient process for investigating misconduct outweighed her public policy concern."⁴¹

The Arbitrator also differentiated the Grievant's case from the *Best* case's⁴² "paradigm of a *de minimus* delay," and found that, even accepting MPD's argument that a criminal investigation tolled the 90-day period by 10 days, that a 10-day delay was more than a ten-percent delay and more than *de minimus*.⁴³ Moreover, the Arbitrator noted that, as he did not find a criminal investigation had commenced, the resulting 50-day delay was even more egregious.⁴⁴ The Arbitrator found that MPD failed to meet its burden to demonstrate that the delay did not substantially prejudice the complaining party.

The Board has stated that this balancing test rests on a factual finding and the agency bears the burden of demonstrating that the delay did not substantially prejudice the complaining party.⁴⁵ Consequently, the Board finds that MPD merely disputes the Arbitrator's factual findings. The Board concludes that the Arbitrator's application of the balancing test is not contrary to law and public policy.

³⁸ *Metropolitan Police Department v. Fraternal Order of Police/Metropolitan Police Department Labor Committee (on behalf of Best)* 2012 CA 007805 (D.C. Super. Ct. July 17, 2014) (applying *JBG Properties* analysis as to whether the prejudice to a party caused by an agency's delay is outweighed by the interests of the other party or the public in allowing the agency to act after the statutory time period has elapsed).

³⁹ Award at 24.

⁴⁰ Award at 24.

⁴¹ Award at 25.

⁴² 2012 CA 007805 P(MPA), (D.C. Sup. Ct. July 17, 2014)

⁴³ Award at 25, fn. 3.

⁴⁴ Award at 25, fn. 3.

⁴⁵ *MPD v. FOP/Metro. Police Dep't Labor Comm.*, 61 D.C. Reg. 11295, Slip Op. No. 1491 at 3, PERB Case No. 09-A-14(R) (2014).

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IV. Conclusion

The Board rejects the MPD's arguments and finds no grounds to modify, set aside, or remand the Award. Accordingly, MPD's Arbitration Review Request is denied and the matter is dismissed in its entirety with prejudice.

ORDER

IT IS HEREBY ORDERED THAT:

1. The arbitration review request is hereby denied.
2. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of Board Chairperson Charles Murphy and Board Members Ann Hoffman, Mary Anne Gibbons, and Douglas Warshof.

August 15, 2019

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 19-A-08, Op. No. 1724 was sent by File and ServeXpress to the following parties on this the 18th day of September, 2019.

Connor Finch, Esq.
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/s/ Merlin M. George

PERB

DISTRICT OF COLUMBIA PUBLIC SCHOOLS

NOTICE OF PROPOSED ACTION

School Closing

The Chancellor of the District of Columbia Public Schools (DCPS) announces a proposed action to close a school program, pursuant to Subtitle 5-E, Section 3607.1 of the District of Columbia Municipal Regulations.

The proposed action involves closing Washington Metropolitan High School. The proposed action is intended to accommodate students who currently attend Washington Metropolitan High School in a more appropriate program that is better equipped to serve their needs. This will also reduce inefficiencies that currently exist in the underutilized building that houses the school program.

On an annual basis, DCPS reviews school enrollment and building utilization data to determine if changes need to be made to its portfolio of schools and programs. DCPS’ recommendation to close Washington Metropolitan High School is based on the following factors (1) articulation with other schools; and (2) student population related to capacity. Findings and recommendations supporting this proposed action are explained below.

FINDINGS AND RECOMMENDATIONS FOR CLOSURE FOR 2020-2021 SCHOOL YEAR

DCPS currently has four Opportunity Academies: Ballou STAY (Ward 8), Luke C. Moore (Ward 5), Roosevelt STAY (Ward 4), and Washington Metropolitan (Wash Met, Ward 1). Opportunity Academies offer a personalized competency-based learning program to ensure that all students in the district have a positive pathway to post-secondary success. Students who are off-track for graduation or promotion in their current middle or high school may transfer to an Opportunity Academy. In addition, many students who have been disconnected from school reengage to attend an Opportunity Academy. Several years of Washington Metropolitan’s school operations data demonstrate limited progress and low levels of student connection, low student enrollment, and minimal student engagement as compared to the other Opportunity Academies in DCPS’ portfolio. The following are key findings that support the proposed action:

As a result of low enrollment, Washington Metropolitan has the lowest building utilization rate of 32%. This means that the school is utilizing 32% of its building when you compare the enrollment with the building capacity. All other Opportunity Academies have higher than 70% utilization rates for their buildings.

Audited Enrollment

	Wash Met	Ballou STAY	Luke C. Moore	Roosevelt STAY
SY16-17	125	466	266	613

SY17-18	195	495	251	515
SY18-19	136	524	288	648
SY19-20*	157	492	280	761

**Reported enrollment*

Student engagement, as measured by attendance rates, is less than 40% at Washington Metropolitan High School. This is much lower than the attendance rates at other Opportunity Academies which are all above 50%. The schools limited progress can also be demonstrated from a history of low number of graduates as compared to other Opportunity Academies.

Attendance

	Wash Met	Ballou STAY	Luke C. Moore	Roosevelt STAY
SY16-17	51.6%	58.4%	53.0%	62.1%
SY17-18	28.7%	53.9%	51.2%	43.2%
SY18-19	28.5%	47.0%	49.9%	54.4%
SY19-20	39.1%	50.9%	51.4%	52.5%

Number of Graduates

(Note: This indicates the total number of graduates per year, not the 4-year adjusted cohort.)

	Wash Met	Ballou STAY	Luke C. Moore	Roosevelt STAY
SY16-17	53	147	116	103
SY17-18	18	97	59	84
SY18-19	31	97	63	70

Based on these findings, DCPS proposes to close Washington Metropolitan High School at the end of SY19-20. DCPS will provide individualized transition supports to students to facilitate enrollment in another school option that best meets their needs.

A special community meeting is scheduled for 6-7:30 PM on December 9, 2019 (Location: Washington Metropolitan High School, 300 Bryant Street NW). Notice of this meeting was given in accordance with Subtitle 5, Section 3608 of the District of Columbia Municipal Regulations.

**SOCIAL JUSTICE PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

The Social Justice School PCS solicits proposals for the following:

Start-up services consulting around finance, HR, and student data infrastructure and processes, training and ongoing reporting throughout its planning year.

Proposals shall be submitted as PDF documents no later than 5:00 PM on Thursday, December 12, 2019. Contact: info@thesocialjusticeschool.org

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, December 19, 2019 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|-----|-------------------------------|--|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Vice-President,
Wastewater Ops |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Senior VP |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Senior VP |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Water Quality Monitoring | Senior Director, Water Ops |
| 7. | Action Items | Senior VP
Senior Director, Water Ops
Director, Customer Care |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20134 of TWPR Developer, LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle K § 921.1 from the maximum linear ground-floor building frontage restriction of Subtitle K § 902.7(e), to develop a mixed used project with ground floor retail in the WR-2 Zone at premises 7100 Georgia Avenue N.W. (Square 2950, Lot 846).

HEARING DATES: October 23, 2019 and November 13, 2019¹
DECISION DATE: November 13, 2019

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 9 (Corrected); Exhibit 5 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 4A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on September 3, 2019, at which a quorum was present, the ANC voted 7-0 to support the application. (Exhibit 33.)

OP Report. The Office of Planning submitted a report recommending approval of the application, with conditions. (Exhibit 31.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 32.)

Special Exception Relief

¹ The public hearing was postponed from October 23, 2019 to November 13, 2019 at the Applicant's request. (Exhibit 37-38.)

The Applicant seeks relief under Subtitle X § 901.2, for special exception under Subtitle K § 921.1 from the maximum linear ground-floor building frontage restriction of Subtitle K § 902.7(e), to develop a mixed used project with ground floor retail in the WR-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 PLANS² AT EXHIBITS 30A-30C2 AND WITH THE FOLLOWING CONDITIONS:**

1. Any tenant occupying the leasable space shown as “0102 Retail Tenant” in the floor plan in Exhibit 30A or occupying any portion of that space that fronts on Elder Street, N.W. shall provide windows on Elder Street, N.W. that provide visual access into the leasable space, as described in this condition. Transom windows located eight feet or more above the adjacent grade shall not be subject to the limitations of this condition.
 - a. If the use is an eating or drinking establishment use, the windows shall provide open views into either the seating or bar areas, or into an active kitchen food preparation area. However, tenant signs or displays applied to the window and digital displays mounted immediately behind a window may cumulatively occupy up to 25% of the total horizontal width of all windows on Elder Street, N.W.
 - b. If the use is a retail, service, or other commercial use, the windows shall provide open views into publicly accessible areas of the use, such as a shopping aisle. Display cases or other furnishings, not including chairs, shall not block the windows; However, tenant signs or displays applied to the window and digital displays mounted immediately behind a window may cumulatively occupy up to 25% of the total horizontal width of all windows on Elder Street, N.W. Any shelves shall be placed no closer than five feet to the windows, or, if projecting show windows are present, five feet from the exterior plane of the main façade.

² 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.

- 2. An Office use, as defined in Subtitle B § 200.2(x), shall not be permitted in the leasable space shown as “0102 Retail Tenant” in the floor plan in Exhibit 30A.

VOTE: 3-0-2 (Frederick L. Hill, Carlton E. Hart, and Anthony J. Hood to APPROVE; Lesylleé M. White 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 15, 2019

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

**BZA APPLICATION NO. 20134
PAGE NO. 3**

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 FOR THE DISTRICT OF COLUMBIA
NOTICE OF CLOSED MEETINGS**

TIME AND PLACE:

**Monday, December 2, 2019, @ 3:00 p.m.
Monday, December 9, 2019, @ 3:00 p.m.
Monday, December 16, 2019 @ 3:00 p.m.**

Via Telephone Conference

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

On Mondays, December 2, 9, and 16, 2019, the Board of Zoning Adjustment, in accordance with § 406 of the District of Columbia Administrative Procedure Act (“Act”)(D.C. Official Code § 2-576), hereby provides notice it will hold closed meetings at the dates, times, and places noted above, regarding cases noted on the agendas for the meetings and hearings to be held on the following Wednesdays in order to receive legal advice from its counsel, and to deliberate, but not voting, on the contested cases, per § 405(b)(4) and (13) of the Act (D.C. Official Code § 2-575(b)(4) and (13)). Per D.C. Official Code §1-207.42(a), “no resolution, rule, act, regulation, or other official action” shall take place except at an open public meeting. The closed meeting will be electronically recorded pursuant to D.C. Official Code § 2-578(a)

**FREDERICK L. HILL, CARLTON E. HART, LORNA L. JOHN----- BOARD OF ZONING
ADJUSTMENT FOR THE DISTRICT OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR,
AND BY CLIFFORD MOY, SECRETARY TO THE BOARD OF ZONING ADJUSTMENT.**

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 17-21
Z.C. Case No. 17-21
As You Like It, LLC
(Consolidated PUD and Related Map Amendment
@ Square 498, Lot 52 [501 I Street, S.W.]
June 10, 2019

Pursuant to notice, the Zoning Commission for the District of Columbia (the “Commission”) held a public hearing on March 28, 2019 to consider an application from As You Like It, LLC (the “Applicant”), on behalf of Erkiletian Development Company (“Developer”) and Shakespeare Theatre Company (“STC”), for review and approval of a consolidated planned unit development (“PUD”) and related amendment to the Zoning Map from the R-3 zone to the MU-4 zone (together, the “Application”) for Lot 52 in Square 498, with an address of 501 I Street, S.W. (the “PUD Site”). The Commission considered the Application pursuant to Subtitles X and Z of 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

BACKGROUND

Setdown

1. On November 7, 2017, the Applicant filed the Application for consolidated review and approval of a PUD and related Zoning Map amendment from the R-3 zone to the MU-4 zone and requested the Commission set down the Application for a public hearing. (Exhibit [“Ex.”] 2.)
2. On December 13, 2017, Advisory Neighborhood Commission (“ANC”) 6D, the “affected ANC” per Subtitle Z § 101.8, filed a report opposing setdown of the Application due to outstanding questions and issues regarding the Comprehensive Plan (Title 10A of the DCMR) (“CP”), the Small Area Plan (“SAP”) for the neighborhood that includes PUD site, the project design, and community negotiations. (Ex. 11.)
3. At a public meeting on January 29, 2018, the Commission considered setdown and deferred a decision to allow the Applicant and the ANC to negotiate further. (Transcript of January 29, 2018 Meeting at 64-77.)
4. On February 26, 2018, the ANC filed a letter reiterating its concerns and opposing setdown, although the ANC letter acknowledged that the Applicant had begun conversations with the ANC regarding its concerns. (Ex. 18.)
5. At its February 26, 2018, public meeting, the Commission unanimously voted to set down the Application for a public hearing.

6. On December 18, 2018, the Applicant requested a postponement of the public hearing, originally scheduled for January 24, 2019.

Notice

7. Notice of the public hearing rescheduled to March 24, 2019, was published in the *D.C. Register* on January 11, 2019, in Volume 66, Issue 2, and was mailed to ANC 6D and to owners of property within 200 feet of the PUD Site. (Ex. 25, 27-30.)
8. The Applicant posted notice of the public hearing at the PUD Site on February 13, 2019 and filed an affidavit describing the maintenance of that notice on March 25, 2019. (Ex. 35, 45.)

Parties

9. In addition to the Applicant, ANC 6D was automatically a party in this proceeding and submitted a report and testimony in support of the Application. (Ex. 49, 53.)
10. United Neighbors of Southwest (“UNSW”) submitted a request for party status in opposition. (Ex. 16, 21, 44.) At its public meeting on December 17, 2018, the Commission approved UNSW as a party in opposition. UNSW later updated its list of members and withdrew its party status in opposition at the public hearing based on the current plan, compromises, and commitments agreed to by the Applicant. (Ex. 44; March 28, 2019 Hearing Transcript (“Mar. Tr.”) at 107-108.)
11. Martin Welles (“Welles”) also submitted a request for party status in opposition. (Ex. 40.) At the public hearing on March 28, 2019, the Commission denied Mr. Welles’ application for party status, noting that Welles was not uniquely affected by the application.

PUD Site

12. The PUD Site consists of approximately 36,476 square feet of land area and is located at the corner of 6th Street, S.W. and I Street, S.W. in Ward 6. (Ex. 2.)
13. The PUD Site is located approximately four blocks away from the Waterfront Metrorail station. (Ex. 2.)
14. The PUD Site is adjacent to and across the street from a series of mostly two- and three-story townhouses, including one four-story townhouse, as well as a three- to four-story mid-block apartment building.
15. The PUD Site is located in the R-3 zone. Much of the nearby property is also located in the R-3 zone, although the parcel immediately to the north is located in the RA-2 zone and the property to the southwest of the PUD Site is located in the RA-4 zone. (Ex. 2.)
16. The CP’s Future Land Use Map (“**FLUM**”) designates the PUD Site in the Institutional Land Use category. The CP’s Generalized Policy Map (“**GPM**”) designates the majority

of the PUD Site as “Institutional,” while a small portion at the northeast corner of the site is designated as a Neighborhood Conservation Area. (Ex. 2.)

THE APPLICATION

The Project

17. The Application proposes to construct a four-story main building (the “Main Building”) connected below grade to a four-and-a-half story annex (the “Annex,” and collectively with the Main Building, the “Project”) that is separate above grade.
18. The Project will be constructed to a height of approximately 48 feet¹ and density of 2.87 floor area ratio (“FAR”), composed of approximately 104,660 square feet of total gross floor area (“GFA”), divided between 13,860 square feet of office and arts, design, and creation uses and 90,800 square feet of residential uses that feature a mix of studio, one-bedroom, two-bedroom, and three-bedroom units. (Ex. 39E1-39E9, 52E.)
19. The Project will house 64 for-sale residential units (the “Residential Component”) and space for STC devoted to office, rehearsal, education, costume-shop uses, approximately 18 actor housing units, and approximately 18 beds for fellows (the “STC Component”). The below-grade level includes STC rehearsal and costume shop spaces. The ground floor of the building will include both STC office uses and residential uses. The second, third, and fourth floors are all for residential uses. (Ex. 2, 20, 38, 51.)
20. The Applicant will set aside eight percent of the residential GFA, or approximately 6,831 square feet of GFA, as affordable housing at 80% of Median Family Income (“MFI”). The affordable housing set-aside includes a commitment to three three-bedroom units, one two-bedroom unit, and one studio unit. (Ex. 52E.)
21. All parking and loading for the Project will be accessed from the private driveway (the “Private Driveway”) located along 6th Street, S.W. at the west side of the PUD Site. The Project will include approximately 40 vehicular parking spaces on site, two on the surface and 38 spaces below grade in the garage, and STC will make an additional 15 parking spaces available off-site. Additionally, approximately 67 long-term bicycle parking spaces are located within the garage, as well as 16 short-term bicycle parking spaces located in the streetscape along I Street, S.W. (Ex. 2, 20, 38, 51.)
22. Overall, the Project uses a combination of high-quality materials and architectural design details to create a new building on a vacant lot that provides an attractive, context-appropriate design:
 - (a) Along I Street, S.W., the architectural design includes a more institutional façade with a sweeping, gently curved glass façade. The I Street, S.W. design also incorporates the kind of art envisioned for this arts corridor with a bas-relief quill along the building façade and art panels in public space along I Street. The main

¹ The Annex has a height of 48 feet, 2 inches.

entrances to both the STC Component and Residential Component complete the interactive, pedestrian-focused nature of the I Street, S.W. façade; and

- (b) Along 6th Street, S.W., the architectural design transitions to a lower-density residential feel with a primary brick façade with punched windows and a series of ground-floor walk-out residential units and bays that create a townhouse rhythm. The 6th Street, S.W. streetscape design also includes a streetscape similar to the nearby 6th Street, S.W. townhouses that creates a “front yard” to complete the townhouse rhythm.

