VOL. 67 – NO. 14 APRIL 3, 2020

District of Columbia REGISTER

HIGHLIGHTS

- D.C. Council honors For Love of Children, for the organization's 54 years of service to the District of Columbia's young scholars
- Office of the Attorney General revises procedures for the receipt of Service of Process on behalf of the Attorney General
- Office of the City Administrator modifies renewal requirements to extend all current security officer and security agency licenses until ninety (90) days after the end of the Coronavirus (COVID-19) public emergency and public health emergency
- Department of Energy and Environment schedules a teleconferencing public hearing and sets the public comment period on Air Quality Issues in the District
- Department of Health establishes emergency regulations to require individuals living in Washington, D.C., to stay at their place of residence, effective March 31, 2020 through April 24, 2020 to mitigate the spread of the Coronavirus (COVID-19)
- Office of the Deputy Mayor for Planning and Economic Development establishes emergency regulations to expedite public health emergency grants to small businesses in the District
- Office of Victim Services and Justice Grants announces availability of funding for the Fiscal Year 2021 Victim Services Grants

The Mayor of the District of Columbia issues a Stay at Home Order, effective at 12:01 a.m. on April 1, 2020 through April 24, 2020 in response to the Coronavirus (COVID-19) public health emergency (Mayor's Order 2020-054)

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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

Deadlines for Submission of Documents for Publication

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

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

Viewing the DC Register

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Legal Effect of Publication - Certification

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

DISTRICT OF COLUMBIA
OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

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MURIEL E. BOWSER
MAYOR

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ADMINISTRATOR

CONTENTS

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

OTHER COUNCIL ACTIONS CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES

PUBLIC HEARINGS

FINAL RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

FINAL RULEMAKING CONT'D

PROPOSED RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

PROPOSED RULEMAKING CONT'D

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY RULEMAKING

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

EMERGENCY RULEMAKING CONT'D

EMERGENCY AND PROPOSED RULEMAKING

NOTICES, OPINIONS, AND ORDERS CONT'D
MAYOR'S ORDERS

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

ACTIONS OF THE EXECUTIVE BRANCH AND INDEPENDENT AGENCIES CONT'D

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-212

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 3, 2019

To recognize and honor Coach Neal Henderson for his induction into the U.S. Hockey Hall of Fame and for his many contributions to the Fort Dupont Ice Hockey Club, and to the District of Columbia.

WHEREAS, Coach Neal Henderson moved to Washington, D.C., in the 1960s and began teaching hockey to neighborhood kids;

WHEREAS, when the demand grew, Coach Henderson rented space at the Fort Dupont Ice Arena and established the Fort Dupont Ice Hockey Club, known as the Cannons, with his high school classmate, Betty Dean in 1978;

WHEREAS, the Fort Dupont Ice Hockey Club is a developmental program with a mission to use hockey to establish self-esteem and a sense of purpose in young people, and to offer them an incentive to excel academically;

WHEREAS, the Fort Dupont Ice Hockey Club is the oldest minority hockey club in North America;

WHEREAS, the Fort Dupont Ice Hockey Club provides the District of Columbia's youth the opportunity to learn hockey and participate in an organized league;

WHEREAS, the program has more than 1,000 children over four decades;

WHEREAS, Coach Henderson ensures each participant excels in school by checking participants' report cards and implementing consequences for any failing grade, including sending participants to do homework while dressed in hockey gear;

WHEREAS, the team is made up of 50 players ages 8 to 18 and is free to participants;

WHEREAS, Coach Henderson uses the club's uniform and colors to teach players about African American history in the nation's capital;

WHEREAS, Coach Henderson's work with the D.C. hockey community has been routinely recognized by the Washington Capitals, including a visit by Capitals captain Alex Ovechkin and

ENROLLED ORIGINAL

owner Ted Leonsis, who brought the Stanley Cup to share with Coach Henderson and his players; and

WHEREAS, Coach Neal Henderson was inducted into the U.S. Hockey Hall of Fame Class of 2019 for his immeasurable contributions to the game of hockey.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Coach Neal Henderson Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia recognizes and honors Coach Neal Henderson for his induction into the U.S. Hockey Hall of Fame and his commitments and contributions to the Fort Dupont Ice Hockey Club, and to District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-213

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 3, 2019

To recognize the important work of For Love of Children and to honor the organization's 54 years of service to the District of Columbia and its young scholars.

WHEREAS, November 12th marked the 54th anniversary of For Love of Children (FLOC);

WHEREAS, FLOC was founded in 1965 and has served more than 10,000 children and youth, and is one of the most respected nonprofits in the Metropolitan area;

WHEREAS, FLOC's mission is to open the doors to success in life by ensuring every child reaches his or her potential, regardless of zip code, skin color, or family status;

WHEREAS, FLOC's dedicated staff and volunteers assist nearly 600 students per year in District of Columbia schools, FLOC facilities, and partner organizations across the District of Columbia;

WHEREAS, FLOC provides educational services beyond the classroom to help students succeed from first grade through college and in their respective careers;

WHEREAS, throughout FLOC's 54-year history, it has operated with the belief that education provides young people with the tools they need to transform their lives, their families' lives, and the communities around them;

WHEREAS, FLOC has built a multi-layered approach to support and guide each of its young scholars to successful completion of a college degree;

WHEREAS, according to the DC Alliance for Youth Advocates, there are approximately 8,300 young people ages 16 to 24 in the District of Columbia who are not enrolled in school;

WHEREAS, FLOC's Neighborhood Tutoring Program provides students with tutoring to prevent them from falling behind in reading and math;

ENROLLED ORIGINAL

WHEREAS, FLOC's Scholars Program exposes students to experiences, information, and activities that build skills to help them progress in their educational journeys and into their chosen careers;

WHEREAS, in the past six years, FLOC has helped 96 students navigate the college application process and build the skills they need to be successful in college and their careers; and

WHEREAS, of the 96 students, 100% graduated from high school; 56 are currently enrolled in college; 35 have received scholarships; and 15 have received postsecondary degrees.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "54th Anniversary of For Love of Children Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia recognizes and honors the past and future commitments and contributions of For Love of Children, its staff, and many volunteers.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-214

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 3, 2019

To recognize and honor the life of Bishop Clifton Ellis, in remembrance of his dedication and service to his church community and the District of Columbia.

WHEREAS, Clifton Ellis was born on November 16, 1922, to the late Buck Shaw Ellis and Daisy Cromartie in North Carolina;

WHEREAS, Bishop Ellis served in the United States Army as an Aviation Engineer during World War II;

WHEREAS, in 1946, Bishop Ellis married Isabell McKoy with whom he had 5 children, 13 grandchildren, 26 great grandchildren, and one great great grandchild;

WHEREAS, in 1954, driven by a call to "go to the city to cry Holy," Bishop Ellis moved his family to Washington, D.C. where served as Deacon and later Elder at Tyson's Temple, First Born Church of the Living God;

WHEREAS, Bishop Ellis opened the Full Gospel Tabernacle in 1965, which grew out of a bible study he and Isabell started in their home;

WHEREAS, Bishop Ellis served and helped build the District of Columbia community through his construction company, "Cement Masters," most notably with contributions to the Reagan National Airport in Virginia and the Basilica of the National Shrine of the Immaculate Conception;

WHEREAS, in 1985, Clifton Ellis was ordained a Bishop and continued his service to his church and the D.C. community;

WHEREAS, in an extension of his service, Bishop Ellis opened the Full Gospel Tabernacle Child Development Center in 1986 and provided assistance to low- and moderate-income families to cover the cost of childcare;

WHEREAS, Bishop Ellis passed away on October 30, 2019, at the age of 96 and left a legacy of faith, kindness, and leadership;

ENROLLED ORIGINAL

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Bishop Clifton Ellis Recognition Resolution of 2019".

Sec. 2. The Council of the District of Columbia recognizes and honors Bishop Clifton Ellis, in remembrance, for his years of service to and positive impact on the District of Columbia.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-215

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 3, 2019

To recognize and honor Louise G. Griffin, a life-long resident of the District and patriot on her 100th Birthday on December 18th, 2019.