(Ex. 2, 20, 39, 51, 52.)

23. In response to concerns raised by the ANC and UNSW, the Applicant revised the Project to render its height and mass consistent with and sensitive to the surrounding context by: (Ex. 2, 20, 39, 51, 52.)

- (a) Setting back the fourth floor of the Project along 6th Street, S.W. and removing the habitable penthouse units, so that the Project reads as similar to the three-story townhouse rhythm along 6th Street, S.W.; and
- (b) Reducing the footprint of the Annex and relocating it to the south, away from the apartment building and townhouses to its north. The first floor of the Annex is partially below grade, so the four- and one-half-story Annex is not inconsistent with its closest neighbor, the three- and four-story apartment building immediately north.

Requested Zoning Map Amendment

24. The Applicant requested a PUD-related amendment to the Zoning Map from the R-3 zone to the MU-4 zone to permit the Project to achieve the requested mix of uses, height, and density.
25. The R-3 zone permits the following as a matter of right:
- Minimum lot width of 20 feet and a minimum lot area of 1,600 square feet;
 - Maximum height of 40 feet and three stories; and
 - Maximum lot occupancy of 60% for residential dwellings.
26. For a residential development that triggers inclusionary zoning, the MU-4 zone permits:
- Maximum density (instead of lot dimension standards) of 3.0 FAR as a matter of right, and 3.6 FAR as a PUD;
 - Maximum height of 50 feet as a matter of right, or 65 feet as a PUD; and
 - Maximum lot occupancy is 75% for residential uses.

Requested PUD Flexibility

27. The Applicant requested flexibility from the following development standards of the MU-4 zone:

- The lot occupancy requirements of Subtitle G § 404 – only for the ground floor, where the Project will slightly exceed the lot occupancy requirement to accommodate STC’s operational needs, while all other floors are compliant with the lot occupancy requirements;
- The court requirements of Subtitle G § 202 for a substandard closed court on the ground floor that provides protected windows along the Project’s eastern façade;
- The rear yard requirements Subtitle G § 405 for a substandard rear yard for the Annex due to the narrowness of the lot. The overall area of the rear yard provided by the Project exceeds the minimum required; and
- The single uniform penthouse requirements of Subtitle G § 203 and Subtitle C § 1500 to accommodate a separate roof stair and elevator override of uneven height on the north side of the Main Building in order to remove the habitable units in the penthouse in response to concerns of the ANC and UNSW, as outlined in the Office of Planning’s (“OP”) Final Report and detailed in the Applicant’s written submissions and testimony at the public hearing. (Ex. 39, 39E1-39E9, 42.)

PROJECT’S PROPOSED AMENITIES AND PUBLIC BENEFITS

28. As detailed in the Applicant’s testimony and written submissions, the Project will implement the following project amenities and public benefits: (Ex. 2, 39, 52, 63.)

- (a) Superior Urban Design and Architecture. The Project exhibits many characteristics of exemplary urban design. Specific features include contextually-appropriate building materials and design, modulations in scale through setbacks and bays to integrate the building design into the community context, and a public space design that reflects the different frontages of the project and matches existing context;
- (b) Site Planning and Efficient and Economical Land Utilization. The PUD Site is currently vacant and fails to capitalize on its prominent location near the Waterfront Metrorail station. The PUD Site currently contains no active use, which discourages pedestrian activity. The Project transforms a vacant and underutilized site into an attractive mixed-use development, with well-located and carefully designed parking and loading locations for the Project that are separated from the primary pedestrian entrances;

- (c) Housing. The Project will create approximately 64 new residential for-sale units in a zone where approximately only 12 residential townhouses could be constructed. The Project also includes three-bedroom units, which are specifically called out as a public benefit. The Project will also include 18 apartments for actors and 18 beds for STC fellows, providing housing for arts populations who might otherwise not be able to live in the District;
- (d) Affordable Housing. The Applicant will provide eight percent of the gross residential area in the proposed building for affordable dwelling units at 80% of the MFI. This will result in approximately 8,631 square feet of affordable housing within five units. Of note, three of the five affordable units are three-bedroom units, which would not otherwise be required under the inclusionary zoning proportionality requirements. A matter-of-right project in the existing R-3 zone would yield approximately 12 rowhouses, including one affordable townhouse, factoring in frontage and site access requirements (assuming that the total number of rowhouses is not reduced to 9 rowhouses to avoid an IZ requirement altogether). (Ex. 21). Accordingly, the amount of housing and affordable housing that exceeds matter-or-right development is considered a public benefit of the PUD;
- (e) Environmental and Sustainable Benefits. The Applicant will achieve a minimum of Gold certification under the LEED-2009 rating system. The Project will also integrate other sustainable design features, including solar panels as a renewable energy source on the roof of the Project. The Project will also include two electric vehicle charging stations in the parking garage;
- (f) Streetscape Plans. The existing streetscape lacks pedestrian activity and attractive landscaping that would otherwise enliven the sidewalks. Further, the 6th Street, S.W. streetscape is the only block on this stretch of 6th Street, S.W. that does not match the existing streetscape design. The Applicant proposes streetscape improvements that will better integrate the Project into the community. Along 6th Street, S.W., the Applicant will construct the “flipped” streetscape to match the existing streetscape in this two-block stretch, bringing the PUD Site into its surrounding context. Along the I Street, S.W. frontage, the Applicant will include art panels in the streetscape to enhance this arts corridor;
- (g) Uses of Special Value
- i. Public Art. The Applicant will create public art components along the I Street, S.W. frontage of the Project. First, there will be brick relief art on the I Street pillar of the Project. Second, there will be transparent etched art panels showing Shakespeare’s themes in the public space along I Street, S.W. Third, the Project will include a rotating costume display in the residential lobby at the corner of 6th and I Streets, S.W. The public art

will enhance the character of I Street, S.W. as an “arts” corridor and evoke the relationship of the Project to William Shakespeare;

- ii. Bumpouts. In response to community feedback and requests, the Applicant will construct “bumpouts” along the intersections of 6th Street, S.W. with G, H, and I Streets, S.W. The bumpouts will improve pedestrian safety, discourage cut-through traffic, and strengthen the appearance of 6th Street, S.W. north of I Street, S.W. as a true neighborhood street;
- iii. Waterfront Village Performances. The Applicant has committed to partnering with Waterfront Village to support their mission of helping residents age in place at their homes by providing ongoing access to theatre performances. Twice a year, STC will provide the Village with a minimum of 30 tickets to an STC performance, make available transportation to and from the performance, and provide pre- and/or post-show discussions with STC education staff, artistic staff, or actors;
- iv. Southwest Night Performances. Based on discussions with UNSW and the ANC, the Applicant will arrange a “Southwest Neighbors” performance for each STC production, for which Southwest residents will be able to purchase deeply discounted tickets; and
- v. Educational Benefits. The Applicant has also committed to providing \$50,000 to the Amidon-Bowen Elementary Parent Teacher Association (“PTA”) for after-school programs and related facility improvements. The Project will also include space and fasteners for a mural on the east side of the Annex facing the Elementary School, which the PTA will design and create.

Southwest Neighborhood Association (“SWNA”) Agreement Benefits

29. The Applicant recommitted to previous benefits discussed with the community related to the Project based on the 2014 SWNA Agreement, including: (Ex. 61.)
- (a) Support for the SW Arts Fest, the Duck Pond, and the Southwester paper; free tickets to the Ward 6 Free for All performance; discounted access to STC educational programs such as its Master Acting Classes and Camp Shakespeare; and access to the new STC facilities for community meetings; and
 - (b) Invitations to STC children’s performances of The Tiny Tempest and A Mini-Midsummer Night’s Dream for Amidon-Bowen Elementary School and Jefferson Middle School, tours of the STC facilities for students and teachers, and access to the District Shakespeare program for Jefferson Middle School.

PUBLIC HEARING – March 28, 2019

30. A public hearing was conducted on March 28, 2019 (the “Public Hearing”). The Applicant provided testimony from Shalom Baranes and Patrick Burkhart of Shalom Baranes Associates, Maris Fry of Gorove/Slade, and Craig McClure of Parker Rodriguez, Inc., all of whom were admitted as experts in their respective fields.

RESPONSES TO THE APPLICATION

OP Report

31. OP submitted a hearing report on March 18, 2019 that recommended approval of the Application based on the following analysis: (Ex. 42.)
- (a) OP noted that the Applicant had addressed previous concerns raised at setdown by OP and the Commission, including community consultation, more contextual design, transportation issues, impact of rear yard relief, Public Space Committee concept approval of art panels, and increasing affordable housing proffer;
 - (b) OP concluded that the proposed PUD and related rezoning was not inconsistent with the CP as a whole, including the FLUM, the GPM, and the Citywide and Area Elements, as well as the SAP;
 - (c) OP evaluated the proposed PUD and related rezoning under the evaluation standards set forth in Subtitle X, Chapter 3, and concluded that the Project’s benefits and amenities were appropriate given the size and nature of the PUD and related requests for rezoning and flexibility;
 - (d) OP requested the following:
 - i. Information on the proposed off-site parking site;
 - ii. A final curbside management plan for the north side of the 400 block of I Street, S.W.;
 - iii. A response to OP’s recommendation to provide training/employment opportunities for Southwest residents;
 - iv. Final agreements with the ANC or other groups; and
 - v. A revised benefits and proffers list.
32. The Applicant confirmed its satisfaction of these requests for information as follows:
- (a) The Applicant testified at the Public Hearing about the off-street parking site at Arena Stage, and a representative of Arena Stage confirmed its commitment to providing parking for the Applicant; (Mar. Tr. at 34, 117.)
 - (b) The Applicant submitted a final curbside management plan, final agreements with UNSW and the PTA, and a benefits and proffers list; (Ex. 52A, 52C, 63.)
 - (c) The Applicant did not commit to specific training and employment opportunities for the Project as part of its benefits and amenities, although as one of the

Proponents noted, the Project will help improve the local talent pool for actors through its acting classes and its fellows program; and (Mar. Tr. at 120-21.)

- (d) On May 6, 2019, the Applicant submitted its preliminary list of its proffered public benefits and draft conditions, and on May 20, 2019, the Applicant submitted its final list. (Ex. 61, 63,)
33. OP confirmed its recommendation of approval in testimony at the Public Hearing.

DDOT Report

34. The District Department of Transportation (“DDOT”) submitted a report on March 18, 2019 report that stated no objection to the PUD, as confirmed by testimony at the Public Hearing, based on the following analysis: (Ex. 49.)
- (a) DDOT found that the Applicant’s Comprehensive Transportation Review (“CTR”) utilized sound methodology and assumptions to perform the analysis. DDOT concluded that the Project’s loading and parking were adequate for the needs of the Project. DDOT further found that the Project would generate a moderate number of vehicle trips and transit trips from the nearby Waterfront Metrorail station; and
 - (b) DDOT found that the Project would have an impact on the existing roadway network, but that such impacts could be mitigated by the Transportation Demand Management Plan (“TDMP”), Parking Management Plan (“PMP”), and Loading Management Plan (“LMP”) proposed by the Applicant, with certain additions which the Applicant agreed to. DDOT also concluded that the proposed amount of vehicle and bicycle parking was sufficient given the Project’s location and other features. DDOT also noted that it would work with the Applicant on other streetscape design details through the public space permitting process.

ANC 6D Reports

35. ANC 6D submitted a report on March 27, 2019 (the “1st ANC Report”), stating that at a regularly-scheduled and duly-noted public meeting on March 11, 2019, with a quorum present, ANC 6D voted to support the proposed PUD and related rezoning, with the following conditions: (Ex. 49.)
- (a) The Public Space Committee’s approval of a 6th Street, S.W. streetscape plan;
 - (b) The execution of Memorandum of Understanding (“MOU”) with UNSW; and
 - (c) The execution of a MOU with the PTA to “include public and school benefits, building design and proposed uses, curbside and construction management plans and additional benefits from the 2014 SWNA agreement.”

36. The Applicant confirmed its satisfaction of these conditions as follows:
- (a) The Applicant testified that the Public Space Committee approved the 6th Street Streetscape on March 28, 2019; (Mar. Tr. at 12-13.)
 - (b) The Applicant submitted the executed MOU with UNSW on March 28, 2019; and (Ex. 52C.)
 - (c) The Applicant submitted the executed MOU with the PTA on April 15, 2019. (Ex. 58.)
37. The First ANC Report also listed several additional issues and concerns that the ANC stated had been resolved by the Applicant:
- (a) The Applicant's "redesign" of the building that changed the massing and organization of the building to incorporate a "three story townhouse rhythm," eliminated the residential units in the penthouse, and a setback of the fourth floor;
 - (b) The redesign of the streetscape to "flip" it to match the urban renewal design of the surrounding townhouses, but approval of the revised streetscape design would not happen until the morning of the scheduled zoning hearing, and if this approval was not obtained the ANC would withdraw its support of the application;
 - (c) The ANC expressed support for homeownership units and was supportive of the Applicant's assurance that it would include a provision in the condominium by-laws requiring a certain percentage of the units to be owner occupied;
 - (d) The ANC expressed support for the Applicant's proposal to set aside as affordable units three family-sized three-bedroom units;
 - (e) Support for the Applicant's proposal to include the STC institutional uses in the Project with no retail component;
 - (f) Support for the Applicant's proposed curbside management plan; and
 - (g) Support for the Applicants proposed construction management plan.
38. The First ANC Report authorized Commissioner Gail Fast to testify on behalf of the ANC at the Public Hearing.
39. Commissioner Fast testified at the Public Hearing and submitted a written copy of her testimony into the record. (Ex. 53.)

40. ANC 6D did not submit a written report stating that the ANC had voted to adopt Commissioner Fast's testimony, as required to qualify for "great weight" by the ANC Act.
41. ANC 6D submitted a second report on April 21, 2019 (the "Second ANC Report"), that stated its support of the Application and commented favorably on the MOU signed with the PTA, the building design, the location of the affordable units in the Project, the public benefits of the Project, the MOU with the Applicant and UNSW, and the construction management plan. (Ex. 60.) The 2nd ANC Report stated that the ANC expected DDOT will take the Applicant's construction management plan and coordinate it with other projects, and to continue dialogue with DDOT's Safe Routes on the best placement of the school speed limit signs. (*Id.*)
42. The Second ANC Report did not include a statement that the ANC had voted to adopt Commissioner Fast's testimony, as required to qualify for "great weight" by the ANC Act.

PUBLIC TESTIMONY

Persons in Support

43. Four individuals submitted letters in support of the Application and three individuals testified in support (together, the "Proponents") of the Application at the public hearing. The Proponents noted the Application's contextual fit within the Southwest community, the cultural use through the STC use, and the benefits for the community. (Ex. 10, 46, 47, 48; Mar. Tr. at 115-125.)

Persons - Undeclared

44. The PTA testified as undeclared, expressing concerns about traffic and pedestrian safety, impacts of the Project on the school's play areas, and lack of affordable three-bedroom units within the Project, but also indicating the Applicant had been willing to work with the PTA to address its concerns. (Mar. Tr. at 110-115)

Persons in Opposition

45. Mr. Welles testified as a person in opposition to the project at the public hearing. Mr. Welles raised concerns regarding the proposed rezoning to a commercial zone as well as the introduction of commercial activity along I Street. Mr. Welles also expressed concern regarding the impact of the Project on a light pole located on the PUD Site.
46. Donna and Andy Gomer (the "Gomers") testified in opposition to the Application at the public hearing, expressing concerns about the height, design, and proximity of the Project to their residence, as well as the impact of the project on parking. In his testimony, Mr. Gomer also indicated that he was happy that the height of the project was reduced, he felt the design was much better, and he confirmed that the height of the Project would not impact their rooftop solar panels. (Mar. Tr. at 108-110, 125-128, 157.)

47. Chris Otten filed a letter in opposition to the Project, expressing generalized concerns that the Application should not be approved due to the lack of agency review and the impacts of the project. (Ex. 55.) Although Mr. Otten claimed to “adopt all opposition positions and contested issues,” his letter failed to note any specific detail about the Application or particular injury to any person in Southwest or otherwise. Mr. Otten claimed that his letter was on behalf of the “DC for Reasonable Development: Ward 6 Study Group” and supported by the “Southwest Accountability Group.” However, the letter provided no evidence that the letter was co-signed by, supported by, or authorized by either organization, so the Commission will treat the letter as testimony in opposition by Mr. Otten as an individual. The Ward 6 Study Group/Southwest Accountability Group have participated directly in other zoning cases through testimony and evidence by their members. (See, for example, the record in Z.C. Cases 02-38J, 02-38I, 07-13G, and 11-03J.)