WHEREAS, Louise G. Griffin was born in Washington D.C. on December 18th, 1919 in Southwest Washington;

WHEREAS, Louise G. Griffin was married to Alphonso Griffin on March 23, 1942;

WHEREAS, Louise G. Griffin has lived in the North Michigan Park community since 1937 where she currently resides;

WHEREAS, Louise G. Griffin is a graduate of Dunbar Senior High School in Washington D.C., Class of 1937;

WHEREAS, Louise G. Griffin earned both a Bachelor's degree and a Master's degree from Howard University;

WHEREAS, Louise G. Griffin was an educator for the District of Columbia Public Schools for over 20 years and taught at Sousa Junior High School;

WHEREAS, Louise G. Griffin served as the assistant principal at Lincoln Junior High School;

WHEREAS, Louise G. Griffin retired from the District of Columbia Public Schools in 1973;

WHEREAS, Louise G. Griffin is the oldest volunteer at the White House and has served for 26 years as a Mail Reader, Christmas Tour Guide, Easter Egg Roll Assistant, Greeting Card Correspondent, State Dinner Reservation Contact, and Call Center Operator for the George W. Bush, William "Bill" Clinton, Barack H. Obama, and Donald Trump administrations;

ENROLLED ORIGINAL

WHEREAS, Louise G. Griffin has 3 children, Valeria Slaughter, Ronald and Brian Griffin and 5 grandchildren Eric Burns, Chandria Slaughter, Anthony Griffin, Harolyn Slaughter, and James Slaughter and;

WHEREAS, Louise G. Griffin enjoys reading, practicing the art of calligraphy and assembling puzzles in her free time.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, that this resolution may be cited as the "Louise G. Griffin 100th Birthday Recognition Resolution of 2019."

Sec. 2. The Council of the District of Columbia recognizes and honors Louise G. Griffin 100th birthday on December 18th, 2019.

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

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-219

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

December 17, 2019

To recognize and celebrate, Reverend James E. Coates for over 60 years of service as the Senior Pastor at Bethlehem Baptist Church in Anacostia.

WHEREAS, Reverend James E. Coates was licensed for ministry by Gethsemane Baptist Church in 1948 and ordained in May 1954;

WHEREAS, Reverend Coates attended Howard University School of Divinity graduating at the top of his class;

WHEREAS, prior to becoming a Pastor, Reverend Coates served as chaplain to migratory agricultural workers in upstate New York and as Director of Christian Educational Activities at Mt. Carmel Baptist Church;

WHEREAS, at Gethsemane Baptist Church, Reverend Coates Pastored the Junior Church, assisted the sexton, played the piano, ushered as a junior usher, and sang in and assisted the Director of Choir No. 2;

WHEREAS, in addition to his Pastoral ministry Reverend Coates was a faculty member at the Washington Baptist Seminary for 10 years;

WHEREAS, Reverend Coates served as the executive director for 3 multi-service anti-poverty programs in the early sixties and seventies;

WHEREAS, Reverend Coates was the leader of the $5 million Anacostia Community School Project and staff chaplain/therapist at St. Elizabeth's Hospital;

WHEREAS, Reverend Coates served in 2 elected positions as the President of the first elected DC Public Schools Board of Education in 1969 and as Ward 8 Representative on the first elected District of Columbia City Council in 1975;

WHEREAS, Reverend Coates currently serves as a clinical member of the Association of Clinical Pastoral Education, a Licensed Professional Counselor and is a member of several boards and commissions;

WHEREAS, Reverend Coates is currently leading Bethlehem Baptist Church in a Multi-Use Development Project, including a new church sanctuary with an adjoining cultural arts and educational facility; and

WHEREAS, Reverend Coates is married to Marcia Hall Coates, a retired Federal Government Senior Executive Service career employee, with whom he shares the parenting of 4 children, eleven grandchildren and four great-grandchildren.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Reverend James E. Coates Ceremonial Recognition Resolution of 2019."

Sec. 2. The Council of the District of Columbia honors Reverend James E. Coates for his community activism, lifelong commitment to service, and faithful leadership.

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

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PROPOSED RESOLUTIONS

PR23-775 National Public Radio, Inc. Refunding Revenue Bonds Project Approval Resolution of 2020

Intro. 3-20-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR23-776 Washington Housing Conservancy/WHC Park Pleasant LLC Revenue Bonds Project Approval Resolution of 2020

Intro. 3-25-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development

PR23-777 District of Columbia Workforce Innovation and Opportunity Act Unified State Plan Approval Resolution of 2020

Intro. 3-25-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Labor and Workforce Development

PR23-778	Public Welfare Foundation, Inc. Revenue Bonds Project Approval Resolution of 2020 Intro. 3-23-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Business and Economic Development
PR23-779	The Studio Theatre, Inc. Revenue Bonds Project Approval Resolution of 2020 Intro. 3-23-20 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

NOTICE OF CANCELLATION OF PUBLIC HEARING ON

B23-641, the Dynamic Performance Parking Zone Amendment Act of 2020

The Committee on Transportation and the Environment's hearing on B23-641, the Dynamic Performance Parking Zone Amendment Act of 2020, scheduled for Monday, April 6, 2020, at 2:00pm in Room 123, is cancelled. The hearing will be rescheduled for a later date.

Members of the public may contact Committee Director Michael Porcello with questions about the hearing at mporcello@dccouncil.us or (202) 724-8062.

COUNCIL OF THE DISTRICT OF COLUMBIA

COMMITTEE OF THE WHOLE

PHIL MENDELSON, CHAIRMAN

NOTICE OF CANCELLATION OF PUBLIC HEARINGS AND ROUNDTABLES

The following public hearings and roundtables of Committee of the Whole are cancelled:

- Bill 23-670, "Bloomingdale Historic District Targeted Historic Preservation Assistance Amendment Act of 2020" (originally scheduled for March 25, 2020)

- PR 23-658, "Public Charter School Board James Sandman Confirmation Resolution of 2020" (originally scheduled for March 26, 2020)

- Bill 23-441,"Reading Equity Acceleration Declaration Act of 2019" (originally scheduled for March 30, 2020)

- PR 23-694, "Commission on the Arts and Humanities Dr. Heran Sereke-Brhan Confirmation Resolution of 2020" (originally scheduled for April 7, 2020)

These hearings will be rescheduled for a later date.

Members of the public may contact Evan Cash at (202) 724-7002, or email, ecash@dccouncil.us with questions.

COUNCIL OF THE DISTRICT OF COLUMBIA
EXCEPTED SERVICE APPOINTMENTS AS OF MARCH 31, 2020

NOTICE OF EXCEPTED SERVICE EMPLOYEES

D.C. Code § 1-609.03(c) requires that a list of all new appointees to Excepted Service positions established under the provisions of § 1-609.03(a) be published in the D.C. Register. In accordance with the foregoing, the following information is hereby published for the following positions.

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	**POSITION TITLE**	**GRADE**	**TYPE OF APPOINTMENT**
Grant, Richard	Legislative Assistant	4	Excepted Service - Reg Appt
Bond, Karlytheia	Special Assistant	1	Excepted Service - Reg Appt
Minor, Angela	Office Manager	4	Excepted Service - Reg Appt
Price, Emily	Senior Legislative Assistant	8	Excepted Service - Reg Appt
Kovalcik, Reana	Communications Director	4	Excepted Service - Reg Appt

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Reprogramming Requests

Pursuant to DC Official Code Sec 47-361 et seq. of the Reprogramming Policy Act of 1990, the Council of the District of Columbia gives notice that the Mayor has transmitted the following reprogramming request(s).

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

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

Reprog. 23-91: Request to reprogram $3,222,032 of Fiscal Year 2020 Paygo Capital funds from the District Department of Transportation (DDOT) Capital Budget to the DDOT operating budget was filed in the Office of the Secretary on March 25, 2020. This reprogramming will ensure that the budget is aligned with the higher priority need.

RECEIVED: 14-day review begins March 26, 2020

Reprog. 23-92: Request to reprogram $1,988,760 of Fiscal Year 2020 Local funds with the Department of Energy and Environment was filed in the Office of the Secretary on March 25, 2020. This reprogramming ensures that the budget for the Clean Rivers Impervious Area Charges (CRIAC) program is properly aligned with anticipated expenditures.

RECEIVED: 14-day review begins March 26, 2020

Reprog. 23-93: Request to reprogram $255,360 of Fiscal Year 2020 Capital Budget Authority between capital projects for the DC Public Library (DCPL) was filed in the Office of the Secretary on March 31, 2020. This reprogramming will ensure that the budget is aligned with the higher-priority need.

RECEIVED: 14-day review begins April 1, 2020

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF PUBLIC HEARING AND PUBLIC COMMENT PERIOD ON AIR QUALITY ISSUES

Notice is hereby given that a public hearing will be held on Monday, May 4, 2020, at 5:30 p.m. The public hearing will be held using teleconferencing, which allows for both a video and voice over internet protocol (VOIP) connection- Weblink: https://meetings.webex.com/collabs/#/meetings/detail?uuid=M5GQS5JPPFSD1H7JLVR0SX65CD-1T19&rnd=410016.89206, and phone line connection: Call-in Number: +1 (415) 655-0001, Access Code: 198 915 325.

This public hearing provides interested parties an opportunity to comment on the proposed revision to the District of Columbia's State Implementation Plan (SIP), found at 40 C.F.R. Part 52, Subpart J.