POST-HEARING SUBMISSIONS

48. At the close of the Public Hearing, the Commission asked the Applicant to address certain aspects of the penthouse design and affordable unit location, as well as to continue coordinating with the PTA, Mr. Welles, and the Gomers regarding the application.
49. The Applicant addressed those issues and concerns in a post-hearing submission dated April 15, 2019, which included:
- (a) A signed MOU between the Applicant and the PTA, and a letter from the PTA in support of the Application indicating that the PTA’s concerns had been addressed; (Ex. 58A, 59)
 - (b) A statement that the Applicant indicated that it met with Mr. Welles and incorporated additional commitments regarding the light pole and other improvements to the School property in its MOU with the PTA to address Welles’ concerns; and (Ex. 58.)
 - (c) A summary of discussions with the Gomers. (Ex. 58.)

National Capital Planning Commission (“NCPC”)

50. At its April 29, 2019 public meeting, the Commission took proposed action to approve the application. The proposed action was referred to NCPC on May 3, 2019, pursuant to § 492 of the Home Rule Act. (Ex. 62.)
51. The Executive Director of NCPC, by delegated action dated May 31, 2019, found that the proposed PUD and related map amendment would not be inconsistent with the Comprehensive Plan for the National Capitol, nor would it adversely affect any other identified federal interests. (Ex. 64.)

CONCLUSIONS OF LAW

Compliance with the PUD Regulations and Contested Issues

1. The Commission is authorized under the Zoning Act to approve a planned unit development and Zoning Map amendment consistent with the requirements set forth in Subtitle X §§ 304, 500.
2. The Applicant shall have the burden of proof to justify the granting of the application according to the standards of Subtitle X § 304 of the Zoning Regulations.
3. The Applicant requested approval, pursuant to Subtitle X, Chapter 3; Subtitle X, Chapter 5; and Subtitle Z, Chapter 3, of a consolidated PUD and related Zoning Map amendment from the R-3 zone to the MU-4 zone, and flexibility from the rear yard, court, lot occupancy, and penthouse uniform height requirements, as is permitted under the Zoning Regulations. (Subtitle X §§ 300.4, 303.1.)
4. The Commission concludes that proper notice of the proposed PUD and Zoning Map amendment was provided in accordance with the requirements in Subtitle Z § 402.
5. The Commission concludes that the Application satisfied the minimum 15,000 square feet of area and the contiguity requirements for PUDs established by Subtitle X § 301.
6. In evaluating a PUD application, the Commission must “judge, balance, and reconcile the relative value of project amenities and public benefits offered, the degree of development incentives requested, and any potential adverse effects.”
7. As further elaborated below, the Commission concludes that:
 - (a) The Applicant has satisfied its burden of proof under the Zoning Regulations regarding the requested flexibility from the Zoning Regulations and satisfaction of the PUD standards and guidelines as set forth in the Applicant’s statements and the OP Report;
 - (b) The requested development incentives for height, density, flexibility, and related rezoning to the MU-4 zone are appropriate and fully justified by the additional public benefits and project amenities proffered by the Applicant;
 - (c) The character, scale, mix of uses, and design of the Project are appropriate, and finds that the site plan is consistent with the intent and purposes of the PUD process to encourage high-quality developments that provide public benefits; and
 - (d) The development of this PUD will carry out the purposes stated in Subtitle X § 300 to encourage higher quality developments that will result in a project “superior to what would result from the matter-of-right standards,” offering “a

commendable number or quality of public benefits” and by protecting and advancing “the public health, safety, welfare, and convenience.” Here, the height, character, scale, mix of uses, and design of the proposed PUD are appropriate, and the proposed construction results in an attractive mixed-use building that capitalizes on the PUD Site’s transit-oriented location and exceeds the quality of what would be developed as a matter of right.

8. *In deciding a PUD application, the Commission shall 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 standards of the case. (Subtitle X § 304.3.)*

The Commission has judged, balanced, and reconciled the relative value of the project amenities and public benefits offered, the degree of development incentives requested (including the proposed map amendment), and any potential adverse effects, and concludes that it is not inconsistent with the CP and concludes the approval of the PUD is warranted for the reasons detailed below.

9. *The Commission shall find that the proposed development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. (Subtitle X § 304.4(a).)*

The Commission concludes that approval of the PUD is not inconsistent with the CP and other relevant planning guidance documents. The Commission concludes that the proposed Project, including its proposed use, height, and density, is consistent with the PUD Site’s Institutional designation on the CP’s FLUM and furthers numerous goals and policies in the CP’s Land Use, Housing, Arts and Cultural, and other citywide elements and policies, as well as policies in the Lower Anacostia/Near Southwest Area Element and the Southwest Neighborhood SAP.

10. As a threshold matter, the Commission addresses UNSW’s contention that the Commission does not have the authority to rezone the PUD Site given its Institutional Use designation on the FLUM. UNSW alleged (prior to withdrawing its opposition) that the Commission does not have authority to approve the Project because, prior to any action by the Commission, the D.C. Council must first change the FLUM designation from Institutional to another designation. The Commission disagrees with this interpretation of the CP as explained below:

- (a) The FLUM includes the PUD Site entirely within the “Institutional” land use category, in recognition of its previous ownership and use by a university and other educational or similar institutional uses;
- (b) The CP states that a change to any land use designation on the FLUM—including a change from Institutional Use to another use—requires approval by the D.C. Council. This is true, but it does not mean that all changes in use require approval

by the D.C. Council, as each FLUM category can permit a range of uses, heights, and densities. The purpose of the FLUM is to guide land use decisions by the Commission and other bodies, with the understanding that the Commission—not the Council—makes the final determination on the particular uses, heights, and densities that are appropriate within each FLUM category;

- (c) This is particularly true on Institutional sites, which lack specific guidance on use, height, and density. The CP specifically recognizes that changes to Institutional sites are expected over the life of the CP. Since the CP does not show density or intensity on Institutional sites, the Plan states that when “a change in use occurs on [Institutional] sites in the future . . . , the new designations should be comparable in density or intensity to those in the vicinity.”; (CP §226.1(h).)
- (d) This provides the Commission with sufficient guidance on land use decisions regarding Institutional sites—provided the proposed zoning change is consistent with density or intensity to surrounding property, no FLUM change is required. Indeed, the history of this Project highlights the application of this approach. The previous version of the Project submitted in a prior PUD proposed a height, density, and rezoning that was not “comparable in density or intensity” to the surrounding neighborhood, and OP therefore rejected it in its setdown report in that case. (Similarly, the Southwest SAP also noted that the prior version of the Project would have required a FLUM land use change, and expressly chose to withhold recommendation of that change) By contrast, the current version of the Project is of a density and intensity that is comparable to the surrounding properties, and so the Commission is able to approve the PUD and rezoning as consistent with the current Institutional Land Use designation on the FLUM;
- (e) Accordingly, the CP is clear that action by the D.C. Council is unnecessary for changes of use on an Institutionally-designated property when the changes are consistent with surrounding property. Furthermore, the Commission is empowered to take actions to facilitate such reuse, including amendments to the Zoning Map, so long as the new use is “comparable in density and intensity to those in the vicinity.”; and
- (f) PUD-related map amendments, in particular, are conditional and allow the Commission to adopt limits on height, density, and use that ensure the reuse of the Institutional site is consistent with surrounding sites. The Commission has repeatedly re-zoned properties designated as Institutional through PUDs and authorized non-institutional uses on such properties, deeming these PUDs as not inconsistent with the Comprehensive Plan.² In each of these cases, the Commission determined the PUD and related rezoning was consistent with the

² An exhaustive list of prior approvals are included in the Applicant’s March 8, 2019 supplemental filing. (Ex. 39A at 3-4.)

FLUM because it was consistent with the surrounding area's use and density. The Commission's approval of PUDs that included a rezoning for properties designated for Institutional Uses in the FLUM has been upheld on appeal. (*See, e.g., Foggy Bottom Association v. District of Columbia Zoning Comm'n*, 07-AA-1197, Memorandum Opinion at 2.)

11. *The Commission shall find that the proposed development 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.* (Subtitle X § 304.4(b).)

The Commission finds that the Project will not result in unacceptable impacts on the surrounding area or on the operation of city services and facilities. The Commission concludes there will be several impacts that are not favorable, but are either capable of being mitigated, or acceptable given the quality of the benefits in the Project:

- (a) The introduction of non-residential uses and multi-family residential uses in the Project will result in impacts that are acceptable given the quality of the benefits of the Project;
- (b) The height and density of the project, along with the rear yard and lot occupancy flexibility, will result in a denser and taller building than would be permitted as a matter of right generating shadow, proximity, and privacy impacts. The Applicant mitigated these impacts somewhat by redesigning its building while its Application was pending. The impacts of the redesigned building are acceptable given the quality of the benefits in the Project;
- (c) The Project will have adverse impacts on vehicular traffic, parking, and pedestrian safety related to the increased number of trips generated by the Project as well as through parking and loading access. This Order contains conditions requiring the Applicant to implement an extensive series of parking, loading, and transportation demand management measures that will adequately mitigate these impacts. To the extent that these measures do not completely mitigate these impacts, they are acceptable given the quality of the benefits of the Project; and
- (d) The Project will generate construction-related impacts. The Commission notes that matter-of-right development of the PUD Site would generate similar impacts. The Commission further notes that impacts related to construction are regulated by the Construction Code and have traditionally been understood to be therefore outside the scope of the Commission's jurisdiction. Nonetheless, the Commission finds that to the extent the Applicant has any obligation to mitigate construction-related impacts in a PUD, the Applicant has adequately mitigated those impacts through its Construction Management Plan. This Order includes a condition requiring the Applicant to abide by the Construction Management Plan. To the

extent that these measures do not completely mitigate the impacts, they are acceptable given the quality of the benefits of the Project;

12. *The Commission shall find that the proposed development 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. (Subtitle X § 304.4(c).)*

The Project provides superior features that benefit the surrounding neighborhood to a significantly greater extent than a matter-of-right development on the PUD Site. The Project also offers a commendable number and quality of public benefits, including the urban design and architecture, site planning, housing, affordable housing, environmental benefits, streetscape plans, and uses of special value, which are all significant public benefits. The proposed public benefits are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.

Responses to Opponents' Contested Issues

13. The Commission has fully analyzed the contested issues from the case raised by the ANC, UNSW, the PTA, Mr. Welles, and the Gomers (collectively, the "Opponents"). As the record of the case shows, the ANC, UNSW, and PTA all came to withdraw their opposition and support the Project based on the Applicant's revisions to the Project and commitments to use restrictions, public benefits, and mitigation measures that the Commission has adopted as conditions of approvals. Collectively, then, the issues raised in the record and at the hearing are substantially resolved as evidenced by the testimony of the Opponents themselves. Nonetheless, the Commission has included these issues in its analysis of the "contested issues" raised in this case.

Consistency with the Comprehensive Plan ("CP")

14. The Opponents challenged the consistency of the proposed PUD and Zoning Map Amendment with the FLUM and certain CP goals and policies and the Southwest Neighborhood SAP, as well as the Commission's authority to approve the Project under the CP. The Commission's authority to approve the Project without D.C. Council action is addressed herein above; other allegations of inconsistency are addressed below.
15. The Opponents alleged that the proposed rezoning to the MU-4 zone was inconsistent with the CP. The Commission finds, however, that the proposed MU-4 zone is not inconsistent with the CP or the character of the surrounding area. Broadly:
 - (a) The proposed MU-4 zoning is consistent with the PUD Site's transitional location between the residential neighborhood consisting of two- to three-story rowhouses and three- to four-story apartment buildings to the north and west and the institutional uses to the east and southeast, including the school, churches, and a public library;

- (b) The proposed MU-4 zoning is also not inconsistent with the general character of I Street, which is not a “residential” street but rather a diverse street with a mix of residential and non-residential uses including not only the above institutional uses but also tall apartment buildings, townhouses, a hotel, and a proposed museum. The rezoning will also facilitate the redevelopment of a strategic but underutilized institutional site with a pedestrian-oriented development with housing and cultural uses that are consistent with this context; and
 - (c) The rezoning is part of a PUD application, which allows the Commission to review the design, site planning, and provision of public benefits and amenities against the requested zoning flexibility. Importantly, the proposed rezoning through the PUD process is a conditional rezoning that is tied to the Project; it does not allow for general “commercial” use of the PUD Site but rather only those uses specifically authorized as a part of the PUD. The Commission finds that the Applicant’s proposed uses are not “general commercial uses” and furthermore notes the Applicant’s commitment to prohibit general commercial uses, such as general office and retail uses.
16. Specifically, the Opponents also alleged that the proposed PUD and rezoning was inconsistent with the PUD Site’s Institutional Land Use designation and the surrounding Moderate Density Residential designation on the FLUM. The Commission disagrees as follows:
- (a) The Commission looks to the density and intensity of use of surrounding property when considering a land use change on a site designated as “Institutional” on the FLUM. Here, those are the surrounding properties, which are in the Moderate Density Residential land use category. Broadly, the moderate-density residential zones are defined as a mix of three- to four-story townhouses and apartment buildings. (CP § 225.4.) Here, the surrounding moderate-density residential designation includes both two- to four-story townhouses and three- to four-story apartment buildings;
 - (b) The Project, as revised, is not inconsistent with the surrounding density and intensity of uses. The Project incorporates design features such as primary brick façade and three-story primary “townhouse rhythm” and fourth-story setback, which specifically align with the context of the surrounding rowhouses, particularly across 6th Street, S.W. The Annex is similarly positioned and at a height of four and one-half stories is of a comparable height to the adjacent apartment building. Finally, the proposed multi-family dwelling uses in the project (including the condominiums, actor housing, and fellows housing) are all uses that would be allowed by right in apartment buildings that are otherwise anticipated in the Moderate Density Residential land use category. To this end, the instant case is distinguishable from *Durant vs. District of Columbia Zoning Commission*. In *Durant*, the court concluded that a six-story apartment building on property that was designated for low- and moderate density uses and

surrounded by a low-density designation, could not be considered as a “moderate-density” building. (*See Durant v. District of Columbia Zoning Comm’n*, 139 A.3d 880, 883-884 (D.C. 2006).) Here, however, the Project itself, at four to four and one-half stories, is shorter than the building proffered in *Durant*, and therefore more in alignment with the Plan’s guidance on the Moderate Density Residential land use category. Furthermore, the surrounding context here is moderate density rather than low density and contains townhouses and apartments, which means that the Project’s use and form is consistent with its surroundings;

- (c) Furthermore, the specific story descriptions associated with each land use category are not intended to serve as absolute, proscriptive limits akin to zoning limitations on height. Rather, as the Comprehensive Plan notes, they are guidelines and cases like PUDs may result in heights that exceed the typical ranges cited in the Comprehensive Plan. (CP §226.1(c).) Indeed, the Court has affirmed, “the FLUM definitions themselves recognize their flexibility” and “that in appropriate circumstances the PUD process may permit greater height or density.”; (*Union Market Neighbors v. District of Columbia Zoning Comm’n*, 197 A.3d 1063, 1070 (D.C. 2018) (internal quotations omitted).)
- (d) The Commission also finds that the uses proposed for the Project are consistent with the Moderate Density Residential designation taken together with the full Plan. Although neither the PUD Site nor the surrounding properties are designated as “Mixed Use” under the Comprehensive Plan, this does not preclude a mix of uses on the PUD Site or the application of a “mixed use” zone under the Zoning Regulations. Many zones permit a mix of uses, and these zones are applied throughout the District, even though the Comprehensive Plan designates many if not most of these properties with a solitary “residential” or “commercial” designation rather than the Comprehensive Plan’s “Mixed Use” striping. As the court noted in affirming the rezoning of the Wisconsin Avenue Giant site now known as Cathedral Commons, mixed uses are not strictly limited to striped areas on the FLUM because the FLUM “does not require that each block strictly correspond with the general description” and the FLUM is not parcel-specific; (*Wisconsin-Newark Neighborhood Coalition v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 395-396 (2011) (approving the Commission’s approval of a mixed-use Project on a site without a FLUM mixed-use designation).)
- (e) Further, the Commission finds that the Project provides some institutional uses, which is consistent with the PUD Site’s Institutional designation on the Comprehensive Plan as well as the Southwest Small Area Plan’s specific preference for cultural uses on the PUD Site (discussed below). The PUD-related rezoning of the PUD Site facilitates the institutional / cultural uses contemplated by these plans. As with “Mixed Use,” the zoning definition of “Institutional” as a use category is not intended to align with the Comprehensive Plan’s concept of “Institutional”; rather, the Comprehensive Plan has a broader definition of Institutional Uses that includes educational and arts uses. Therefore, the STC

Component of the Project is not inconsistent with the FLUM designation and the broader context of the Comprehensive Plan;

- (f) The Commission finds that the map amendment, in connection with the PUD process, is not inconsistent with the FLUM designation. The proposed MU-4 zone is a zone that permits “moderate-density mixed use development.” (Subtitle G § 400.3(a).) Accordingly, the proposed MU-4 rezoning accomplishes the twin goals of allowing for comparable overall density to the surrounding area yet also accommodating the cultural use called for in the Small Area Plan (discussed below). When OP rejected a taller, denser PUD for the PUD Site in 2016 that involved a rezoning to a higher-density zone district as inconsistent with the Comprehensive Plan, OP explicitly recommended the MU-4 zone as one zoning category that would be consistent with the Comprehensive Plan;
- (g) Finally, the Main Building is four stories in height and is therefore entirely consistent with the surrounding Moderate Density Residential designation in the Comprehensive Plan. Even if the Annex, with its four- and a half-story height is inconsistent on its face with the four-story height description for Moderate Density Residential land in the Comprehensive Plan, the Commission finds that there are other policies that justify outweighing this particular line of the Comprehensive Plan. Specifically, because the Annex provides free housing for actors and STC fellows, the additional height is justified by other provisions that call for promoting institutional uses, housing, and artist housing, as follows:

Policy LU 2.3.5 Institutional Uses – Recognize the importance of institutional uses, such as private schools, child care facilities, and similar uses, to the economy, character, history, and future of the District of Columbia. Ensure that when such uses are permitted in residential neighborhoods, they are designed and operated in a manner that is sensitive to neighborhood issues and that maintains quality of life. Encourage institutions and neighborhoods to work proactively to address issues such as traffic and parking, hours of operation, outside use of facilities, and facility expansion;

Policy H 1.1.2 Production Incentives – Provide suitable regulatory, tax, and financing incentives to meet housing production goals. These incentives should continue to include zoning regulations that permit greater building area for commercial projects that include housing than for commercial projects that do not include housing; and

Policy AC 3.1.1 Affordable Artist Housing – Include provisions for arts professionals in the District's affordable housing programs. (See also the Housing Element for additional policies and actions on affordable and workforce housing.) The Mather Building in downtown DC is an example of an affordable live/work space for artists. The building had been vacant for over a decade before the Cultural Development Corporation of DC and a private developer renovated it as

condos, with the units on the building's second two floors designated for artist live/work space. This development gave artists an opportunity to own their space at a very low cost and enabled them to remain in the District.

Moreover, the benefits associated with the STC Component of the Project and the actors/fellows that will live and work within the Project further Comprehensive Plan policies focused on the impact of arts uses through an increase in arts-oriented education and in a transit-oriented location. This outweighs any inconsistency with the FLUM designation. In addition to LU-2.3.5 cited above, the Project furthers the following policies:

Policy AC 1.1.5 Siting of Facilities – Support the siting of arts facilities in locations where impacts upon nearby uses can be most easily managed. Give preference to locations near public transit, or sites where shared parking facilities are available. Conversely, ensure that appropriate parking and transit access improvements are made when arts and cultural venues are developed;

Policy AC 4.4.1 Arts Education Programs – Build a stronger constituency for the arts in the District through arts education in K-12 schools including attendance at arts performances and art exhibitions, and support of adult art programs for persons of all ages and backgrounds. City resources should be used to help promote the strong and diverse arts programs offered by our public schools; and

Policy AC 4.4.4 Participation of Artists – Support and increase the participation of artists in the District's arts education programs.

(Ex. 2, 20, 39, 39A, 39D, 42, 61.)

17. The Opponents also alleged that the Project was inconsistent with the PUD Site's designation as Institutional and Neighborhood Conservation Area on the CP's GPM. The Commission disagrees and finds that the proposed PUD and related rezoning to the MU-4 zone is not inconsistent with the PUD Site's designations on the GPM as discussed below:
- (a) Similar to the FLUM, when uses change on Institutionally-designated property, the new zoning designation should be comparable in density or intensity to the surrounding uses. As the Commission concluded above, the Project is not inconsistent with the surrounding uses and densities; and
 - (b) Additionally, the Commission concludes that the Project is not inconsistent with the Neighborhood Conservation Area designation that applies to a small portion of the PUD Site as well as the surrounding properties. As OP discussed at the public hearing, the "neighborhood" in this case is all of Southwest, which includes a range of residential uses from townhouses to ten-story apartments as well as a mix of institutional and commercial uses. The Project fits well within

not only its immediate context but also the broader neighborhood context of Southwest, which is characterized by a diversity of densities and uses. More broadly, the Comprehensive Plan notes that infill development can be expected in Neighborhood Conservation Areas. Therefore, the Project is not inconsistent with the Generalized Policy Map.

(Ex. 2, 20, 39, 39A, 39D, 42.)

18. The Opponents also alleged that the Project was inconsistent with certain provisions of the Land Use Element, including policies that call for protection of rowhouse neighborhoods, neighborhoods adjacent to the Central Employment Area, and similar buffering requirements. The Commission finds that the Project is also not inconsistent with these policies and goals given the character of the Project in itself as well as other policies and goals in the Land Use Element that promote development of transit-oriented infill sites such as the PUD Site as discussed further below:
 - (a) The Project is not inconsistent with the provisions in the Land Use Element that focus on promoting neighborhood conservation. First, the Project does not remove any existing housing, as the PUD Site is currently vacant and was previously used for non-residential uses. Instead, it will add owner-occupied housing units, which will help strengthen and reinforce the existing residential neighborhood. Second, the Project has been designed to appropriately transition to the rowhouses to the north and west of the PUD Site. The 6th Street façade has been designed to read as a series of three-story townhouses with ground-entry units and a fourth story set back on a 1:1 basis from the third floor. The Project also uses residential materials, including brick and punched windows, to fit within the neighborhood. While the Project includes some cultural, non-residential uses, such uses are concentrated along the I Street entrance and away from the 6th Street façade and neighbors to the north of the PUD Site. Finally, the Commission notes again that the introduction of multifamily and non-residential uses to the PUD Site are not inconsistent with neighborhood character, given the historical use of the PUD Site as a university and presence of multifamily housing and institutional/cultural uses up and down I Street;
 - (b) In addition, the Land Use Element does not only focus on neighborhood conservation. The Element also identifies “directing growth and new development to achieve economic vitality” and “balancing competing demands for finite land resources” as critical land use issues. (CP § 300.2.) The Project also directly promotes these critical issues. The Land Use Element encourages greater infill development at sites located near Metrorail stations, as these areas provide pedestrian-oriented nodes and transit-oriented development opportunities. The Project also contributes to the variety of residential housing opportunities in the immediate area as well as in the broader Southwest community;

- (c) Opponents argued that any development on site would be an infill development and transit-oriented, and therefore these provisions should not be interpreted to allow for multifamily apartment or other development that diverges from the predominant rowhouse form adjacent to much of the PUD Site. The Commission disagrees with this interpretation. The provisions regarding infill and transit-oriented development recognize the strategic value of these properties and specifically encourage denser development for sites that are proximate to Metrorail stations and along major pedestrian corridors. When properties are ideal for infill and near Metrorail stations, these provisions of the Land Use element challenge the premise that the site must remain exactly as it is, as adjacent property is used, or as existing zoning might allow. Consistent development does not mean identical development but rather contextual development, and that is what the Applicant proposes here; and
- (d) The Commission finds that the Project provides a transitional design on the buffer area surrounding the Central Employment Area moving toward residential neighborhoods. The PUD Site is not surrounded on all sides by rowhouse neighborhoods. Instead, the Project serves as an appropriate transition from the higher-density uses to the south (including high-density projects at the Waterfront Metrorail Station and the Wharf) to the rowhouse neighborhoods to the north. The buffering requirements in the Comprehensive Plan exist to prevent a “sharp visual distinction” between extremely tall buildings, like those across and further down I Street, and two- to three-story rowhouses, like those north and west of the PUD Site. A four- and five-story Project provides the precise transitional design called for by the Land Use Element. Therefore, the Commission finds that the Project is not inconsistent with the Land Use Element of the Comprehensive Plan.

(Ex. 2, 20, 39, 39A, 39D, 42.)

19. The Opponents also alleged the Project is inconsistent with the Lower Anacostia/Near Southwest Area Element, but the Commission disagrees as follows:
- (a) The Area Element focuses on new development along key corridors and “near the Waterfront/SEU and Navy Yard metrorail stations,” focusing on projects with “mixed use development” including “cultural uses” in the Waterfront area. (CP § 1908.4.) The Area Element also focuses on the conservation of established waterfront neighborhoods like the residential neighborhood to the west and north of the PUD Site. This immediate part of the neighborhood is characterized by primarily two- and three-story rowhouses and three- and four-story apartment buildings, though the Southwest neighborhood as a whole is marked by a mix of taller and shorter buildings that define its character; and
 - (b) The Project focuses development along I Street as a key corridor and respects the character of these neighborhoods by serving as an appropriate transition into the lower-density residential area from the higher-density mixed uses further along I

Street and closer to the high-density areas around the Metrorail Station and at the Wharf. The Project concentrates the non-residential uses along I Street, S.W., while transitioning to residential uses and residential architecture along 6th Street, S.W. and to the rear of the PUD Site. The 6th Street townhouse-style façade which reads as three stories in height, coupled with the residential character of the Annex, respects and conserves the residential neighborhood to the north and west of the vacant Property.

(Ex. 2, 20, 39, 39A, 39D, 42.)

20. The Opponents argued that the Project was inconsistent with the Southwest SAP, which did not recommend a change to the FLUM for the PUD Site. The Commission concludes, however, that the Project—which is smaller than the version contemplated at the time of the SAP—is not inconsistent with the SAP, and in fact furthers the SAP’s call for a cultural use at the PUD Site as explained below:
- (a) The SAP specifically addresses the PUD Site. It notes that the “Shakespeare Theater Company (STC), proposed a plan to convert the PUD Site into its new headquarters with artist space by tearing the existing building down and erecting a larger building in its place. STC planned to partner with a private developer to include additional market rate housing as well as housing specifically for visiting actors.” The SAP notes community objection to a “6-9 story building” that was initially proposed for the PUD Site. However, the SAP also notes that “a cultural use at this site would be a preferred use going forward.”;
 - (b) While the SAP acknowledges that “to facilitate the full building program” a land use designation change to the FLUM would be required, the Project as proposed has been significantly reduced from the “6-9 story building” and associated rezoning under consideration at the time of the SAP. The Project does not require a land use designation change to the FLUM because the Project and related rezoning are not inconsistent with either the PUD Site’s Institutional designation or the Moderate Density Residential designation of surrounding properties, as detailed above; and
 - (c) The Project is also consistent with the Design Guidelines of the SAP because it furthers the mix of building heights that define Southwest. With the removal of the penthouse and fourth-story setback, the Project consistent with the “shorter” townhouses and apartment buildings in the immediate neighborhood, which contrast with the taller apartment buildings such as the ones located across I Street and west of the townhouses along 7th Street. The Project is a high-quality design with a variation in building frontages, with a curved glass façade along I Street and a townhouse-style façade along 6th Street. The Project also includes landscaping along the PUD Site’s perimeter and sustainable features at the Project, all furthering guidelines and priorities in the SAP. In sum, the Project is not inconsistent with the SAP.

(Ex. 2, 20, 39, 39A, 39D, 42.)

21. The Commission credits the testimony of the Applicant, OP, ANC 6D, and the Proponents regarding the consistency of the Project with the Comprehensive Plan in concluding that the PUD and related rezoning is not inconsistent with the Comprehensive Plan. The Applicant included an exhaustive review of the Project's consistency with the Comprehensive Plan, evaluating not only broad consistency but also over 200 individual provisions of the Plan, including those cited by the Opponents. (Ex. 39A, 39D.) OP provided its own independent analysis concluding consistency. (Ex. 42.) Finally, ANC 6D, UNSW, and the PTA all came to withdraw opposition to and support the Project based on its reduced height and scale, more consistent architectural design, and constraints on use, all of which were at the heart of their earlier concerns about consistency with the Comprehensive Plan. Based on the substantial evidence in the record, the Commission concludes that the proposed PUD and Map Amendment is not inconsistent with the Comprehensive Plan, for the reasons described in detail below. (Ex. 2, 39A, 39D.)

Project Impacts

22. The Opponents alleged that the Project would have adverse impacts on surrounding property due to a number of factors, including use, height, density, traffic, parking, and safety. The Commission finds that the Project has the potential to create adverse effects on the neighborhood as outlined below. However, the Commission also finds that in most cases the Applicant has proposed design changes and measures that will mitigate these adverse impacts, and in the remaining cases the impacts are acceptable given the public benefits from the Project. On balance, the Project does not have unacceptable adverse impacts when considering the Project as a whole.
23. Opponents raised the introduction of non-residential uses and multi-family residential uses that would be allowed as a matter of right under the Zoning Regulations as an adverse impact of the Project. Even though the previous use of the PUD Site was a non-residential use, Opponents argue that uses not consistent with the existing zoning represent an adverse impact on the community. In particular, Opponents raised concerns regarding the MU-4 zone, which would allow a variety of non-residential uses at the PUD Site. The Commission addresses this below: (Ex. 32, 33, 36; Mar. Tr. at 130-133.)
 - (a) The Commission finds that the non-residential component of the Project will not have the level of adverse impacts feared by the Opponents. Broadly, the non-residential component of the Project is limited to the STC Component of the Project proposed by the Applicant, which will not have the same level of impact as the broader range of general commercial uses speculated by the Opponents. Also, the non-residential uses such as the garment shop and rehearsal space are smaller-scale efforts tied directly to STC's mission, not broader commercial enterprises. The PUD itself, along with the Applicant's long-term commitment to not include more general commercial uses like retail, will regulate the use of the

PUD Site and sufficiently mitigate the concern about potential adverse impacts from the “commercial use” of the PUD Site;

- (b) The Commission also finds that the residential components of the Project will not result in unacceptable adverse impacts. Indeed, with the commitment to for-sale, owner-occupied housing, housing for STC fellows and actors, and affordable three-bedroom units, the PUD will provide positive impacts for the surrounding residential neighborhood that were acknowledged by the ANC, among others; and
 - (c) The Commission further finds that the benefits associated with the non-residential uses and greater density of residential uses, including increased affordable housing and educational benefits, outweigh the potential adverse impact of the introduction of these non-residential uses.
24. The Opponents suggested that the height and density of the Project along with its rear yard and lot occupancy flexibility will have an adverse impact on the neighborhood through construction of a denser and taller building than would be allowed as a matter of right. Among other issues, the Opponents expressed concern with the proximity of the Project, shadows generated by the Project, and impact on privacy of nearby townhouses. (Ex. 33, 36, 40; Mar. Tr. at 130-132.) The Commission finds that the height and scale of the Project will have impacts on the surrounding properties, but these impacts are mitigated by the Project’s design changes or are acceptable given the quality of the public benefits. Such mitigations are discussed below:
- (a) The Applicant reduced the massing and scale to better fit within the community context. From the initial Application filing to the Commission’s approved design, the Applicant removed the habitable penthouse space on the Main Building, shifted the Annex, and set the fourth floor of the Main Building back on a 1:1 basis from the 6th Street façade. (Ex. 2, 39E1-39E9.) The Applicant also introduced more residential materials to the building, including brick facades and punched windows. Finally, the Applicant introduced the townhouse rhythm along 6th Street to better situate the building into the neighborhood context. (Ex. 39E1-39E9, 52H.) The Applicant’s architectural expert submitted views and renderings that demonstrated the Project would not visually intrude into the surrounding neighborhood and would in fact appear of similar height to other properties near the Project. The ANC and UNSW agreed that the Applicant’s changes addressed their concerns;
 - (b) The Applicant’s architectural expert submitted shadow studies that demonstrated the proposed Project would cast some additional shadow compared to a matter of right project on the adjacent townhouses and school property. (Ex. 39E1-39E9, 52F.) However, the Commission finds that these impacts are not unacceptable given that UNSW and the PTA both indicated they were acceptable in light of the Applicant’s other commitments, and the Gomers indicated at the hearing that the

reduced height of the Project would not adversely impact their solar panels, and the limited amount of additional shadow;

- (c) With respect to concerns about the proximity of the Project to adjacent residential uses to the north, the Applicant's architectural expert submitted plans and drawings illustrating the separation between the Main Building and the townhouses to the north was over 50 feet, which was not only significantly greater than the distance required by right for the Project, but also significantly greater than the distance from a theoretical matter-of-right townhouse. Similarly, at the hearing the Applicant's architectural expert submitted drawings illustrating how the location and position of the Annex would not have adverse impacts on the adjacent apartment house;
 - (d) With respect to concerns expressed by the Gomers regarding the privacy of their fourth-floor terrace due to penthouse units looking down on it, the Commission finds that the removal of the habitable penthouse units eliminates this concern;
 - (e) The Commission credits the testimony and design of the Applicant's expert in architectural design and finds that with the revisions to the Project design create a Project that fits within the neighborhood context and minimizes adverse impacts of the Project's building design. Additionally, based on the foregoing evidence, the Commission concludes that the Project will not impose unacceptable adverse shadow or visual impacts on the surrounding neighborhood; and (Ex. 39, 39E1-39E9.)
 - (f) The Commission further finds that the minor areas of lot occupancy relief and rear yard relief do not create an adverse impact beyond the impact of the Project generally. The minor increase in lot occupancy over what is allowed as a matter of right does not create an additional impact of the Project. Further, the rear yard flexibility behind the Annex does not create an adverse impact to the properties to the north given that the area behind the Annex is the large yard adjacent to the apartment building in the RA-2 zone to the north. (Ex. 39E1-39E9.)
25. Opponents alleged that the Project could have potentially adverse impacts on vehicular traffic, parking, and pedestrian safety. (Ex. 37, 40; Mar. Tr. at 109, 135.). As acknowledged by the Applicant and by DDOT, the Project will create potentially adverse effects on the transportation network through an increase in trips to the PUD Site as well as through the location of parking and loading access. However, the Applicant's transportation report and supplemental materials concludes that many of the alleged impacts are minimal and also details an extensive series of parking, loading, and transportation demand management measures that will adequately mitigate these impacts. (Ex. 2, 22A, 39C, 41, 52A.) Again, these measures were all found acceptable by ANC, UNSW, and the PTA as addressing their concerns. Based on the foregoing, the