The United States Environmental Protection Agency (EPA) designated the District as a Marginal Nonattainment Area for the 2015 8-hour Ozone National Ambient Air Quality Standards (NAAQS) after promulgation of the revised standards established at 0.070 parts per million (ppm) effective on August 3, 2018 (83 Fed. Reg. 25776, June 4, 2018). To meet requirements of Clean Air Act § 172(c)(3) for marginal areas, the District must submit a base year emissions inventory to EPA no later than two years after designation (42 U.S. Code § 7511a(a)(1)). Once the District has completed its procedures, the inventory and supporting documents will be submitted to EPA as a SIP revision.

Copies of the proposed SIP revision are available for public review at https://www.mwcog.org/documents/2020/01/24/washington-dc-md-va-2015-ozone-naaqs-nonattainment-area-base-year-2017-emissions-inventory-/.

Interested parties wishing to testify at this hearing must submit, in writing, their name, address, telephone number and affiliation to Air Quality Division (AQD), Department Of Energy and Environment at the address: 1200 First Street, NE, Fifth Floor, Washington, DC 20002, or email Mr. Joseph Jakuta at joseph.jakuta@dc.gov by 4:00 p.m. on May 4, 2020. Interested parties may also submit written comments to AQD's Monitoring and Assessment Branch at the same address or by email to Mr. Joseph Jakuta at joseph.jakuta@dc.gov. Questions can be directed to Mr. Joseph Jakuta at joseph.jakuta@dc.gov or by phone at 202-535-2988. No comments will be accepted after May 4, 2020.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL 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 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 final 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 was approved by the Centers for Medicare and Medicaid Services (CMS) on December 6, 2019, with an effective date of November 30, 2019. The corresponding SPA was 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.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 29, 2019 at 66 DCR 15762. No comments were received, but DHCF is making technical amendments to the dates in §§ 903.31(a) and (e) to align with the effective date of the approved SPA. The Director adopted these rules as final on March 24, 2020 and they shall become effective on the date of publication of this rulemaking 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 November 30, 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 ($1/4^{th}$) 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 November 30, 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 ($1/4^{th}$) 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.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance (DHCF or the Department), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of an amendment to Section 995 (Medicaid Physician and Specialty Services Rate Methodology) of Chapter 9 (Medicaid Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

These rules provide DHCF the authority to make recurring periodic supplemental payments for one (1) fiscal year to Medicaid-enrolled physician groups, with at least five hundred (500) physicians that are members of the group, that contract with a public general hospital located in an economically underserved area of the District to deliver inpatient, emergency department, and intensive care physician services to Medicaid beneficiaries. These supplemental payments will mitigate the financial losses of eligible physician group practices that offer these critically important services to Medicaid beneficiaries. DHCF projects an increase in aggregate expenditures of approximately four and a half ($4.5) million dollars in Fiscal Year 2020.

The corresponding State Plan Amendment (SPA), which was approved by the Centers for Medicare and Medicaid Services (CMS) on December 10, 2019 is effective for services rendered on or after November 23, 2019 through June 30, 2020.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on November 22, 2019 at 66 DCR 15556. No comments were received and no changes have been made. The Director adopted these rules as final on March 24, 2020 and they shall become effective on the date of publication of this rulemaking in the *D.C. Register*.

Chapter 9, MEDICAID PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended as follows:

Section 995, MEDICAID PHYSICIAN AND SPECIALTY SERVICES RATE METHODOLOGY, is amended to read as follows:

Subsection 995.8 is amended to read as follows:

995.8 For services rendered on or after October 1, 2019 through September 30, 2020, supplemental payments in the amount described in § 995.10 shall be equally distributed among physician groups that meet the criteria described in Subsection 995.9.

Subsection 995.10 is amended to read as follows:

995.10 Supplemental payments made in accordance with Subsection 995.8 shall not exceed four and a half ($4.5) million for Fiscal Year (FY) 2020.

Subsection 995.11 is amended to read as follows:

995.11 Payments shall be made in three (3) installments, aligning with the end of the first (1st), second (2nd), and third (3rd) quarters of the federal FY. All payments shall be made by June 30, 2020.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health Care Finance, 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 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 of an amendment to Chapter 93 (Medicaid Recovery Audit Contractor Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

State Medicaid programs are required, under § 6411 of the Patient Protection and Affordable Care Act of 2011, approved March 23, 2010 (Pub. L. No. 111-148, 124 Stat. 119), to establish a Recovery Audit Contractor (RAC) program. Through these programs, states can coordinate with contractors or other entities that perform Medicaid claim audits to better identify and reconcile Medicaid provider overpayments and underpayments. Timely identification of Medicaid provider overpayments and underpayments is an important safeguard against future improper Medicaid payments.

The final rulemaking makes changes to align the District's payments with federal requirements set forth at 42 CFR § 455.510 and to update the District's payment methodology for entities under contract with the District under the RAC Program. This change will allow the District's Medicaid program to increase the contingency fee rate paid to RAC entities up to the maximum percentage allowable under federal law. There is no associated fiscal impact.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on December 13, 2019, at 66 DCR 016244. No comments were received and no changes were made. The Director adopted these rules as final on March 24, 2020 and they shall become effective on the date of publication of this rulemaking in the *D.C. Register*.

Subsections 9300.4 through 9300.7 of Section 9300, GENERAL PROVISIONS, of Chapter 93, MEDICAID RECOVERY AUDIT CONTRACTOR PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, are amended to read as follows:

9300.4 The contracted entity identified in § 9300.3 shall be paid a contingency fee in accordance with the requirements set forth in Section 4, Attachment 4.5 of the District of Columbia Medicaid State Plan and federal requirements set forth at 42 CFR § 455.510.

9300.5 All audits performed by the Medicaid Recovery Audit Contractor (RAC) shall be subject to the billing standards of the District of Columbia (District) Medicaid program.

9300.6 The following claims and payments may be excluded from review and audit under the Medicaid RAC Program:

(a) Claims associated with managed care, waiver, and demonstration programs;

(b) Payments made for Indirect Medical Education and Graduate Medical Education;

(c) Claims reimbursed more than three (3) years prior to the date of the RAC review or audit;

(d) Claims that require reconciliation due to beneficiary liability; and

(e) Unpaid claims.

9300.7 In accordance with 42 CFR §§ 455.506(c) and 455.508(g), DHCF shall ensure that no claim audited under the Medicaid RAC Program has been or is currently being audited by another entity.

Subsection 9300.8 is added to read:

9300.8 DHCF shall reserve the right to limit the Medicaid RAC Program audit period by claim type, provider type, or for any other reason where DHCF believes it is in the best interest of the Medicaid program to limit claim review. Timely notice of this action shall be made to the Medicaid RAC in writing, by letter, or via email.

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health ("Department"), pursuant to the authority set forth in § 1301 of the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.)) (the "Act"), and in accordance with Mayor's Order 2005-137, dated September 27, 2005, hereby gives notice of the adoption of the following amendments to Chapter 101 (Assisted Living Residences) of Title 22 (Health), Subtitle B (Public Health and Medicine), of the District of Columbia Municipal Regulations ("DCMR").

The adoption of these amendments to Chapter 101, which had until now contained only licensure fees, is necessary to supplement the Act, which sets uniform, minimum standards of licensure for assisted living residences ("ALRs") in the District. The purpose of the rulemaking is to address gaps in the Act that put residents at risk of injury to their persons and to the rights granted to them under the Act. The rulemaking will also enhance and clarify the Act's existing provisions as necessary to address current industry practices and challenges while promoting and protecting ALR residents' rights, health, welfare, and safety. Lastly, this rulemaking relocates the section titled "Fees" from 22-B DCMR § 10101 to 22-B DCMR § 10105, but does not make any substantive changes to the existing language in the section.