Commission concludes that the transportation impacts of the Project are not acceptable, subject to the conditions detailed in this Order and discussed as follows:

- (a) The Project is located less than a half-mile from the Waterfront Metrorail Station as well as multiple bus lines that serve the Southwest area, a well-connected urban network of pedestrian sidewalks and paths, and a connected network of streets; (Ex. 2, 22A, 39C, 52A.)
- (b) The Applicant's traffic expert's CTR concluded that the proposed Project, based on the proposed uses, would not generate an adverse traffic impact on the surrounding roadway network or cause objectionable impacts to the surrounding neighborhood due to traffic or parking impacts. The Applicant's traffic expert also concluded that the number of parking and loading spaces, as well as the location of parking and loading access from the 6th Street curb cut, would accommodate the needs of the Project and not generate adverse or objectionable impacts on neighborhood property; (Ex. 22A, 39C, 52A.)
- (c) DDOT submitted a report recommending approval of the Project. DDOT concurred with the scope, methodology, and findings of the Applicant's CTR and agreed that the Project would have minimal impact on the surrounding roadway network. DDOT supported the Project's proposed vehicle parking, bicycle parking, and loading, as well as the Applicant's proposed TDMP, PMP, and LMP measures, with certain enhancements, which the Applicant agreed to; (Ex. 41, 52A.)
- (d) Opponents challenged the adequacy of the parking given the significant demand for on-street parking in the neighborhood as well as the accuracy of the on-street parking analysis given the street sweeping schedule in the neighborhood on the date of the analysis. The Applicant's expert submitted a revised analysis of on-street parking demand addressing the latter concern and otherwise affirmed that the amount of parking within the Project would accommodate the demand of its users. (Ex. 52.) In particular, the expert noted the fact that vehicle trips forecasted in the analysis included not only self-parked cars but also ridesharing trips from taxis or Uber/Lyft, meaning that not all vehicle trips to the Project result in a parked car. The expert also found that the relatively high supply of other public parking in the neighborhood, combined with STC's commitment to off-site parking for its office workers, would adequately address demand for STC employees and visitors. The Applicant noted that the Project would not feature significant on-site performances that would otherwise draw high numbers of patrons and guests. Finally, co-locating the actor and fellow housing with the rehearsal and office space also helps to reduce the number of trips and associated parking demand;
- (e) Opponents challenged the location of the driveway access on 6th Street as well as the impact of delivery and service activity along that driveway on adjacent

residential uses. Broadly, the Applicant's expert and DDOT both agreed that 6th Street was the best location for vehicular access given the higher levels of vehicular, bicycle, and pedestrian activity along I Street. Furthermore, the Applicant agreed to a number of measures to reduce the impact of service and delivery activity in the driveway, including limits on the hours and frequency of trash service, limits on the hours of other loading activity, commitments to an on-site loading manager, and location of some loading activity within the project's garage. UNSW later provided evidence these measures were acceptable;

- (f) Opponents further challenged the impact of increased vehicular traffic on curbside drop-off activity and pedestrian safety, particularly related to the School. As a threshold matter, the Commission notes that many of the issues raised by the PTA were existing conditions unrelated to the Project. Nevertheless, the Commission finds that the Applicant's proposed curbside management plan, agreed to by DDOT, the ANC, UNSW, and the PTA, will provide for the effective and safe use of curbside space along I Street, S.W. for pickup and drop-off activity. The Commission also finds that the Project will improve pedestrian safety through, among other measures, the closure of the I Street, S.W. curb cut and the proposed bumpouts;
- (g) Opponents challenged the amount and location of bike parking for the Project. The Commission finds that the Applicant has met or exceeded all of the bike parking requirements of the Regulations and that the location of the bike parking will not impose adverse impacts on surrounding properties;
- (h) Opponents challenged other general assertions of the CTR. The Commission credits the testimony of the Applicant's traffic consultant and DDOT and finds that the traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of public benefits of the PUD;
- (i) Based on the foregoing, the Commission concludes that the Project will not cause unacceptable impacts on vehicular or pedestrian traffic, as demonstrated by the testimony and reports provided by the Applicant's traffic expert and DDOT. The traffic, parking, and other transportation impacts of the Project on the surrounding area are capable of being mitigated through the measures proposed by the Applicant and are acceptable given the quality of the public benefits of the PUD; and
- (j) The Commission further finds that the bumpouts benefit provided by the Applicant, while not necessary as a mitigation, creates a benefit of the Project that will increase safety in the neighborhood by reducing crosswalk distances and serving as a visual cue for drivers to slow down. (Ex. 39, 39E1-39E9, 52D.)

26. The Opponents also raised concerns regarding construction impacts from the Project. First, the Commission acknowledges that any development at the PUD Site would create construction impacts on the neighborhood. Further, the Commission finds that the Applicant has adequately mitigated construction impacts through the implementation of the Construction Management Plan agreed to with UNSW and the PTA. (Ex. 52C, 58.)
27. The Commission credits testimony from OP, DDOT, ANC 6D, and the Proponents that the impact of the PUD on the surrounding neighborhood, infrastructure, and levels of service will not be unacceptable.
28. The Commission finds that while the Project will result in the impacts outlined above, on balance and considering the Project as a whole, any adverse impacts are addressed through mitigation or will be outweighed by the benefits and amenities delivered with the Project. Therefore, the Project does not have unacceptable adverse impacts.

Sufficiency of the Amenities Package

29. The Opponents initially alleged that the proposed public benefits were insufficient given the height, density, and rezoning sought for the Project. However, as demonstrated by the UNSW and PTA MOUs as well as the ANC and OP Reports, the Applicant committed to additional public benefits that are meaningful commitments that will satisfy District and neighborhood desires and priorities. The STC-related improvements and bumpouts alone are valued at approximately \$2.5 million, and the affordable housing, sustainable design features, and public art and streetscape will provide additional benefit to the neighborhood and District. Moreover, over the course of the proceeding, the Applicant reduced the height and scale of the Project. On balance, the Commission finds that the public benefits and project amenities are adequate given the development incentives and flexibility sought through the PUD process. (Ex. 42, 49, 52C, 63.)
30. The Opponents initially alleged that the proposed housing was not a significant public benefit because it lacked “family” housing. However, the Applicant revised the affordable housing proffer by introducing three-bedroom units to the Project where they did not otherwise exist and set aside all of the three-bedroom units as affordable units, which addresses this concern as evidenced by the ANC Report and PTA MOU, among other evidence. (Ex. 52E.)
31. The Opponents initially alleged that the architectural design of the Project did not constitute superior design. In response, the Applicant completely revised the design and scale of the Project to better fit with the surrounding context, to the satisfaction of the Opponents, who stated that the revised design was a “substantial improvement.” (Mar. Tr. at 107.) The Commission finds that the Project utilized a number of well-recognized architectural design approaches to mitigate the apparent height and scale of the Project to fit within its context.

32. The Opponents initially alleged that the initial streetscape design for the Project was “inconsistent” and lacked contribution to the I Street arts corridor concept. In response, the Applicant revised the design of the 6th Street streetscape to match the adjacent and surrounding streetscape rhythm along 6th Street and integrated public art into the streetscape and building design along I Street, which satisfied the ANC and UNSW. The Commission finds that the Applicant has proffered a streetscape design and public art that will be a public benefit.
33. The Opponents alleged that the Project would not further sustainable design goals and lacked a commitment to plant trees. The Applicant is proffering a commitment to LEED-Gold certification, solar panels, and electric vehicle charging stations, none of which are required and therefore all of which represent public benefits. Further, the Applicant’s plans show extensive streetscape improvements including new street trees. Therefore, the Commission finds the Applicant has addressed these concerns.
34. The Opponents initially alleged that the benefits from the SWNA Agreement could not be counted as benefits of the Project, since they were already agreed to as consideration in that Agreement. Moreover, the Opponents alleged that the Applicant had failed to deliver on commitments in that Agreement, suggesting that future commitments could also be empty promises. (Ex. 11, 34, 36.) However, the Commission finds that the SWNA Agreement clearly linked the proffered benefits to the approval of the PUD and it is therefore appropriate to count these as benefits of the Project. Indeed, the SWNA benefits are clearly of value to the community, given that both the UNSW and PTA MOUs incorporated the benefits by reference. The Commission also finds that the Applicant’s commitment to incorporate these benefits as conditions of approval of the PUD itself – meaning they may be enforced not only through the SWNA Agreement and the MOUs but also through the zoning enforcement process – provides additional assurance that they will be delivered. Finally, even if the SWNA benefits were not included, the Commission finds that the other public benefits associated with the Project are still sufficient to satisfy the PUD approval standards.
35. The Commission credits the testimony of the Applicant and its architectural expert as well as OP, DDOT, ANC 6D, and the Proponents regarding the proposed benefits and amenities, and finds that the superior architectural design, site planning, housing and affordable housing, sustainable design, and uses of special value of the Project all constitute acceptable project amenities and public benefits.
36. The Commission finds that the Project is acceptable in all proffered categories of public benefits and project amenities and is superior in public benefits and project amenities related to exemplary design, site planning, housing and affordable housing, sustainable design, and uses of special value. The Commission credits the testimony of OP, ANC 6D, and the Proponents that the benefits and amenities are of substantial value to the community and the District commensurate with the additional density and height sought through the PUD.

Other Alleged Issues

37. The Opponents raised allegations of non-profit tax violation issues related to the Applicant's relationship between STC and the Developer. The Opponents filed numerous materials alleging improper tax actions by the Applicant. (Ex. 16, 21.) In this case, such issues are beyond the scope of this proceeding because they do not bear on the standards for review and approval of the PUD and related rezoning. Therefore, the Commission takes no action and does not opine on the Applicant's consistency with the United States and District tax laws. Furthermore, these issues were raised by UNSW, who later withdrew its opposition on this and other grounds.
38. The Opponents alleged that the Applicant had misstated the width of the 6th Street right-of-way as 100 feet rather than 80 feet. The Applicant admitted its error, noting that while 6th Street is 100 feet wide south of I Street, it narrows to 80 feet north of I Street, adjacent to the Project. (Ex. 39.)
39. The Opponents raised concerns regarding the Project's impact on the fence and field light at the Amidon-Bowen Elementary School. (Ex. 43; Mar. Tr. at 133-135.) The Commission finds that the Applicant has addressed this issue by agreeing to move the field light to a new location acceptable to the Opponents and to move the fence near the Annex and re-sod the reclaimed area, thus increasing the School's usable space. (Ex. 58.)
40. Mr. Welles also argued that the presence of the light pole on the PUD Site gave rise to a claim for adverse possession given the length of time the light pole had been located on the PUD Site. (Mar. Tr. at 133-135.) Determinations regarding adverse possession arguments are an issue of property rights beyond the scope of this proceeding because they do not bear on the standards for review and approval of the PUD and related rezoning. The Applicant has adequately addressed the impact of the Project on the light pole by agreeing to relocate it to Mr. Welles' satisfaction. Therefore, the Commission does not opine on the adverse possession claim.
41. Opponents initially alleged that the Applicant had not engaged in sufficient or meaningful efforts to engage the community regarding the Project. The Commission finds that there was ample and extensive awareness of the Project over its long history as evidenced by the number of people participating directly or indirectly in the hearing through one of the parties as well as other measures ranging from community and ANC meetings to lawn signs. Ultimately, the Applicant came to agreement with the ANC, UNSW, and the PTA through detailed agreements memorializing extensive discussions regarding the Project, resulting in an overwhelming expression of satisfaction with the compromises that were reached at the public hearing. Even the two households who did not sign on to the UNSW agreement (Mr. Welles and the Gomers) acknowledged the outreach and indicated that many of their concerns had been addressed. The Commission is satisfied that the Applicant met its burden of engagement.
42. Opponents alleged that the Applicant's "matter of right" townhouse scheme, used for comparing the Project for amount of housing provided as well as shadow and other

impacts, provided less housing than a scheme developed by them purporting to show upwards of 20 townhouses on the Project. This detail is immaterial to the standards for review and approval of the PUD; either way, the Project provides substantially more housing and affordable housing than a matter of right option. Furthermore, even if a denser development of the PUD Site were achievable as a matter of right, that would likely result in greater traffic, parking, proximity, and shadow impacts and therefore reduce the degree to which the Project generates additional impact compared to what could be constructed as a matter of right.

43. As described above, Mr. Otten raised generalized concerns in his letter regarding compliance with the zoning “review process” and PUD “impacts,” without specific reference to any alleged deficiency in the review process or analysis of impacts in this case. Mr. Otten also referenced a list of few Comprehensive Plan policies by number, without any explanation of what those policies state much less how the Project is inconsistent with those provisions. (Ex. 54.) For the reasons described below, the Commission is unpersuaded by these concerns and finds that Mr. Otten’s allegations are without merit. Broadly, the issues raised by Mr. Otten are unsubstantiated, generalized grievances. Mr. Otten cites no specific aspects of the Project or any evidence about the harms it alleges. As the Commission has previously found, an applicant is not obligated to respond to such generalized and unsupported assertions. (*See, e.g.*, Z.C. Order No. 11-03J(1) (2018).) For a party or witness to raise issues for which a response is required, the party or witness must present some factual basis for the claim and/or draw a nexus between the claimed deficiency and the current application. Mr. Otten’s letter did not do so with respect to these issues; it simply presented a list of blanket complaints about the PUD process, without any explanation of how those complaints applied to this Project or how those complaints resulted in injury or adverse impact to Mr. Otten or any other person.
44. Therefore, based on the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that:
 - (a) The proposed PUD-related Zoning Map amendment for the PUD Site from the R-3 to the MU-4 zone is not inconsistent with the CP, including the PUD Site’s designation as Institutional on the FLUM;
 - (b) Is appropriate given the superior features of the PUD, the benefits and amenities provided through the PUD, the goals and policies of the CP, and other District of Columbia policies and objectives; and
 - (c) The PUD and rezoning for the PUD Site will promote orderly development of the PUD Site in conformance with the District of Columbia zone plan as embodied in the Zoning Regulations and Map of the District of Columbia.

“Great Weight” to the Recommendations of OP

45. The Commission 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); *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
46. The Commission finds OP’s recommendation to approve the Application, based on OP’s analysis of the Application’s met the PUD and map amendment standards, persuasive and concurs in the judgment.

“Great Weight” to the Written Issues and Concerns of an ANC

47. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public 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) To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
48. The First ANC Report reported that the Applicant had resolved several issues and concerns that the ANC had identified, but conditioned its support for the Project as follows, which the Commission interprets as “issues and concerns”:
- (a) The Public Space Committee’s approval of the revised streetscape design; and
 - (b) The Applicant reaching agreements with the UNSW and the PTA “that include public and school benefits, building design and proposed uses, curbside and construction management plans and additional benefits from the 2014 SWNA agreement.”
49. The Commission notes that both of these conditions were satisfied – the Public Space Committee did approve the revised streetscape design and the Applicant reached agreements with the UNSW and PTA on the issues raised by the ANC Report (FF 36). The Commission therefore concludes that it has given “great weight” to the issues and concerns raised by the First ANC Report.
50. The Commission notes that the written hearing testimony submitted by Commissioner Fast and the Second ANC Report are not eligible for “great weight” as the full ANC did not vote to adopt them at a properly noticed public meeting of the ANC. However, the

Commission recognizes these efforts of Commissioner Fast and the ANC and finds their support for the Application persuasive.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission of the District of Columbia concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a consolidated PUD and related Zoning Map amendment from the R-3 to MU-4 zone, subject to the following guidelines, conditions, and standards:

A. Project Development

1. The Project shall be developed in accordance with the architectural plans and drawings submitted on March 8, 2019, marked as Exhibits 39E1-39E9 of the record, and as modified by Exhibits 52D – 52H and 58B1-58B3 of the record (collectively the “Approved Plans”).
2. The Project shall have a FAR of no greater than 2.87 and a height of no greater than 48 feet, 2 inches.
3. The PUD Site shall be subject to a PUD-related map amendment from the R-3 zone to the MU-4 zone. Pursuant to Subtitle X § 311.4, the change in zoning shall be effective upon the recordation of the covenant discussed in Condition No. E.1.
4. The Applicant shall have flexibility from the following development standards:
 - (a) The closed court width and area requirements to allow a portion of the building on the ground floor that is set back from the eastern Property line to accommodate windows;
 - (b) Lot occupancy requirements at the ground floor, to allow a ground floor lot occupancy of 79%;
 - (c) Rear yard requirements at the Annex building, to allow a setback of 8 feet 4 inches from the northern property line; and
 - (d) Single uniform penthouse requirements to accommodate the second roof stair and elevator override at the Project.
5. The Applicant shall have flexibility from the Approved Plans with regards to the design of the PUD in the following areas:
 - (a) To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, and

mechanical rooms, provided that the variations do not change the exterior configuration of the building as shown on the Approved Plans;

- (b) 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 shown on the Approved Plans;
- (c) To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the building or design shown on the Approved Plans. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- (d) To provide a range in the approved number of residential dwelling units of plus or minus ten percent, except that the number of affordable housing units and the square footage reserved for affordable housing shall not be reduced;
- (e) To make refinements to the approved parking configuration, including layout and percentage of compact spaces, except that the number of parking spaces shall not be reduced;
- (f) 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;
- (g) To vary the streetscaping and landscaping materials on private property within the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies;
- (h) To vary the amount, location, and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves a minimum GAR of 0.3 and install solar panels on a minimum of 830 square feet of roof area;
- (i) To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse setback requirements;

- (j) To vary the final design of the outdoor residential amenity spaces to reflect their final programming, provided that the use of space, character, and quality of the features and plantings remain in substantial conformance with the concept design shown on the Approved Plans;
 - (k) To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans and are compliant with the DC signage regulations; and
 - (l) To install a potential mural on the Annex building in the location shown on the drawing dated April 15, 2019 and marked as Exhibit 58A of the Record.
6. **For the life of the Project**, the Applicant will reserve the Residential Component as for-sale units as follows:
- (a) During the initial unit sales effort, and to the extent that it is economically feasible at currently projected average sales prices of \$720,000 per unit, the Applicant shall impose leasing and resale restrictions to ensure that a minimum of 90% of the Residential Component units of the Project are sold to purchasers who intend to occupy the units as their primary residence(s). The future condominium documents and bylaws shall include a provision that no less than 80% of condominium units in the Residential Component of the Project shall be owner-occupied at any time;
 - (b) Rentals through Airbnb or other such short-term rentals shall be prohibited in the condominium documents and bylaws; and
 - (c) Compliance with the above restrictions shall be demonstrated through evidence submitted by the Applicant prior to the issuance of a certificate of occupancy.
7. **For a minimum period of 20 years beginning from the date of the issuance of the first certificate of occupancy for the Project**, the Applicant shall cause the non-residential portion of the STC Component to be reserved for use by STC as office, rehearsal, and education uses as well as a costume shop as follows:
- (a) The Applicant shall not cause or permit the STC Component to be used for retail activity, other than customary and incidental sales related to the mission of STC or another institutional user;
 - (b) The Applicant shall not cause or permit the STC Component to be used for set fabrication activity; and

- (c) The Applicant shall not cause or permit the STC Component to include a black-box theatre or similar dedicated performance space, though the rehearsal and educational spaces may be used for occasional performances related to STC’s other programs.

8. **For a minimum period of 20 years beginning from the date of the issuance of the first certificate of occupancy for the Project,** the Applicant shall cause the housing portion of the STC Component (“STC Housing Component”) to be reserved as housing for STC actors, fellows, and other staff. STC shall be permitted to also make available the STC Housing Component as housing for other arts organizations. The STC Housing Component may be used for short-term housing for the above persons and organizations; notwithstanding the foregoing, STC shall not cause or permit the STC Housing Component to include rentals through Airbnb or other such short-term rentals. Further:

- (a) During the initial 20-year period described above, the Applicant shall be permitted to sell all or a portion of the STC Housing Component, but in the event that the Applicant sells such component during this period, the STC Housing Component shall only be sold for use as for-sale housing consistent with Condition A6 of this Order and such units and any related condominium association shall be subject in all respects to the terms and conditions of this Order; and
- (b) In the event that the Applicant sells or leases all or a portion of the STC Component of the Project after the expiration of the 20-year period, the Applicant shall first cause the purchaser(s) and/or lessee(s) to enter into a written agreement whereby the purchaser(s) and/or lessee(s) acknowledges and agrees that the STC Component will remain as a mix of office, arts/design/creation, educational, housing, or similar institutional uses

B. Public Benefits

1. Affordable Housing:

- (a) **For the life of the Project,** the Applicant shall set aside a minimum of 8% of the residential GFA of the Project (approximately 6,831 square feet of GFA) as Inclusionary Zoning Units in accordance with Subtitle C for households earning up to 80% of the Median Family Income, as set forth in the chart below;

Residential Unit Type	Gross Floor Area / % of Total*	# of Units	Income Type	Affordable Control Period	Affordable Unit Type
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Total	85,387/100%	82	Mixed	--	--
Market Rate Units	78,556/92%	77	Market Rate	--	--
Inclusionary Zoning Units	6,831/8%	5	Up to 80% of MFI	Life of the Project	Ownership

- (b) At least three Inclusionary Zoning Unit shall be three-bedroom units and at least one Inclusionary Zoning Unit shall be a two-bedroom unit;
- (c) The covenant required by D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl.) shall include a provision or provisions requiring compliance with this Condition; and
- (d) The Applicant will work with the D.C. Department of Housing and Community Development to include the Amidon-Bowen Parent Teacher Association as well as teachers and other staff at public schools within ANC 6D as a part of the marketing efforts for the Project’s affordable housing.

2. Environmental and sustainable benefits:

- (a) **Prior to the issuance of the first Certificate of Occupancy for the Project,** the Applicant shall provide the Zoning Administrator with evidence that the Project is on track to secure LEED-Gold certification or higher from the U.S. Green Building Council under the LEED-2009 rating system. **Within 12 months after the issuance of the first certificate of occupancy for the Project,** the Applicant shall submit evidence to the Zoning Administrator that it has secured such LEED-Gold certification;
- (b) **Prior to the issuance of a Certificate of Occupancy,** the Applicant shall demonstrate that it has designed and constructed solar arrays located on a minimum of 830 square feet of the roof area of the Project.; and
- (c) **Prior to the issuance of a Certificate of Occupancy,** the Applicant shall demonstrate that it installed at least two electric vehicle charging stations in the garage.

3. Streetscape improvements:

Prior to the issuance of a Certificate of Occupancy for the Project and subject to approval by DDOT, the Applicant shall provide evidence to the Zoning Administrator that it has constructed the streetscape and public space improvements shown on pages 4.1 to 4.5 of the Approved Plans.

4. Bumpouts:

Prior to the issuance of a Certificate of Occupancy for the Project and subject to approval by DDOT, the Applicant agrees to design and install “bumpouts” along 6th Street between G Street and I Street as shown in Exhibit 52D, to slow vehicular traffic, discourage “cut-through” traffic, and improve pedestrian safety crossing 6th Street.

5. Public Art:

Prior to the issuance of a Certificate of Occupancy for the Project and for so long as STC is located within the Project, the Applicant shall develop and install the “art panels” along I Street as shown on the Approved Plans subject to approval by the Public Space Committee.

6. Waterfront Village:

Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period and for a minimum of 20 years, the Applicant will partner with the Waterfront Village to provide access to STC performances. Twice a year, the Applicant will provide the Village with a minimum of 30 tickets to an STC performance, make available transportation to and from the performance, and provide pre- and/or post-show discussions with STC education staff, artistic staff, or actors.

7. Southwest Night STC Performances:

Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period and for a minimum of 20 years, the Applicant will create a “Southwest Neighbors” performance for each STC show (i.e., a minimum of six times per year), for which all Southwest residents will be able to purchase deeply discounted tickets (no greater than 33% of regular price). the Applicant shall designate a staff person to be responsible for working with ANC 6D and the Amidon-Bowen and Jefferson Academy PTAs to publicize the event.

8. Amidon-Bowen Parent Teacher Association:

Not more than 90 days after the issuance of the final order approving the Development and the adjudication of any appeals or expiration of the appeals period, the Applicant shall contribute \$50,000 via check to the Amidon-Bowen Parent-Teacher Association to fund after-school programs and related facility improvements at Amidon-Bowen Elementary School. **Compliance with this condition shall be demonstrated through evidence submitted by the Applicant prior to the issuance of a Certificate of Occupancy** that (1) Applicant has completed the contribution to the PTA and (2) the after-school programs and improvements have been or are being provided.

C. **Benefits Outlined in Southwest Neighborhood Assembly (SWNA) Agreement**

1. **Following the issuance of this Order and the adjudication of any appeals or expiration of the appeals period, and for a minimum period of 20 years**, the Applicant shall provide the following benefits:
- (a) Make available “District Shakespeare” events and activities to Jefferson Academy Middle School, including at least 100 tickets for one performance annually, transportation to and from the performance, pre-show workshops, and professional development for teachers;
 - (b) Provide invitations to Jefferson Academy and Amidon-Bowen Elementary School to STC’s performances of *A Mini Midsummer Night’s Dream* and *The Tiny Tempest.*;
 - (c) Invite classes from Amidon-Bowen and Jefferson, as well as community associations, for annual tours of the Lansburgh Theatre, Sidney Harman Hall, and the Project (once completed);
 - (d) Reserve four gift certificates for tickets, adult Master Acting Classes, or Camp Shakespeare annually for the Amidon-Bowen PTA and the Jefferson Academy PTA, for PTA special events and raffles, which will be provided upon appropriate request made by organizers of such events to STC and subject to availability (i.e. two gift certificates for each program per PTA, annually);
 - (e) Coordinate with the Ward 6 Councilmember’s office to distribute free tickets to Ward 6 Night Free for All performances at Sidney Harman Hall. Provide tickets for up to 200 residents of Ward 6 annually;
 - (f) Provide Southwest Community educators priority invitations to Teacher Appreciation Night at Sidney Harman Hall;
 - (g) Make available at least 10 discounted tuition/scholarship spots for Adult Master Acting Classes and Camp Shakespeare for members of the Southwest Community who apply for such discounted tuition by the advertised deadline for same;
 - (h) Reserve free tickets, annually, to the Academy of Classical Acting Night showcase performances for the Southwest Community;
 - (i) An STC representative will serve on the Duck Pond Advisory Group and, based on the direction of the Advisory Group, STC shall assist and participate in programming of arts events at the Duck Pond;

- (j) Advertise in the Southwester newspaper with at least four one-half page advertisements per year (or the equivalent thereof) for a minimum period of four years;
 - (k) Provide an annual monetary contribution of \$2,500 to the SW ArtsFest for a minimum period of five years. In the event that the SW ArtsFest is not held, the contribution shall be reallocated to the Southwest Business Improvement District (SW BID) for improvements to or programming at the Greater Duck Pond/Arts Walk; and
 - (l) Compliance with the above requirements shall be demonstrated through the report set forth in Condition D.9(b).
2. **Following the issuance of a Certificate of Occupancy for the Project**, the Applicant shall provide the following benefits:
- (a) Provide an Open House at the Project for the Southwest community (including evening tours of the costume shop and rehearsal spaces, with activities for families);
 - (b) When such spaces are not in use by STC, STC shall make available assembly spaces and/or conference rooms, education space, or rehearsal space in the Project to organizations of the Southwest community during reasonable weekday evening and weekend daytime hours for community meetings with no room rental charges, provided STC staff is available to open and close the space during the requested meeting time; and
 - (c) Compliance with the above requirements shall be demonstrated through the report set forth in Condition D.9(b).

D. Mitigations

1. Trash:
- (a) The Applicant shall ensure that the Project will utilize a vendor that undertakes all trash and recycling pickup no more than twice a week;
 - (b) The Applicant shall ensure that trash and recycling collection hours will be limited to 10:00 a.m. to 4:00 p.m., Monday through Friday. There will be no trash or recycling collection on weekends; and
 - (c) The Applicant shall ensure that trash and recycling collection will take place within the Private Driveway rather than in the building's loading dock.

2. Deliveries and Loading

- (a) The Applicant shall ensure that the Project will reserve one space within the garage to accommodate the van used for costume shop deliveries;
- (b) The Applicant shall ensure that all other deliveries and moving activity will occur within the loading dock. Deliveries will be limited to 9:00 a.m. to 5:00 p.m. Except in case of an emergency, service vehicles shall be limited to 7:00 a.m. to 8:00 p.m.; and
- (c) The Condo Association and STC shall ensure that all service, delivery, and moving trucks utilizing the loading dock will be limited to 30-foot box trucks or smaller vehicles.

3. Noise:

- (a) The Applicant shall ensure that access to the rooftop terrace of the Project will be limited to 7:00 a.m. to 10:00 p.m. on Sunday through Thursday and 7:00 a.m. to 11:00 p.m. on Friday and Saturday; and
- (b) No amplified music through a loudspeaker will be permitted on the rooftop at any time.

4. Parking:

- (a) The Applicant shall ensure that the Project will include 40 on-site parking spaces, including 25 parking spaces for the condominium units and 15 spaces for STC;
- (b) The Applicant will ensure that STC staff will also have access to a minimum of 15 off-site parking spaces for daytime parking use by STC, either at Arena Stage or at a similar nearby garage;
- (c) The Applicant will notify all guests attending classes, workshops, or events at the site that street parking is extremely limited, and STC will provide information on transit alternatives as well as on nearby parking garages; and
- (d) The Applicant will include a provision in all condominium documents advising potential purchasers that the properties will not be eligible for participation in the Residential Parking Permit (“RPP”) program.

5. Curbside Management:

The Applicant will work with DDOT to implement the curbside management plan included in Exhibit 52C, which will accommodate STC's building entrance and summer camp pickup/drop off needs without reducing the number of RPP spaces on 6th Street and without reducing the number of RPP spaces on I Street by more than two spaces.

6. Pets:

- (a) The Applicant shall incorporate a "pet relief area" into the Project to be located on the roof of the Project; and
- (b) The Applicant shall ensure that the condominium documents and by-laws require maintenance of the "pet relief area" in the Project.

7. Litter and Maintenance:

Prior to the commencement of construction of the Project, the Applicant shall:

- (a) Conduct patrols and site visits three times a week;
- (b) Ensure that the sidewalks adjacent to the PUD Site are shoveled and/or treated the morning after any snow or ice event; and
- (c) Provide the name and contact number of its property management person responsible for the PUD Site to UNSW and to ANC 6D.

8. Construction Management:

The Applicant will adhere to the Construction Management Plan included in Exhibit 52C as supplemented by the CMP Addendum included in Exhibit 58A of the Record.

9. Reporting:

- (a) Report Point for Neighborhood Comment:

The Applicant shall ensure that STC and the Condo Association each will establish and maintain a point of contact to ANC 6D, UNSW, Amidon-Bowen, and Jefferson Academy; and

- (b) **For a minimum of 20 years and for so long as STC is located within the Project**, the Applicant shall ensure that STC provides ANC 6D with a written, publicly available annual report with respect to the Public Benefits outlined in Conditions B(5) – B(8) and C(1) and C(2) above. STC shall continue to evaluate and develop meaningful ways to enhance or

supplement these programs based on suggestions and feedback received from ANC 6D, UNSW, the Amidon-Bowen and Jefferson Academy PTAs, and other stakeholders, and STC shall be permitted to modify these programs only as necessary or appropriate to increase efficacy.

10. Transportation Conditions from DDOT:

- (a) **For the life of the Project**, the Applicant shall provide the following transportation demand management (“TDM”) measures:
- i. The Applicant will identify a TDM Leader (for planning, construction, and operations). The TDM Leader will work with residents and tenants of the building to distribute and market various transportation alternatives and options. This includes providing TDM materials to new residents and tenants in a welcome package. At a minimum, the Welcome Package will include the Metrorail pocket guide, Capital Bikeshare coupon or rack brochure, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map;
 - ii. The Applicant will provide TDM leader contact information to DDOT and goDCgo (info@godcgo.com), for both residential and Shakespeare uses, and report TDM efforts and amenities to goDCgo staff once per year;
 - iii. TDM Leaders will receive TDM training from goDCgo to learn about the TDM conditions for this project and nearby available options;
 - iv. The Applicant will post all TDM commitments online, publicize availability, and allow the public to see what commitments have been promised;
 - v. The Applicant will provide website links to CommuterConnections.com and goDCgo.com on property websites;
 - vi. The Applicant will exceed the Zoning Regulations’ requirements for bicycle parking. This includes secure 67 long-term bicycle parking spaces and 16 short-term exterior bicycle parking spaces around the perimeter of the site;
 - vii. The long-term bicycle storage room will accommodate non-traditional sized bikes including cargo, tandem, and kids’ bikes;

- viii. The Applicant will install a bicycle repair station within the long-term bicycle storage room;
- ix. The Applicant will install Transportation Information Center Displays (electronic screens) within the residential and Shakespeare Theater Company lobbies;
- x. The Applicant will host a transportation event for residents, employees, and members of the community once per year for the first three years after the opening of the building. These could include a walking tour of local transportation options, transportation fair, WABA Everyday Bicycling Seminars, etc.;

The following TDM components apply to the Residential Component:

- xi. The Applicant will unbundle all parking from the cost of the lease or purchase of residential units. Parking costs will be set at the average market rate within a quarter mile, at a minimum;
- xii. The Applicant will provide five shopping carts for resident use to run errands and for grocery shopping;

The following TDM components apply to the STC Component:

- xiii. The Applicant will install a minimum of two showers and four lockers for use by employees and actors;
- xiv. The Applicant will provide a ride-matching program for employees and actors; and
- xv. The Applicant will post “getting here” information on the arts/culture tenant website for attendees/visitors that includes information about how to travel to the site via Metro, biking, and walking. A printable map should also be available and goDCgo can assist with this effort. “Getting here” information will also be disseminated during registration for Shakespeare classes and educational events.