The rulemaking was first published as a Notice of Emergency and Proposed Rulemaking in the *D.C. Register* on August 24, 2018 at 65 DCR 8785. The Department received comments in response to the notice from the following (in order of receipt): Sharon E. Ricardi, President, Northbridge Advisory Services, on behalf of Hallkeen Assisted Living & Northbridge Advisory Services, jointly; Marjorie Rifkin, Managing Attorney, Disability Rights DC at University Legal Services; Kathleen N. Ausley and Dr. Allan J. Reiter, together in their individual capacities; Edward F. Howard, in his individual capacity; Mark C. Miller, DC Long-Term Care Ombudsman, Office of the DC Long-Term Care Ombudsman, Legal Counsel for the Elderly; Louis Davis, Jr., State Director, AARP DC State Office; Gilda H. Lambert, in her individual capacity; Veronica Damesyn Sharpe, President, District of Columbia Health Care Association; Kate Sullivan Hare, Executive Director, Long Term Care Quality Alliance; Judith Levy, Coordinator, District of Columbia Coalition on Long Term Care; Stephanie M. Ross, in her individual capacity; Dallas Salisbury, in his individual capacity; Margaret Lenzner, in her individual capacity; and Christy Kramer, Director, LeadingAge DC. The Department, on its own volition, also revised language in the rulemaking in order to adjust syntax for clarity and to correct apparent confusion and misinterpretations of the rulemaking's meaning or intent prior to republishing the rulemaking. Based upon the review of the public comments, as well revisions made on its own volition, the Department amended the following sections:

- § 10100 - to clarify that ALRs must adhere to laws other than the Act when such laws are applicable.
- § 10101 - to more accurately reflect the purpose of the rulemaking.
- § 10106 - to state clearly that background check information collected pursuant to § 10104 shall be considered with the rest of the application, and to remove the provision excepting

ALRs with fewer than seven (7) beds from providing evidence of a certificate of occupancy with their license application, as is consistent with current zoning regulations.

- § 10107 – to rename the section "Inspections Before and After Licensure," and to provide additional rules with respect to inspections conducted by the Department, including the events that trigger inspection, the scope of information subject to inspection, and the Department's protection of resident information prior to releasing an inspection report to the public.
- § 10108 - to clarify that the minimum standard for admission is that an applicant requires "at least" the minimal level of assistance with assisted living services provided by the ALR, and to expressly state that an ALR shall consider available mental health resources in the District when assessing a potential resident's mental health needs and the ALR's ability to meet those needs at the time of admission.
- § 10109 - to permit a resident to view, upon demand, a copy of the required ALR policies enumerated in § 10110, but not a copy of all internal procedures connected to those enumerated policies; to set a fifteen (15) day deadline for ALRs to respond, in writing, to requests and grievances submitted by a resident or resident group; to provide for resident group meetings to be posted prominently in designated areas; to have the date, time, and location of upcoming meetings be included in the ALR's published activity calendars or schedules of events; to ensure resident group meetings are provided meeting space of appropriate size and seating for attendees; to prohibit using "resident group" or "resident council" to describe a group or other gathering that is moderated or otherwise controlled by an ALR; to ensure that the documents made available to residents on demand by the Act also be made available to a resident's surrogate, when applicable; and to require ALRs to honor a disabled resident's duly-executed supported decision-maker agreement in accordance with Title III of the Disability Services Reform Amendment Act of 2018.
- § 10110 - to specify that an ALR's A/V monitoring system policies shall include length of retention of recordings and destruction of recordings; to add resident falls and protection from retaliation against residents for expressing complaints and grievance to the enumerated mandatory policies and procedures; to specify that an ALR's policy on visitation shall include visitor conduct; to rephrase language requiring that policies meet "requirements set forth by the Department" in order to clarify that the policies must meet the Director's approval; and to expressly state the Department's intent for ALRs to develop and implement policies and procedures concerning aspects of the ALR's operation, and that all policies and procedures be consistent with applicable District and federal law; and to require all policies be dated as to when they became effective.
- § 10112 - to clarify that quarterly financial records reported to a resident (or surrogate) shall pertain to the funds and personal property entrusted to the ALR, as described in § 603(a)(2) of the Act; to require an ALR turn over funds entrusted to the ALR at the time of the resident's discharge; and to require resident funds over two hundred dollars ($200) that are entrusted to an ALR be deposited in an interest-bearing account in the resident's name.
- § 10113 - to support the participation of family and friends in the development, review, and renegotiation of a resident's ISP; to increase the time for completing a post-admission assessment to seventy-two (72) hours; to identify the individuals required to participate in the ISP development and update process on behalf of the ALR; to enumerate the details that an ALR must address in the notice of a resident's upcoming ISP review; to clarify the

means by which disagreements between a resident and the ALR regarding updates of the resident's ISP shall be resolved prior to implementation of the ISP; to emphasize a resident's right to engage in negotiating a shared responsibility agreement ("SRA") to refuse participation in a service; and to instruct on the use of SRAs as a mechanism to resolve disputes concerning any service an ALR attempts to provide a resident.

- § 10114 - to explicitly require an ALR to document and provide to a resident, in writing, the adverse risks for which the ALR declined to enter into an SRA with the resident when declining under the authority of this subsection; and to clarify that an ALR is not required to permit a resident to pursue a course of action it poses a clear and present risk of harm to the health, wealth, or safety of other residents or staff.
- § 10115 – to rename the section "Transfer, Discharge, and Relocation;" to require consultation between the ALR and a resident prior to the ALR initiating a discharge on the basis that it can no longer meet a resident's care needs; to expound on the Act's protections for residents seeking to return to an ALR after having been transferred to an acute care facility to temporarily receive a higher level of care; to ensure a resident receives all personal funds he or she entrusted to the ALR during his or her residency; and to ensure documentation of a resident's relocation, transfer, or discharge, and the basis for the action, be kept in the resident's record and, thus, be accessible to the resident.
- § 10116 - to require posting the name of the assisted living administrator ("ALA") or acting administrator on duty.
- § 10118 - to simplify the rulemaking by holding ALRs responsible for private duty healthcare professionals to the extent of requiring and causing a private duty healthcare professional to comply with the provisions of § 10118 as a condition of providing service on the ALR's premises, and to provide a resident with notice and an opportunity to appeal in the event that a private duty healthcare professional hired by the resident is removed from the ALR premises upon determination by the ALR that the private duty healthcare professional has, or is suspected to have, a communicable disease, is mentally or physically incapable of performing his or her duties, or otherwise presents a risk to the health and safety of one (1) or more residents in the ALR.
- § 10119 - to provide for residents or their surrogates to challenge an ALR's decision to immediately remove a companion from its premises under § 10119.4, and to ensure that ALRs require all companions, as defined by the rulemaking, to report abuse, neglect, or exploitation of a resident to the ALR.
- § 10122 - to clarify that on-site medication reviews are performed by a registered nurse.
- § 10123 - to clearly hold medication that requires refrigeration or medication stored on portable medication carts to security standards consistent with the Act's requirements for medication stored in the ALR's medication storage area; to expressly state that medication be stored as indicated on its label; and to ensure that medications are returned to residents at the time of their discharge from an ALR, to the extent permitted by law.
- § 10124 - to ensure that individuals with disabilities are not disqualified from being assessed capable of self-administration due to performing the required assessment tasks with the utilization of accommodations for their disabilities, provided that he or she can perform the tasks in part (a) or (b) of the assessment tool without the assistance of another person; to more clearly convey the rulemaking's intent to permit residents who are capable of self-administration – or self-administration with a reminder or physical assistance to open or remove medication from containers – to utilize devices or other resources to

facilitate the self-administration of their medication, as limited by the rulemaking; and to remove trained medication employee ("TME") from the list of permitted private duty healthcare professionals.

- § 10125 - to clarify that the Department may receive complaints regarding ALRs in addition to the DC Office of the Long-Term Care Ombudsman; and to require instances of abuse or unusual incidents involving death or criminal activity at an ALR be reported to the Metropolitan Police Department.
- § 10126 – to rename the section "Denial, Restriction, Suspension, or Revocation of a License;" to relocate all inspection provisions previously in this section to § 10107; to cover administrative procedure for denials, restrictions, suspensions, and revocations; and to provide additional guidance with respect to the grounds for which an inspection can be conducted and the breadth of information that is subject to inspection.

Therefore, a Notice of Second Proposed Rulemaking was published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436. The Department received a total of fourteen (14) written comments submitted in response to the notice during the thirty (30) day comment period from the following (in alphabetical order, by last name): Dr. Mary M. Cleveland, in her individual capacity; AARP, by Louis Davis, Jr., State Director of the AARP DC State Office; Alma H. Gates, in her individual capacity; Kate Sullivan Hare, in her individual capacity; Steven Hart, in his individual capacity; Cindy Hounsell, in her individual capacity; LeadingAge DC, by Christy Kramer, Director; Legal Counsel for the Elderly, by Mark C. Miller, DC Long-Term Care Ombudsman at DC Office of the Long-Term Care Ombudsman; Disability Rights DC at University Legal Services, by Marjorie Rifkin, Managing Attorney; Rebecca W. Roesle, in her individual capacity; Stephanie M. Ross, in her individual capacity; Long Term Care Quality Alliance, by Dallas L. Salisbury; Castle Hill Consulting, LLC on behalf of Southern Avenue Owner, LLC, by Claudia Schlosberg; and District of Columbia Health Care Association, by Veronica Damesyn Sharpe, President. The Department received a second submitted comment from DCHCA after the thirty (30) day comment period ended and, therefore, did not accept the comment.