(b) **For the life of the Project**, the Applicant shall provide the following parking management plan:

- i. Residents shall purchase parking spaces in the garage. These spaces will be numbered such that residents have a designated space within the garage;

- ii. Employees must purchase parking passes in the garage or within the designated off-site parking garage;
 - iii. Adults attending classes and actors attending rehearsals will be encouraged to use non-auto modes of transportation and given information on the available options;
 - iv. For those that choose to drive, a list of nearby garages will be distributed, noting that on-street parking is limited and should not be used;
 - v. Special events such as Academy of Classical Acting performances will require off-site parking. For such events, STC will identify nearby parking lots and/or garages that may be used for event parking; and
 - vi. STC will distribute information about special events parking to attendees of Academy of Classical Acting performances and encourage non-auto modes of transportation.
- b. **For the life of the Project**, the Applicant shall provide the following Loading Management Plan measures:
- i. A loading facility manager will be designated by property management;
 - ii. The loading facility manager will schedule deliveries such that the loading facility's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the facility is full, that driver will be directed to return at a later time when the loading facility will be available;
 - iii. STC deliveries and residential condo owners will be provided with information regarding loading dock restrictions, rules, and suggested truck routes upon purchase;
 - iv. All residential condo owners will be required to schedule move ins and move outs;
 - v. Trucks using the loading facility will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including, but not limited to, Title 20 DCMR, Chapter 9, Section 900 (Engine Idling); 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

- vi. The loading facility manager will be responsible for disseminating suggested truck routing maps to drivers from delivery services that frequently utilize the loading facility. The facility manager will also distribute materials such as DDOT's Freight Management and Commercial Vehicle Operations document to drivers as needed to encourage compliance with idling laws.

E. Miscellaneous

1. 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 PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of this Order within which time an application shall be filed for a building permit. Construction must begin within three years of the effective date of this Order.
3. The Applicant is required to comply fully with the provisions of the Human Rights Act of 1977, D.C. Law 2-38, as amended, and this Order is conditioned upon full compliance with those provisions. In accordance with the D.C. Human Rights Act of 1977, as amended (D.C. Official Code § 2-1401.01 *et seq.*, ("Act")), the District of Columbia does not discriminate on the basis of actual or perceived: race, color, religion, national origin, sex, age, marital status, personal appearance, sexual orientation, gender identity or expression, familial status, family responsibilities, matriculation, political affiliation, genetic information, disability, source of income, or place of residence or business. Sexual harassment is a form of sex discrimination that is also prohibited by the Act. In addition, harassment based on any of the above protected categories is also prohibited by the Act. Discrimination in violation of the Act will not be tolerated. Violators will be subject to disciplinary action.
4. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

**PROPOSED ACTION
VOTE (April 29, 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 (Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull 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 29, 2019.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), 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 (SSA) 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 a new Chapter 86 (Behavioral Health Transformation Demonstration Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations.

DHCF, in partnership with the Department of Behavioral Health (DBH), submitted a Section 1115 Behavioral Health Transformation Demonstration Program (demonstration program) application to the Centers for Medicare and Medicaid Services (CMS) on June 3, 2019 and received federal approval on November 6, 2019. Under the demonstration program, the District received authority to provide new behavioral health services reimbursed by the Medicaid program between January 1, 2020 and December 31, 2024. Waiver expenditure authority for services not covered under Section 8608 will expire by December 31, 2021. The District plans to seek CMS approval to convert authority for Medicaid coverage of expiring services to the District of Columbia Medicaid State Plan.

The goals of this demonstration program are to increase access to a broader continuum of behavioral health services for District Medicaid beneficiaries, advance the District's goals in the Opioid Strategic Plan, *Live.Long.DC*, and support movement towards a more person-centered system of physical and behavioral health care. The demonstration program will test whether the expenditure authority granted, in addition to other concurrent behavioral health delivery system enhancements and re-design efforts, results in increased access to behavioral health care services and improved behavioral health outcomes for District Medicaid beneficiaries diagnosed with substance use disorders (SUD), serious mental illness (SMI), and serious emotional disturbance (SED). Further information on the demonstration program, including CMS' notice of approval and the special terms and conditions governing District of Columbia's implementation of the demonstration program, are available on DHCF's website at <https://dhcf.dc.gov/1115-waiver-initiative>.

Under the demonstration program, DHCF is authorized to claim federal financial participation for a broad array of behavioral health services including: (1) services provided to non-elderly adults in an institution for mental disease (IMD); (2) crisis stabilization services; (3) trauma-informed behavioral health services; (4) transition planning services for individuals leaving inpatient and residential settings; (5) recovery support services; and (6) psychosocial rehabilitation services (also known as "Clubhouse" services); and (7) supported employment services. Additionally, DHCF is eliminating the one-dollar (\$1) copayment for prescriptions related to the provision of medication assisted treatment (MAT) services.

DHCF estimates that Medicaid expenditures under this demonstration program will total \$37,599,200 in demonstration year (DY) 2020 and \$40,110,911 in DY 2021.

The purpose of this emergency and proposed rulemaking is to set forth requirements governing beneficiary eligibility, provider participation, and Medicaid fee-for-service reimbursement for behavioral health services authorized under the demonstration program. Services and program changes authorized under the demonstration program will be phased in during the first demonstration year. The proposed rulemaking sets forth requirements for service and program changes to be implemented beginning January 1, 2020. Sections 8610, 8611, and 8612 are reserved for additional demonstration program services DHCF will provide in subsequent rulemaking. This rulemaking also corresponds to changes to the District’s local authority to oversee behavioral health services being proposed by DBH under Title 22-A of the DCMR.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents. This demonstration program was conceived, in large part, as a response to the crisis unfolding in the District relating to opioid use and abuse. DHCF and DBH expect implementation of the proposed changes to improve the quality of health outcomes for individuals diagnosed with SMI/SED and increase access to potentially life-saving treatment for individuals diagnosed with SUD.

The emergency rulemaking was adopted on November 27, 2019 and shall become effective on the date of publication of this notice in the *D.C. Register*. The emergency rules will remain in effect for one hundred and twenty (120) days or until March 26, 2019, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

**CHAPTER 86 BEHAVIORAL HEALTH TRANSFORMATION
 DEMONSTRATION PROGRAM**

- 8600 GENERAL PROVISIONS**
- 8601 ELIGIBILITY REQUIREMENTS**
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- 8603 PROGRAM SERVICES: PSYCHOSOCIAL REHABILITATION
 (CLUBHOUSE)**
- 8604 PROGRAM SERVICES: TRAUMA RECOVERY EMPOWERMENT
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- 8605 PROGRAM SERVICES: TRAUMA SYSTEMS THERAPY**
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- 8609** PROGRAM SERVICES: LICENSED BEHAVIORAL HEALTH PRACTITIONERS
- 8610** CRISIS STABILIZATION SERVICES [RESERVED]
- 8611** SUPPORTED EMPLOYMENT SERVICES FOR BENEFICIARIES WITH A SUBSTANCE USE DISORDER [RESERVED]
- 8612** TRANSITION PLANNING SERVICES [RESERVED]
- 8613** MEDICATION ASSISTED TREATMENT BENEFICIARY COST SHARING
- 8614** RECORDKEEPING
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- 8616** AUDITS AND REVIEWS
- 8617** QUALITY OVERSIGHT AND PROVIDER REPORTING
- 8699** DEFINITIONS

8600 GENERAL PROVISIONS

- 8600.1 The purpose of this chapter is to establish standards governing the administration of the Medicaid Section 1115 Behavioral Health Transformation Demonstration Program (demonstration program) as authorized by the United States Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) under Section 1115 of the Social Security Act (SSA).
- 8600.2 Services and requirements set forth in this chapter shall be effective January 1, 2020 through December 31, 2024, in accordance with the Special Terms and Conditions (STCs), as set forth by CMS, in its approval of the demonstration program. The STCs are available on the Department of Health Care Finance's (DHCF) website at <https://dhcf.dc.gov/1115-waiver-initiative>.
- 8600.3 Except for services identified in § 8608, expenditure authority under this demonstration program will expire on December 31, 2021.
- 8600.4 Medicaid services authorized under this chapter are subject to evaluation and monitoring requirements consistent with the STCs and policy guidance published to the DHCF website at www.dhcf.dc.gov.
- 8600.5 The demonstration program may be terminated by CMS, or withdrawn, extended, or amended by DHCF in accordance with the requirements set forth in the approved STCs.
- 8600.6 DHCF shall publish and maintain provider guidance that supports implementation of the demonstration program on the DHCF website at www.dhcf.dc.gov.

8601 ELIGIBILITY REQUIREMENTS

- 8601.1 The demonstration program does not amend or change District of Columbia Medicaid eligibility requirements, standards, or methodologies set forth under the

District of Columbia Medicaid State Plan and applicable regulations under Title 29 of the District of Columbia Municipal Regulation (DCMR).

- 8601.2 Services outlined in this chapter will be available to individuals enrolled in District of Columbia Medicaid Program to the extent that the individual meets the criteria established for the service in this chapter.

8602 REIMBURSEMENT

- 8602.1 In order to receive Medicaid reimbursement, each demonstration program services provider shall enter into a provider agreement with DHCF and comply with the screening and enrollment requirements set forth in Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 DCMR.

- 8602.2 Effective January 1, 2020, reimbursement for services set forth in this chapter shall be made according to the District of Columbia Medicaid fee schedule available online at www.dc-medicaid.com. All future updates to Medicaid reimbursement rates for demonstration program services shall comply with the public notice requirements set forth under Section 988 of Chapter 9 of Title 29 DCMR and be posted to the DHCF website at www.dhcf.dc.gov.

- 8602.3 A public notice of demonstration program rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of any changes and shall include a link to the Medicaid fee schedule.

- 8602.4 For services outlined in this chapter, the Department of Behavioral Health (DBH) shall be responsible for payment of the non-federal share of total expenditures in accordance with the terms and conditions set forth in the Memoranda of Understanding between DHCF and DBH.

8603 PROGRAM SERVICES: PSYCHOSOCIAL REHABILITATION (CLUBHOUSE)

- 8603.1 Psychosocial rehabilitation (also known as “Clubhouse”) services are behavioral, cognitive, or supportive interventions that assist individuals with the development of social networking, independent living, budgeting, self-care, and other skills to enable independent living and ongoing employment. Services under this section shall become effective January 1, 2020.

- 8603.2 Individuals eligible to receive psychosocial rehabilitation services are Medicaid recipients who meet the requirements set forth in Chapter 34 and Chapter 39 of Title 22-A DCMR.

- 8603.3 Psychosocial rehabilitation services shall be delivered in accordance with the requirements set forth in Chapters 34 and 39 of Title 22-A DCMR.

8603.4 Psychosocial rehabilitation service providers shall be certified in accordance with the requirements set forth in Chapters 34 and 39 of Title 22-A DCMR.

8604 PROGRAM SERVICES: TRAUMA RECOVERY EMPOWERMENT MODEL

8604.1 Trauma Recovery Empowerment Model (“TREM”) is a structured group therapy intervention for individuals who have survived trauma and have substance use disorders or mental health conditions.

8604.2 Effective March 1, 2020, individuals eligible to receive TREM services shall be Medicaid beneficiaries who meet requirements set forth in Chapter 34 or Chapter 63 of Title 22-A DCMR.

8604.3 Medicaid reimbursable TREM services shall include therapy sessions focused on:

- (a) Empowerment, self-comfort, and accurate self-monitoring, as well as ways to establish safe physical and emotional boundaries;
- (b) The trauma experience and its consequences; and
- (c) Skills building, including emphases on communication style, decision-making, regulating overwhelming feelings, and establishing safer, more reciprocal relationships.

8604.4 TREM services shall be furnished by a TREM provider certified in accordance with the requirements set forth in Chapter 34 or Chapter 63 of Title 22-A DCMR. TREM provider staff must complete DBH-approved TREM training.

8605 PROGRAM SERVICES: TRAUMA SYSTEMS THERAPY

8605.1 Trauma Systems Therapy (TST) is a comprehensive, phase-based treatment program for children and adolescents who have experienced traumatic events or who live in environments with ongoing stress or traumatic reminders.

8605.2 Effective March 1, 2020, Medicaid reimbursable TST services shall include:

- (a) Psychotherapy;
- (b) Home or community-based stabilization;
- (c) Emotion regulation skills training; and
- (d) Consultation with the psychopharmacologic treatment team.

8605.3 Medicaid beneficiaries who meet the requirements set forth in Chapter 34 of Title 22-A DCMR shall be eligible to receive Trauma Systems Therapy (TST) services, as provided under the Demonstration Program.

8605.4 TST services shall be furnished by providers that have been certified by DBH in accordance with requirements set forth in Chapter 34 of Title 22-A DCMR. TST provider staff must complete DBH-approved TST training.

8606 PROGRAM SERVICES: RECOVERY SUPPORT SERVICES

8606.1 Recovery support Services are non-clinical services and supports designed to support and maintain ongoing recovery from a substance use disorder (SUD). Services under this section shall become effective January 1, 2020.

8606.2 Medicaid reimbursable recovery support services shall include:

- (a) Recovery Support evaluation;
- (b) Goal setting;
- (c) Case management;
- (d) Coaching;
- (e) Counseling; and
- (f) Other services designed to assist individuals with SUD with successful implementation of their recovery plan in either individual or group settings, provided in accordance requirements set forth in Chapter 63 of Title 22-A DCMR.

8606.3 Medicaid beneficiaries eligible to receive recovery support services shall meet the following criteria:

- (a) Have a diagnosis of a SUD who are currently in treatment or have moved into recovery from substance use disorder; or
- (b) Be self-identified with having a SUD, but assessed, in accordance with Chapter 63 of Title 22-A DCMR, as not needing treatment.

8606.4 Recovery support services shall be furnished by Medicaid-enrolled providers certified as recovery support service providers in accordance with Chapter 63 of Title 22-A DCMR.

8606.5 Recovery support provider qualified staff include:

- (a) Certified recovery coaches;
- (b) Certified peer specialists; and
- (c) Other qualified providers authorized under Chapter 63 of Title 22-A DCMR.

8607 PROGRAM SERVICES: SUPPORTED EMPLOYMENT SERVICES FOR INDIVIDUALS WITH SERIOUS MENTAL ILLNESS

8607.1 Supported employment is an evidence-based practice that:

- (a) Provides ongoing work-based vocational assessment, job development, job coaching, treatment team coordination, and vocational and therapeutic follow-along supports;
- (b) Involves community-based employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the consumer;
- (c) Provides services at various work sites; and
- (d) Provides part-time and full-time job options that are diverse, competitive, and integrated with co-workers without disabilities; are based in business or employment settings that have permanent status rather than temporary or time-limited status; and which pay at least minimum wage.

8707.2 Effective February 1, 2020, Medicaid reimbursable vocational supported employment services shall include the following, as defined in Chapter 37 of Title 22-A DCMR:

- (a) Intake;
- (b) Vocational Assessment;
- (c) Individualized Work Plan Development;
- (d) Treatment Team Coordination;
- (e) Disclosure Counseling;
- (f) Job Development;
- (g) Job Coaching; and
- (h) Vocational Follow-Along Supports for the beneficiary and employer.

- 8607.3 In accordance with the eligibility requirements set forth in Chapter 37 of Title 22-A DCMR, individuals eligible for vocational supported employment services shall:
- (a) Be a Medicaid beneficiary at least eighteen (18) years of age;
 - (b) Indicate an interest in employment;
 - (c) Have supported employment identified as a needed service on a current, person-centered plan of care that has been reviewed by DBH; and
 - (d) Be determined by DBH as meeting the following needs-based criteria set forth in Chapter 37 of Title 22-A DCMR.
- 8607.4 Individuals shall be assessed for supported employment services by an entity designated by DBH.
- 8607.5 The designated assessment entity shall conduct the needs-based assessment in accordance with the requirements set forth in Chapter 37 of Title 22-A DCMR and shall conduct a reassessment at least every one-hundred eighty (180) days or upon significant change in the beneficiary's condition.
- 8607.6 The designated assessment entity shall also be responsible for developing the person-centered plan of care, as identified in § 8607.3(c), in accordance with federal regulations under 43 CFR § 441.725 and requirements set forth in Chapter 37 of Title 22-A DCMR.
- 8607.7 The person-centered plan of care must be reviewed and revised by the designated assessment entity in accordance with the requirements set forth in Chapter 37 of Title 22-A DCMR.
- 8607.8 The designated assessment entity shall also assist the Medicaid beneficiary in identification and selection of a supported employment provider.
- 8607.9 The assessment and the person-centered plan of care shall be reviewed by DBH, consistent with the requirements set forth in Chapter 37 of Title 22-A DCMR prior to initiation of supported employment services.
- 8607.10 Following review and approval of the assessment information and person-centered plan of care, DBH shall issue an authorization for the initiation of supported employment services by the beneficiary-selected supported employment provider, in accordance with the requirements set forth in Chapter 37 of Title 22-A DCMR.
- 8607.11 The designated assessment entity shall inform the beneficiary of his or her eligibility for supported employment services.

8607.12 Supported employment providers shall be certified in accordance with the requirements set forth in Chapter 37 of Title 22-A DCMR.

8607.13 A supported employment provider shall develop an Individualized Work Plan for each Medicaid beneficiary receiving supported employment services, in accordance with the requirements set forth in Chapter 37 of Title 22-A DCMR.

8607.14 A Medicaid beneficiary shall not receive supported employment services if they reside in an institutional setting or any setting that is not in compliance with the Home and Community-Based Services (HCBS) setting requirements consistent with 42 CFR § 441.301.

8608 PROGRAM SERVICES: SERVICES PROVIDED IN INSTITUTIONS FOR MENTAL DISEASE FOR MEDICAID BENEFICIARIES AGED 21-64

8608.1 Medicaid reimbursable treatment provided in inpatient or residential treatment settings that qualify as institutions for mental disease (IMD) shall include services which:

- (a) Are medically necessary to diagnose, treat, or stabilize the underlying illness, condition, or disease;
- (b) Identified within and provided in accordance with an individualized plan of care; and
- (c) Authorized under the District of Columbia Medicaid State Plan or a waiver thereof.

8608.2 Medicaid beneficiaries are eligible for services provided within an IMD under the demonstration program, when they:

- (a) Are aged twenty-one (21) to sixty-four (64);
- (b) Require short-term inpatient or residential treatment to resolve or ameliorate the symptoms associated with the acute phase of a behavioral health crisis, as determined by a qualified practitioner practicing in accordance with licensure requirements, as set forth under the District of Columbia Health Occupations Revision Act of 1985 and applicable regulations.

8608.3 The individualized plan of care, identified in § 8608.1(b) shall be developed by a multi-disciplinary team of practitioners following diagnosis of the beneficiaries underlying condition and comprehensive assessment of the beneficiary's treatment needs.

- 8608.4 The multi-disciplinary team shall include psychiatrists, psychologists, advanced practice registered nurses, and other qualified providers practicing in accordance with licensure requirements, as set forth under the District of Columbia Health Occupations Revision Act of 1985 and applicable regulations.
- 8608.5 District inpatient and residential behavioral health service providers shall be licensed or certified in accordance with the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48, D.C. Official Code §§ 44- 501 *et seq.*) or otherwise applicable licensure or certification requirements as set forth under District law.
- 8608.6 Eligible providers must meet the definition of an institution for mental disease as set forth at 42 CFR § 435.1010.
- 8608.7 Inpatient mental health and SUD treatment shall be delivered by a facility that meets the conditions of participation set forth in 42 CFR § 482 and be either:
- (a) A licensed or certified facility that meets the conditions of participation; or
 - (b) Accredited by nationally recognized accreditation entity by a national accrediting organization whose psychiatric hospital accreditation program or acute hospital accreditation program has been approved by CMS.
- 8608.8 Residential SUD treatment shall be delivered by a certified facility that, as assessed by the District or a nationally recognized accreditation entity, delivers care consistent with requirements under Chapter 63 of Title 22-A DCMR.
- 8608.9 Residential mental health treatment shall be delivered by a facility that, as assessed by the District or a nationally recognized accreditation organization, delivers care consistent with nationally recognized, mental health-specific program standards for residential treatment facilities.
- 8608.10 To be eligible for Medicaid reimbursement, inpatient and residential SUD treatment providers must provide Medication Assisted Treatment (MAT) services directly or facilitate the provision of MAT services by providing transportation for beneficiaries to obtain medications at a MAT provider and participating in the coordination of care in conjunction with MAT providers.
- 8608.11 Effective January 1, 2020, Medicaid reimbursement for services provided in an IMD located in the District of Columbia shall be made according to the District of Columbia Medicaid fee schedule available online at <https://www.dc-medicaid.com/dcwebportal/home>.
- 8608.12 DHCF shall reimburse IMD providers located outside the District of Columbia at the rate established by the Medicaid State Agency where the IMD is located.

- 8608.13 For Medicaid beneficiaries enrolled in a District Medicaid Managed Care Plan, DHCF shall only provide fee-for-service reimbursement to eligible providers for IMD stays that exceed the stays reimbursed by the Medicaid Managed Care Plan, pursuant to “in lieu of” requirements set forth under 42 CFR § 438 and subject to provider guidance provided by DHCF on its website at www.dhcf.dc.gov.
- 8608.14 DHCF will provide services for a targeted statewide average length of stay of thirty (30) days in inpatient and residential treatment settings.
- 8608.15 IMD stays for the treatment of SMI that exceed sixty (60) days are not Medicaid reimbursable.
- 8608.16 Medicaid fee-for-service reimbursement for IMD stays shall be authorized by DHCF or its designee. DHCF or its designee shall provide oversight of total length of stay by conducting concurrent utilization reviews.
- 8608.17 Inpatient SUD treatment services shall be billed on a per diem basis. Residential SUD treatment services shall be billed on a per unit basis.
- 8608.18 Inpatient SMI treatment services shall be billed on a per diem basis.
- 8608.19 Reimbursement under this section is available for acute inpatient or residential treatment provided in settings that qualify as IMDs. Medicaid reimbursement for long-term residential or long-term inpatient treatment is not available under this section.
- 8608.20 Effective April 1, 2020, IMD providers are required, as a condition of reimbursement for services authorized under this chapter, to participate through a formal agreement with a registered HIE entity of the DC Health Information Exchange (DC HIE), defined in Chapter 87 of Title 29 DCMR. Once they become a participating provider, IMD providers must also participate in a reporting process via the DC HIE throughout the demonstration period, in accordance with provider guidance published to the DHCF website at www.dhcf.dc.gov.
- 8608.21 Medicaid reimbursement for services provided in general hospitals, intermediate care facilities, nursing facilities, or skilled nursing facilities is not governed or authorized under this section.
- 8608.22 Medicaid reimbursement is not available for services provided to beneficiaries who are involuntarily residing in an inpatient or residential treatment facility by operation of criminal law.

8609 PROGRAM SERVICES: LICENSED BEHAVIORAL HEALTH PRACTITIONERS

8609.1 Effective January 1, 2020, the following licensed behavioral health providers shall be eligible to enroll in the District of Columbia Medicaid Program and provide behavioral health services, regardless of program affiliation:

- (a) Psychologists;
- (b) Licensed Independent Clinical Social Workers;
- (c) Licensed Professional Counselors; and
- (d) Licensed Marriage and Family Therapists.

8609.2 Medicaid reimbursement will be available for the following services, when provided to an eligible Medicaid beneficiary by a licensed behavioral health practitioner identified in § 8609.1, practicing within the scope of their licensure, in accordance with requirements set forth under the District of Columbia Health Occupations Revision Act of 1985, District of Columbia Official Code Title 3, Chapter 12 Sections 3-1201.01-3-1213.13, 3-1251.01-3.1251.16 and applicable regulations:

- (a) Assessment, Diagnostic, and Screening services; and
- (b) Psychological Testing.

8609.3 Medicaid reimbursement will be available for the following services, when provided to an eligible Medicaid beneficiary diagnosed with a serious emotional disturbance, SMI, or SUD by a licensed behavioral health practitioner identified in § 8609.1 practicing within the scope of their licensure, in accordance with requirements set forth under the District of Columbia Health Occupations Revision Act of 1985 District of Columbia Official Code Title 3, Chapter 12 Sections 3-1201.01-3-1213.13, 3-1251.01-3.1251.16 and applicable regulations:

- (a) Counseling and Psychotherapy; and
- (b) Treatment Planning and Care Coordination.

8609.4 Medicaid reimbursement rates for fee-for-service behavioral health services provided in accordance with this section shall be eighty percent (80%) of the rates paid by the Medicare Program. The reimbursement rates for behavioral health services shall be posted on Department of Health Care Finance's website at www.dc-medicaid.com and updated annually.

- 8609.5 For services identified in §§ 8609.2 and 8609.3, where the procedure code does not fall within the Medicare fee schedule, the methodology set forth § 8609.6 shall be used to establish the Medicaid reimbursement rate.
- 8609.6 DHCF shall consider the following factors to establish the Medicaid reimbursement rate for procedure codes that do not fall within the Medicare fee schedule:
- (a) Practitioner fees;
 - (b) Fee schedules from other states;
 - (c) Similar procedures with established fees; or
 - (d) Private insurance payments.
- 8610 CRISIS STABILIZATION SERVICES [RESERVED]**
- 8611 SUPPORTED EMPLOYMENT SERVICES FOR BENEFICIARIES WITH A SUBSTANCE USE DISORDER [RESERVED]**
- 8612 TRANSITION PLANNING SERVICES [RESERVED]**
- 8613 MEDICATION ASSISTED TREATMENT BENEFICIARY COST SHARING**
- 8613.1 Medicaid amount, duration and scope requirements, as set forth under § 1902(a)(10)(B) of the SSA, and comparability requirements, as set forth under §§ 1902(a)(10) and 1902(a)(17) are waived under this demonstration program to enable the DHCF to exempt beneficiaries receiving SUD treatment under this demonstration from one-dollar (\$1) pharmacy cost-sharing requirements when they are receiving prescriptions associated with MAT.
- 8613.2 There shall be no Medicaid beneficiary cost-sharing for prescriptions associated with the provision of MAT services.
- 8613.3 Medicaid reimbursement for prescriptions associated with the provision of MAT services shall increase by the cost-sharing amount set forth in the District of Columbia Medicaid State Plan fee-for-service pharmacy services.
- 8613.4 Effective January 1, 2020, DHCF shall increase fee-for-service pharmacy provider reimbursement rates for prescriptions associated with provision of MAT services by the cost-sharing amount identified in § 8613.3.

8614 RECORDKEEPING

- 8614.1 Each provider of demonstration program services shall establish and implement a privacy plan to protect the privacy and confidentiality of a beneficiary's records.
- 8614.2 The disclosure of information by a provider of demonstration program services shall be subject to all provisions of applicable District and federal laws governing the privacy and security of health and personal information.
- 8614.3 Each provider of demonstration program services shall maintain complete beneficiary records, financial records covering its operations, and individual treatment plans, in accordance with the service requirements set forth in this chapter, and shall maintain each record for a period of no less than ten (10) years.

8615 ACCESS TO RECORDS

- 8615.1 Each Medicaid-enrolled provider of waiver services shall maintain beneficiary records and individual treatment plans in a manner that will render them amenable to audit and review by the U.S. Department of Health and Human Services, DHCF, DBH, and their authorized designees or agents. Providers must allow appropriate DHCF personnel, DBH personnel, representatives of the U.S. Department of Health and Human Services, and other authorized designees or officials of the District of Columbia government and federal government full access to all records upon request and during announced or unannounced audits or reviews.

8616 AUDITS AND REVIEWS

- 8616.1 This section sets forth the requirements for audits and reviews of demonstration program services set forth in this chapter. DHCF, or its designee, shall perform regular audits of eligible providers to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted at least annually and when necessary to investigate and maintain program integrity.
- 8616.2 DHCF, or its designee, shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of inpatient and residential services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.
- 8616.3 The audit process may utilize statistically valid sampling methods to ensure that a statistically valid sample is drawn when the audit is based on claims sampling. The audit process may review all claims by type, time-period, or other criteria established by DHCF or other entities. Statistically valid and commonly accepted

standards methods for calculating overpayments will be followed. If DHCF denies a claim during an audit, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:

- (a) DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review.
- (b) The Provider shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
- (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
- (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
- (e) Within fifteen (15) days of receipt of the FNMOR, the Provider may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
- (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.

8616.4 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested. DHCF shall retain the right to conduct audits or reviews at any time and audits or reviews may be announced or unannounced.

8616.5 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the auditing official.

8616.6 The failure of a provider to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by

DHCF to the provider to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement. This provision in no way limits DHCF's ability to terminate any Medicaid Provider Agreement for any other reason.

- 8616.7 As part of the audit process, documents providers shall grant access, which may include, but is not limited, to the following:
- (a) Relevant financial records;
 - (b) Statistical data to verify costs previously reported;
 - (c) Program documentation;
 - (d) A record of all service authorization and prior authorizations for services;
 - (e) A record for all request for change in services;
 - (f) Any records listed in § 8614, in addition to any other records relating to the adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider(s); and
 - (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of demonstration program services.

- 8616.8 Nothing in this rule effects a provider's independent legal obligation under this chapter and federal and District law to self-identify overpayments and repay within sixty (60) days of discovery.

8617 QUALITY OVERSIGHT AND PROVIDER REPORTING

- 8617.1 Medicaid reimbursement for services provided under this chapter are authorized under Section 1115(a)(2) of the SSA and are subject to evaluation and monitoring requirements consistent with the terms and conditions of the authorized demonstration.
- 8617.2 As a condition of reimbursement for services authorized under this chapter, providers are required to report any clinical, billing, or utilization information related to provision of service authorized under this chapter to DHCF, its designee, or CMS upon request.
- 8617.3 DHCF shall publish and maintain provider guidance with regard to quality oversight and provider reporting requirements, or subsequent changes, on the DHCF website at www.dhcf.dc.gov.

8699 DEFINITIONS

8699.1 For purposes of this chapter, the following terms shall have the meanings ascribed:

Case Management – A collaborative process of assessment, planning, facilitation, and advocacy for options and services to meet the beneficiary’s behavioral health needs through communication and available resources.

Clubhouse – See Psychosocial Rehabilitation Services.

Counseling - Individual, group, or family face-to-face services for symptom and behavior management, development, restoration, or enhancement of adaptive behaviors and skills, and enhancement or maintenance of daily living skills.

Department of Behavioral Health (DBH) - District of Columbia, Department of Behavioral Health.

Department of Health Care Finance (DHCF) - The executive department responsible for administering the Medicaid program within the District of Columbia effective October 1, 2008.

Institutions for Mental Disease (IMD) – A hospital or other institution of more than sixteen (16) beds that is primarily engaged in providing diagnosis, treatment, or care of persons with mental diseases, including medical attention, nursing care and related services. Whether an institution is an institution for mental diseases is determined by its overall character as that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such. An institution for Individuals with Intellectual Disabilities is not an institution for mental diseases.

Medication Assisted Treatment (MAT) - The use of FDA-approved medications, in combination with counseling and behavioral therapies, to provide a "whole-patient" approach to the treatment of substance use disorders.

Medicaid Fee Schedule - A comprehensive list of fee maximums used to reimburse providers on a fee-for-service basis located at www.dc-medicaid.com.

Psychosocial Rehabilitation Services – Behavioral health, cognitive, or supportive interventions assisting individuals with the development of life skills. Also known as Clubhouse services.

Recovery Support Services (RSS) - Non-clinical services provided to a beneficiary by a certified RSS provider to assist the beneficiary in achieving or sustaining recovery from an SUD. Recovery Support Services are available to individuals with a SUD who are currently in treatment or have moved into recovery from SUD use/abuse, and individuals who have self-identified with SUD, but are assessed as not needing treatment.

Trauma Recovery Empowerment Model (TREM) - A structured group therapy intervention for individuals who have survived trauma and have substance use disorders or mental health conditions. TREM draws on cognitive restructuring, skills training, and psychoeducational and peer support to address recovery and healing from sexual, physical, and emotional abuse.

Trauma System Therapy (TST) - A comprehensive, phase-based model for treating traumatic stress in children and adolescents that adds to individually-based approaches, by specifically addressing the child's or youth's social environment and/or system of care. TST is designed to provide an integrated, highly coordinated system of services guided by the specific understanding of the nature of child or youth traumatic stress.

Vocational Services – Services necessary to enable an individual with a disability to engage in competitive employment.

Substance Use Disorder (SUD) – A chronic relapsing disease characterized by a cluster of cognitive, behavioral, and psychological symptoms indicating that the client continues using a substance despite significant substance-related problems. A diagnosis of SUD requires a client to have had persistent, substance related problem(s) within a twelve (12)-month period in accordance with the most recent version of the DSM.

Comments on this proposed rulemaking shall be submitted in writing to Melisa Byrd, Medicaid Director, Department of Health Care Finance, 441 4th Street, N.W., 9th Floor, Washington, DC 20001, via email to DHCFPublicComments@dc.gov, online at www.dcregs.dc.gov, or by telephone to (202) 442-8742, within thirty (30) days after the date of publication of this notice in the *D.C. Register* or online at DHCF's website. Additional copies of these rules may be obtained from the above address.

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