In many comments, the Department received numerous recommendations for changes to the rulemaking that were identical to, or reiterations of, recommendations already submitted during the preceding comment period. The Department acknowledged and addressed those recommendations in its Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436 and hereby declines those recommendations in this final notice for the same reasons stated in its Notice of Second Proposed Rulemaking. All other comments are addressed below.

Louis Davis, Jr., State Director of the AARP DC State Office, submitted comments on behalf of AARP in support of the rulemaking as written and did not request any changes.

The following comments were received separately from Dr. Mary M. Cleveland, Rebecca W. Roesle, Kate Sullivan Hare, and Steven Hart, but set forth virtually identical recommendations. The Department addressed the comments together as follows:

- **Regarding § 10109, a recommendation to include provisions that dictate permissible visiting hours at ALRs.** The Department did not adopt stakeholder's recommendation

because the Department did not find it necessary to regulate ALR visiting hours at this time.

- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received separately from Dr. Mary M. Cleveland, Rebecca W. Roesle, Kate Sullivan Hare, Steven Hart, and Cindy Hounsell, but set forth virtually identical recommendations. The Department addressed the comments together as follows:

- **Regarding § 10116.18, a recommendation to reword the requirements for personnel ID badges as follows: "The badge must be affixed to clothing and remain stationary at chest level so that the name of the employee is always face forward, or, alternately, the badge must be affixed at two points to a cord/chain hung around the neck and always face forward."** The Department did not accept this recommendation because § 10116.18 already contains adequate provisions on identification badges to appropriately govern the conspicuous display of ALR personnel's names.
- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from Legal Counsel for the Elderly by Mark C. Miller, DC Long-Term Care Ombudsman at DC Office of the Long-Term Care Ombudsman, and addressed by the Department as follows:

- **Support for §§ 10106.5, 10107.1, 10107.3, 10110.2, 10110.6, 10113.2, 10122, and 10125.**
- **Regarding § 10101, a recommendation to return to the language that stated the rulemaking's purpose from the initial Notice of Emergency and Proposed Rulemaking.** The Department did not adopt this recommendation because the language in this rulemaking more precisely characterizes the purpose of this rulemaking, which is to supplement the Act and promote the principles of the Act. In promoting the principles of the Act, these regulations continue to promote independence, individuality, personal dignity, autonomy, freedom of choice, and fairness; thus, the change in language does not reduce protection of the those principles.
- **Regarding §§ 10113.10–10113.12, a recommendation to define a process for residents who disagree with their individual service plan ("ISP") to voice their concerns and obtain resolution prior to the implementation of the ISP.** The Department did not accept this recommendation because this rulemaking already sets forth a defined process for ISP disagreements between a resident and ALR that balances the resident's right to refuse proposed services with the ALR's duty to provide adequate care for its residents. (See §§ 10113). The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.

- **Regarding §§ 10114, a recommendation to limit the scope of an SRA to specific circumstances or eliminate the entire subsection.** The Department did not adopt this recommendation because to limit use of the SRA or eliminate its use is contradictory to the Act. Per the Act, at D.C. Official Code § 44-106.05(a), an SRA is to be the mechanism to settle disagreements that arise as to lifestyle, personal behavior, safety, and service plans.
- **Regarding § 10115, a recommendation to restate the thirty (30) days' advance notice for discharges in the regulations.** The Department will not adopt this recommendation because the Act already requires a thirty (30)-day notice period prior to discharging a resident. The Act, at D.C. Official Code § 44-113.01, authorizes this rulemaking to supplement the rules provided in the Act; thus, is it not the purpose of this rulemaking to repeat the rules already provided in the Act.
- **Regarding §§ 10115.2 and 10115.3, a recommendation to remove § 10115.13 as an exception to the requirement for notice prior to relocation.** The Department did not adopt this recommendation because the rule language is necessary to ensure a facility can protect a resident by temporarily relocating that resident with abbreviated notice in order to protect the resident from an exigent threat that exists in the resident's unit. The Department gave great consideration to this provision and finds it to be appropriate at this time.

The following comments were received from Castle Hill Consulting, LLC on behalf of Southern Avenue Owner, LLC by Claudia Schlosberg, and were addressed by the Department as follows:

- **Support for §§ 10106.4 and 10113.11.**
- **Regarding § 10103.05, a recommendation to add an exception that will protect a license from forfeiture if it is transferred under the Act's "Change in Ownership" provisions.** The Department did not adopt this recommendation. This recommendation is not possible because, under the Act's "Change in Ownership" provisions in D.C. Official Code § 44-103.05, the transferor's license is terminated as part of the transfer process (the transferee receives a new, unique license rather than simply receiving the transferor's license). Therefore, to protect the transferor's license from forfeiture (*i.e.*, termination) during a change in ownership would contradict the Act's "Change in Ownership" procedure.
- **Regarding § 10105.4, a recommendation to provide additional language to identify when reinspection is required when a revised license is sought due to changes in the facility.** The Department does not find a need to adopt this recommendation because the current provisions are adequate at this time. The current provision cross-references to § 305 of the Act (D.C. Official Code § 44-103.05), from which the reader may ascertain whether reinspection of the facility may be required depending on the nature of the changes.
- **Regarding § 10107.7, a recommendation to replace the existing language in order to resolve an internal inconsistency with the following language: "The Director may, after having conducted any inspection under § 10107.1, deny, restrict, suspend or revoke a license in accordance with the provisions of § 10126 or impose sanctions in accordance with § 10127."** The Department did not accept this recommendation. The Department does not share the stakeholder's opinion that an inconsistency exists. Furthermore, the stakeholder's recommendation seeks to alter the regulation beyond

simply resolving what stakeholder perceives to be an internal inconsistency. The Department gave great consideration in creating these rules and finds the current provisions to be appropriate at this time.

- **Regarding § 10108.2, a recommendation to append "except when the denial of admissions would be in violation of federal law" to the end of the provision.** The Department did not accept this recommendation. This recommendation is not necessary, as it is redundant of the "General Provision" in § 10100.4, which provides that "Nothing in this chapter shall be construed to authorize conduct that is in violation of any other District or federal law or rules[…]."
- **Regarding § 10109.11, a recommendation to revise the subsection to state that fees cannot be charged for copies of records that must be provided to the residents.** The Department did not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be consistent with other jurisdictions and appropriate at this time.
- **Regarding § 10110.3, a recommendation to delete the requirement that ALR procedures must meet the Director's approval.** The Department did not accept this recommendation. The Department gave great consideration in creating these rules and finds the current provisions is necessary to protect the health, safety, and welfare of the ALR's residents, staff, and the public. Additionally, the comment contained questions that did not pose an actionable recommendation for changes to the rule language that the Department could accept or decline.
- **Regarding § 10113.6, a recommendation to remove the requirement that the ALA or Acting ALA be involved in the update of each resident's ISP, and only be required to be consulted in appropriate cases.** The Department did not accept this recommendation because the current provisions set forth appropriate requirements to adequately protect residents' health, welfare, and safety. The recommendation also seeks to add that persons of the resident's choosing must be included in the ISP updates. The Department did not find this recommendation to be necessary because § 10113.2 already provides for the involvement of a resident's family and friends in the ISP development, review, and renegotiation.
- **Regarding § 10114.6, a recommendation to add a subsection (e) to state "Shall initiate involuntary transfer, discharge or relocation only in accordance with the provisions of § 10115."** Department did not accept this recommendation because paragraph (b) already indicates that the ALR may take subsequent action – inclusive of initiating an involuntary transfer, discharge, or relocation – if necessary to maintain an environment that is safe and compliant with laws and regulations. Furthermore, the stakeholder's recommendation would require (see, "shall") ALRs to initiate involuntary transfers, discharges, or relocations, even though other remedies may be available to achieve an environment that is safe and compliant with laws and regulations.
- **Regarding § 10115.4, a recommendation to strike the section.** The Department did not accept this recommendation. The Department finds that the current provisions set forth the appropriate requirements to protect health information at this time.
- **Regarding § 10115.6, a recommendation to append the following to paragraph (c): "and payable from the residents' personal funds."** The Department did not accept this recommendation. The Department finds the current provision sets forth the appropriate requirements at this time. Furthermore, the stakeholder's recommendation will have the

effect of requiring that additional supports be payable from the resident's personal funds when other arrangements may be available.

- **Regarding § 10121.1, a recommendation to strike this section or, alternatively, change "shall" to "may."** The Department did not accept this recommendation. The Department gave great consideration in creating these rules and finds that the current provisions are appropriate to ensure thorough medication assessments at this time.
- **Regarding § 10122.1, a recommendation to add licensed pharmacist as a professional authorized to conduct an on-site medication review.** The Department did not accept this recommendation at this time. The current provision for registered nurses to conduct on-site medication assessments is appropriate to protect residents' safety.
- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from Stephanie Ross and addressed by the Department as follows:

- **Support for §§ 10109.2, 10109.7. 10109.13, 10115.4(e), 10118.3, the Acting ALA provisions throughout § 10116, and the clarification that family members are not necessarily considered "companions" for the purpose of these rules unless that family member is acting as a companion as defined by the rules.**
- **Regarding §§ 10109.2, 10110.2(f), and 10125.1, a recommendation to provide additional language describing the external review process by an independent person or entity under the Act, at D.C. Official Code § 44-105.05(4).** The Department did not accept the stakeholder's recommendation. The Department finds the current provisions regarding external reviews to be sufficient at this time.
- **Regarding § 10113.6, a recommendation to remove the requirement that the ALA or Acting ALA be involved in the update of each resident's ISP, and only be required to be consulted in appropriate cases.** The Department did not accept this recommendation because the current provisions set forth appropriate requirements to adequately protect residents' health, welfare, and safety. The recommendation also seeks to add that persons of the resident's choosing must be included in the ISP updates. The Department did not find this recommendation to be necessary because § 10113.2 already provides for the involvement of a resident's family and friends in the ISP development, review, and renegotiation.
- **Regarding § 10114.5, a recommendation to insert language that guarantees residents the right to utilize the Ombudsman during the shared responsibility agreement process.** The Department did not accept the stakeholder's recommendation. The Office of the LTC Ombudsman is a statutorily-provided resource for residents to use for numerous purposes and it is unnecessary to specify that residents may contact the office for assistance during the SRA process. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10115.6, a recommendation to add language that states the rights afforded to residents in § 10115.6 to return home to their ALR after a stay in an acute**

care facility also apply to residents returning to their ALR after a stay at a sub-acute care facility or rehab facility. The Department did not accept this recommendation at this time. The Department finds that the existing provisions throughout the rulemaking set forth the appropriate requirements to protect residents from improper discharges after a temporary transfer to another facility.

- **Regarding § 10116, recommendations to require that the ALA also be responsive to calls from residents within one (1) hour when an Acting ALA is on-site, and that policies and procedures for implementing Acting ALA provisions be required under § 10110.2.** The Department did not accept the stakeholder's recommendations. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate for governing ALAs and Acting ALAs at this time.
- **Regarding § 10116.15, a recommendation that ALRs maintain in the employee's record any complaints made about that employee.** The Department did not accept the stakeholder's recommendation. The Department finds the existing provisions throughout the Act and these rules to be adequate to regulate personnel files at this time.
- **Regarding § 10116.18, a recommendation to reword the requirements for personnel ID badges as follows: "The badge must be affixed to clothing and remain stationary at chest level so that the name of the employee is always face forward, or, alternately, the badge must be affixed at two points to a cord/chain hung around the neck and always face forward."** The Department did not accept this recommendation because § 10116.18 already contains adequate provisions on identification badges to appropriately govern the conspicuous display of ALR personnel's names.
- **Regarding § 10118.3, a recommendation to provide notification to the resident in writing.** The Department did not accept this recommendation. The Department finds the current provisions are sufficient to provide appropriate notice at this time.
- **Regarding an unspecified section, a recommendation to expound upon the minimum elements and standards for an ALRs internal complaint process.** The Department did not accept the stakeholder's recommendation. The Department finds the current provisions regarding ALR internal grievance processes to be appropriate at this time.
- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from the Long Term Care Quality Alliance, by Dallas L. Salisbury, and were addressed by the Department as follows:

- **Support of §§ 10109.02, 10109.13, 10110.5, 10113.2, 10113.3, 10113.13, 10115.5 in part, 10117.1, 10118.3, 10119.4, 10119.6, 10122.1, 10123.2, 10123.3, 10124.4, and 10124.9.**
- **Regarding § 10106.5, a recommendation that ALRs must resubmit copies of the policies and procedures required by 10110.2 and 10110.3 as part of license renewal.** The Department did not accept the stakeholder's recommendation. The Department finds the current provisions to be appropriate at this time to ensure compliance with the required ALR policies and procedures as outlined in § 10110.

- **Regarding § 10109, a recommendation to include provisions that dictate permissible visiting hours at ALRs.** The Department did not adopt the stakeholder's recommendation because the Department did not find it necessary to regulate ALR visiting hours at this time.
- **Regarding § 10109.1, a recommendation to require posting of the document delineating residents rights under ALRRA Sections 502-507 in a conspicuous place on each floor of the facility.** The Department did not accept the stakeholder's recommendation. The Act, at D.C. Official Code § 44-105.08, provides that a document delineating residents' rights be posted in a conspicuous location, plainly visible and easily read by residents, staff, and visitors and provide a copy to each resident and resident's surrogate upon admission and at the time of any change to the resident's status, level of care, or services available to the resident. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10109.5, a recommendation to state that solicitation of residents by residents to participate in resident groups is a right resident have and cannot be limited by an ALR, and to expound on residents' rights to organize into resident groups.** The Department did not accept the stakeholder's recommendation. The Department gave great consideration in creating these final rules and finds the existing provisions throughout the Act and these rules to be appropriate at this time to protect residents' rights, including the residents' right to organize in resident group.
- **Regarding § 10109.6(c), a recommendation to insert "private" after "provide" and before "meeting."** The Department did not accept this recommendation. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10109.6, a recommendation to add a new paragraph (d) to state: "Resident groups may invite and accept assistance from family members, and others, beyond ALR staff, with resident group meetings."** The Department did not accept this recommendation because the stakeholder's request is already satisfied in paragraph (b).
- **Regarding § 10110, a recommendation to include in the rules that the Department will append and web post all policies and procedures as part of the annual licensure survey report on the internet.** The Department did not accept the recommendation because to require that the agency append to its report and post to its website all of the policies and procedures developed by an ALR as part of each ALR's annual license renewal process is an undue burden on department resources and unnecessary to protect the health, safety, welfare, and rights of the residents.
- **Regarding § 10113.3, a recommendation that the rules include a statement that off-site review of an ISP by the resident's physician meets the requirements intended by the regulations.** The Department did not accept the stakeholder's recommendation. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10113.6, a recommendation to remove the requirement that the ALA or Acting ALA be involved in the update of each resident's ISP, and only be required to be consulted in appropriate cases.** The Department did not accept this recommendation because the current provisions set forth appropriate requirements to adequately protect residents' health, welfare, and safety. The recommendation also seeks to add that persons of the resident's choosing must be included in the ISP updates. The Department did not

find this recommendation to be necessary because § 10113.2 already provides for the involvement of a resident's family and friends in the ISP development, review, and renegotiation.

- **Regarding § 10115, a recommendation to state that a new Resident Agreement / Service Agreement / Contract / shall not be required in the event of either voluntary or involuntary relocation in the ALR.** The Department did not accept the stakeholder's recommendation because it is not necessary for the protection of residents' rights, health, safety, or welfare. The Department finds the existing provisions throughout the Act and the rules are appropriate to govern unit assignment changes at this time.
- **Regarding § 10115.6, a recommendation to require every ALR to provide every current resident, and then every new resident at the time of admission, with the table of contents of the ALRRA, this regulation, and Title 22, and web links to each at www.dc.gov, the full text of resident rights, grievance policy and procedure, abuse neglect and exploitation policy and procedure, contact information for the Ombudsman and the Department of Health, notice requirements for transfer and discharge, and the full list of ALR Policies and Procedures required by § 10110, where they can be accessed, and how they can make a copy, at their own expense.** The Department does not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate to protect residents' rights, health, safety, and welfare.
- **Regarding § 10116.18, a recommendation to reword the requirements for personnel ID badges as follows: "The badge must be affixed to clothing and remain stationary at chest level so that the name of the employee is always face forward, or, alternately, the badge must be affixed at two points to a cord/chain hung around the neck and always face forward."** The Department did not accept this recommendation because § 10116.18 already contains adequate provisions on identification badges to appropriately govern the conspicuous display of ALR personnel's names.
- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from the District of Columbia Health Care Association by Veronica Damesyn Sharpe, President, and were addressed by the Department as follows:

- **Regarding § 10107.7, a recommendation to replace the existing language in order to resolve an internal inconsistency with the following language: "The Director may, after having conducted any inspection under §10107.1, deny, restrict, suspend or revoke a license in accordance with the provisions of §10126 or impose sanctions in accordance with §10127."** The Department did not accept this recommendation. The Department does not share the stakeholder's opinion that an inconsistency exists. Furthermore, the stakeholder's recommendation seeks to alter the regulation beyond simply resolving what stakeholder perceives to be an internal inconsistency. The Department gave great consideration in creating these rules and finds the current provisions to be appropriate at this time.

- **Regarding § 10109.7, a recommendation to allow 30 days, rather than 15 days, for an ALR to reply to resident grievances.** The Department did not accept this recommendation. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10109.10, a recommendation to replace "on demand" with "as soon as possible not to exceed 3 business days."** The Department did not accept this recommendation because the "on demand" time period is statutorily provided by the Act.
- Regarding § 10109.10(b), the comment contained questions that did not pose an actionable recommendation for changes to the rule language that the Department could accept or decline.
- **Regarding § 10109.11, a recommendation to add "within a reasonable period of time not to exceed three business days" to this section.** The Department did not accept this recommendation at this time. The Department finds the current provisions to be appropriate at this time.
- **Regarding § 10109.12, a recommendation to add: "Adequate privacy which shall not exclude a member of the community staff from assisting to ensure the integrity of the records and not necessarily a totally private space."** The Department did not accept this recommendation at this time. The Department finds the current provisions to be appropriate to govern meeting space at this time.
- **Regarding § 10109.13, a recommendation to add: "Residents may by consensus delegate a team member to run the meeting at the beginning of each day."** The Department did not accept this recommendation at this time. The Department finds the current provisions to be appropriate to govern resident group meetings at this time.
- **Regarding § 10110.3, a recommendation to delete the requirement that ALR procedures must meet the Director's approval.** The Department did not accept this recommendation. The Department gave great consideration in creating these rules and finds the current provisions is necessary to protect the health, safety, and welfare of the ALR's residents, staff, and the public. Additionally, the comment contained questions that did not pose an actionable recommendation for changes to the rule language that the Department could accept or decline.
- **Regarding § 10110.15, a recommendation to add: "The facility shall respond as soon as possible but no longer than 3 business days."** The Department did not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be the appropriate requirements at this time.
- **Regarding § 10110.16, a recommendation to add: "The facility shall respond as soon as possible but no longer than 3 business days."** The Department did not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be the appropriate requirements at this time.
- **Regarding § 10112.4, a recommendation to add "within a reasonable period of time not to exceed three business days" to this section.** The Department did not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be the appropriate requirements at this time.
- **Regarding § 10113.8, a recommendation to strike paragraphs (b), (d), and (e) and to add "The intent of the ISP is to collaborate with the resident and or surrogate, therefore a copy of the updated ISP will be offered to be sent to the resident/surrogate as soon as possible or within 10 business days of the meeting."** The Department did not

accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions ensure adequate notice to residents regarding important information related to an upcoming ISP review.

- **Regarding § 10113.13, a recommendation to strike this section because it is covered in the ISP change of condition clause.** The Department did not accept this recommendation because the intent of § 10113.13 is to address the specific circumstance of when an SRA is negotiated by a resident and the ALR. This provision is distinct from capturing changes in the ISP due to changes in condition, which is contained in 44-106.04(b) of the ALRRA. Therefore, the Department finds that the requirement in § 10113.13 when considered within the context of a negotiated SRA is sufficiently clear.
- **Regarding § 10114.4, a recommendation to outline that the ALR should have the ability to discharge the resident in order to protect the rights and safety of the other residents.** The Department did not accept this recommendation because paragraph (b) in § 10114.6 already indicates that the ALR may take subsequent action – inclusive of initiating an involuntary transfer, discharge, or relocation – if necessary to maintain an environment that is safe and compliant with laws and regulations. Therefore, the Department finds the exiting language to be adequate at this time.
- **Regarding § 10115.1, a recommendation to utilize terminology similar to the current standards for nursing home administration.** The Department did not accept this recommendation because it determined that ALRs are unique to Nursing Homes; thus, assisted living administrator rules must address the requirements for ALRs, and not simply mirror regulations for nursing home administrators. The Department gave great consideration in creating these regulations and finds the current provisions to be appropriate at this time.
- **Regarding § 10115.6, recommendations to strike sections (b) (c) and (d), and at the end of section (a), add language such as "in a case where a resident wishes to return to the ALR based on an outside (non-ALR) healthcare practitioner's written approval but whose return has been determined by the ALA or Acting Administrator that the ALR cannot safely support the resident's return, the resident will be required to submit records for review by one of the following: (1) the ALR Medical Director, (2) ALR assigned attending physician, or (3) physician with active knowledge of ALR regulations and ALR services provided."** The Department did not accept this recommendation because the additional documents suggested for review by a physician or Medical Director are an unnecessary obstacle to the resident's return to the ALR. The Department finds the current provision sets forth the appropriate requirements at this time.
- **Regarding § 10118.4, a recommendation to add language that states until the appeal process is completed the private duty professional remain off premises and return only if the appeal is in favor of the resident(surrogate) requesting the appeal.** The Department did not accept this recommendation. The Department finds the current provisions to be appropriate to govern private duty professionals at this time.
- **Regarding § 10121.1, a recommendation to make the onsite medication review sufficient.** The Department did not accept this recommendation. The Department gave great consideration in creating these rules and finds that the current provisions are appropriate to ensure thorough medication assessments at this time.
- **Regarding § 10125.5, recommendations to include additional language to expound on "a sustained utility outage" and on "emergency response personnel."** The Department

did not accept this recommendation because the definition of and examples of unusual incidents are already detailed within § 10125.5. The Department gave great consideration in creating these rules and finds the current provisions to be appropriate at this time.

- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from Disability Rights DC at University Legal Services by Marjorie Rifkin, Managing Attorney, and were addressed by the Department as follows:

- **Regarding § 10108.2, a comment that indicates a request for admission criteria that is more prescriptive.** DC Health did not adopt the recommendation because the existing provisions in the Act and the rules adequately describe minimum and maximum care needs for admission. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10114, a recommendation to limit SRAs to specific exigent circumstances where immediate revisions to the resident's ISP are not possible and, in those rare instances, the reliance on SRAs should be time-limited to a 14-day period to allow for revision to the ISP with the resident's participation and non-coerced buy-in.** The Department did not adopt the recommendation because limiting the use of an SRA is contradictory to the Act. The Act provides that an SRA is to be the mechanism to settle disagreements that arise as to lifestyle, personal behavior, safety, and service plans.
- **Regarding § 10115, a comment that the regulations do not provide adequate protection of residents' right to a thirty (30) day notice prior to involuntary discharge and transfer.** The Department did not make any changes to the rulemaking in response to this comment because the Act already provides for a thirty (30)-day written notice prior to involuntarily discharge, and DC Law 6-108 (which the Act and these regulations mandate adherence to) already provides a twenty-one (21) day written notice period prior to involuntary transfers.
- **Regarding § 10118, a comment that the rules restrict residents' access to privately arranged services.** To the contrary, the Act gives residents the right to age in place - which includes the right to use privately arranged services so long as the residents' care needs do not exceed which that can be adequately and appropriately managed by the ALR. These regulations do not curtail the residents' ability to obtain outside services in accordance with the Act. Furthermore, consistent with other jurisdictions, the Act and regulations require that anyone providing health care services at an ALR be licensed to do so. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time. The Department did not make any changes to the rulemaking in response to this comment.
- **Regarding § 10119.3, recommendations to change the definition for "companion" and "companion services," and to change the requirements for an ALR to exercise limited supervision over companions so that residents' visiting family members are not subject to rules regarding companions.** The Department did not adopt these recommendations because the recommendation appears to be premised upon a

misunderstanding of the definition of "companion" and seeks to exclude family members or unpaid companions from the provisions of this section, regardless of whether they meet the definition of a "companion" and are providing companion services. The definition provided in these rules makes it clear that individuals who are simply social guests (*i.e.*, are not being employed to provide companion services at the discretion or control of someone other than themselves) are not necessarily considered companions for the purposes of the regulations. The definition of companion may be inclusive of a resident's family member if that family member is employed to provide services in accordance with the definition provided in this rulemaking. The Department gave great consideration in creating the companion regulations and finds the current provisions to be appropriate at this time.

- **Regarding §§ 10121.1 and 10124, a comment indicating concern that the section allows ALRs to deny admission to applicants who cannot self-administer their medications, based on consultations with treating healthcare providers.** The Department did not make any changes to the rules in response to this comment. The regulations provide for self-administration assessments prior to admission, as well as an ongoing assessment, to determine the extent to which a resident requires assistance with medication administration; however, a prospective applicant's ability or inability to self-administer is not a criterion for approval or denial of admission. The Department gave great consideration in creating these final rules and finds the current provisions to be appropriate at this time.
- **Regarding § 10124.3, a recommendation to allow a resident's family or friends to be trained to administer the resident's medication.** The Department did not adopt these recommendations because administration of medication by anyone other than a healthcare professional authorized to do so is inconsistent with the Act. (*E.g.*, residents who are assessed and determined not to be capable of self-administration "require that medication be administered by a TME or licensed nurse.") These rules extend authority to administer medication to any healthcare professional licensed or otherwise authorized by the District to administer medication because administration of medication by an authorized healthcare professional is within the spirit of the Act.
- **Regarding an unspecified section, a recommendation to specify the types and level of direct care and other services and staffing that will be provided by ALRs to residents, depending their care needs, and include minimum on-site staffing ratios for direct care staff.** The Department did not adopt this comment because the Act covers the scope sufficiently for care services related to activities of daily living and instrumental activities of daily living. The Department declines to prescribe specific and types of levels of direct care that will be provided to residence depending on their care needs because those determinations are made by the ALRs in accordance with their operational practices. The Department also decline to impose minimum on-staffing ratios because of the broad variance in sizes of ALRs in the District, and because doing so would cause an undue burden on smaller ALRs.

The following comments were received from Alma Gates and were addressed by the Department as follows:

- **Regarding § 10109.7, a recommendation to add language to the subsection to ensure that ALRs will ultimately implement changes requested by a resident or resident group.** The Department did not accept this recommendation because the rulemaking at § 10109.7 already contains adequate provisions on the action or inaction of the ALR in response to a written request or grievance by a resident or resident group.
- All other recommendations were identical to, or reiterations of, recommendations already submitted during the preceding comment period and addressed in the Notice of Second Proposed Rulemaking, published in the *D.C. Register* on September 20, 2019 at 66 DCR 12436; therefore, the Department declines those recommendations in this final notice for the same reasons stated in the Notice of Second Proposed Rulemaking.

The following comments were received from LeadingAge DC by Christy Kramer, Director, and were addressed by the Department as follows:

- **Regarding § 10109.11, a recommendation to add "within a reasonable period of time not to exceed three business days" to this section.** The Department did not accept this recommendation at this time. The Department finds the current provisions to be appropriate at this time.
- **Regarding § 10112.4, a recommendation to add "within a reasonable period of time not to exceed three business days" to this section.** The Department did not accept this recommendation at this time. The Department gave great consideration in creating these final rules and finds the current provisions to be the appropriate requirements at this time.
- **Regarding § 10115.1, a recommendation to utilize terminology similar to the current standards for nursing home administration.** The Department did not accept this recommendation because it determined that ALRs are unique to Nursing Homes; thus, assisted living administrator rules must address the requirements for ALRs, and not simply mirror regulations for nursing home administrators. The Department gave great consideration in creating these regulations and finds the current provisions to be appropriate at this time.
- **Regarding §§ 10116.4-10116.12, a recommendation to utilize the current standards for nursing home administration to redesign the requirements for the Assisted Living Administrator.** The Department did not accept this recommendation because it determined that ALRs are unique to Nursing Homes; thus, assisted living administrator rules must address the requirements for ALRs, and not simply mirror regulations for nursing home administrators. The Department gave great consideration in creating these regulations and finds the current provisions to be appropriate at this time. Additionally, the comment contained a request for comparisons that did not pose an actionable recommendation for changes to the rule language that the Department could accept or decline.

After careful consideration of all timely comments, the Department did not find that any further changes to the rulemaking were needed at this time. Therefore, no changes have been made to the Notice of Second Proposed Rulemaking that was published in the *D.C. Register* on September 20, 2019.

Following the required period of Council review, the rules were deemed approved by the D.C. Council on March 26, 2020. These rules were adopted as final on November 18, 2019 and will be effective upon publication of this notice in the *D.C. Register*.

The Department is aware that regulations governing the practice of assisted living administrators and the licensure of said practice have not yet been published as final or taken effect. Consequently, the Department will not enforce the portions of this rulemaking that require an individual to be licensed by the District of Columbia Board of Long-Term Care Administration or otherwise authorized to practice assisted living administration in the District until rules have been published, and take effect, to govern said licensure and authorization.

Chapter 101, ASSISTED LIVING RESIDENCES, of Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended in its entirety to read as follows:

CHAPTER 101 ASSISTED LIVING RESIDENCES

Secs.

10100 GENERAL PROVISIONS

10100.1 These rules are implemented pursuant to and in accordance with the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000 (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq*. (2012 Repl.), as amended from time to time (hereinafter, the Act).

10100.2 The provisions set forth in this chapter have been issued to supplement provisions of the Act. Accordingly, each assisted living residence ("ALR") licensed pursuant to the Act must comply with the Act and with this chapter, which together constitute standards for licensing and operation of ALRs within the District of Columbia.

10100.3 Nothing in this chapter shall be construed to violate the provisions of the Act or the residents' rights provided therein.

10100.4 Nothing in this chapter shall be construed to authorize conduct that is in violation of any other District or federal law or rules issued thereto, including, where applicable, the D.C. Human Rights Act of 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq.* (2016 Repl.)), the Americans With Disabilities Act of 1990 (42 USC §§ 12101 *et seq.*), the Fair Housing Act (42 USC §§ 3601 *et seq.*); and the Health Insurance Portability and Accountability Act of 1996 (42 USC §§ 1320d *et seq.*).

10100.5 An ALR that participates in the Medicaid Home Community-Based Services Waiver program for the Elderly and Persons with Physical Disabilities, as approved by the Council of the District of Columbia and the Centers for Medicare and Medicaid Services, shall maintain compliance with Chapter 42 (Home and Community-Based Services Waiver for Persons Who Are Elderly and Individuals with Physical Disabilities) of Title 29 of the District of Columbia Municipal Regulations (DCMR) in addition to the Act and this chapter.

10101 PURPOSE

10101.1 The purpose of this chapter is to supplement provisions of the Act, which sets minimum, reasonable standards for licensure of ALRs in the District of Columbia. This chapter is intended to promote the principles of the Act, and establish additional minimum standards as necessary to protect assisted living residents' health, safety, and welfare.

10102 AUTHORITY TO OPERATE AN ASSISTED LIVING RESIDENCE (ALR) IN THE DISTRICT OF COLUMBIA

10102.1 A separate license shall be required to operate each ALR, regardless of whether multiple ALRs are operated by the same person, or whether the ALR is on premises shared with another ALR or facility. Each ALR license shall be specific to the location of the ALR.

10102.2 The provision of housing under a landlord-tenant arrangement does not, in and of itself, exclude a person from the requirements to be licensed and in compliance with the provisions of the Act and this chapter.

10102.3 An ALR shall post its license to operate on its premises in a manner conspicuous to residents and visitors.

10102.4 A Licensee shall be responsible for the health, safety, and welfare of the ALR's residents.

10102.5 A Licensee shall be responsible for the operation of the ALR, including personnel and the ALR's compliance with the Act, this chapter, or any other applicable District or federal laws or regulations.

10102.6 An ALR's failure to comply with the Act, this chapter, or any other applicable District or federal laws or regulations may be grounds for sanctions or penalties, including suspension or revocation of licensure, as specified in the Act and in § 10126 of this chapter.

10103 RESTRICTIONS

10103.1 An ALR shall not provide services beyond the scope of its license.

10103.2 An entity may not use the term "assisted living" to advertise its services unless the entity is licensed under the Act to operate as an ALR.

10103.3 A person may not advertise, represent, or imply to the public that an ALR is authorized to provide a service that the service provider is not licensed, certified, or otherwise authorized to provide.

10103.4 A person may not advertise the facilities or services provided by the ALR in a manner that is false, misleading, or fraudulent. Facilities or services that are provided at an additional cost to an ALR resident shall be identified in a manner that indicates such.

10103.5 The Director shall issue each license only for the premises and person or persons named as applicants in the application. The license shall not be valid for use by any other person or persons or at any place other than that designated on the license.

Any transfer as to person or place shall cause the immediate forfeiture of the license.

10103.6 Each license to operate an ALR that is in the Licensee's possession shall be the property of the District Government and shall be returned to the Director immediately upon any of the following events:

(a) Suspension, or revocation of the license;

(b) Denial of an application to renew the license;

(c) Forfeiture consistent with § 10103.5; or

(d) The ALR's operation is discontinued by voluntary action of the Licensee.

10104 QUALIFICATION AND ELIGIBILITY

10104.1 The Director may conduct background checks on an applicant for licensure or for renewal of licensure in order to determine the applicant's suitability or capability to operate or to continue operating an ALR. If applicant is a partnership or non-corporation business entity, the background checks may be conducted on the owners. If applicant is a corporation, the background checks may be conducted on the directors, officers, and any person owning or controlling ten percent (10%) or more of common stock in the corporation.

10104.2 Applicant background checks may consist of, but not be limited to, investigating the following:

(a) Whether the applicant, or the individual identified on the application to serve as assisted living administrator (ALA) for the ALR, holds a current, valid license to practice assisted living administration in the District of Columbia;

(b) Applicant's history of compliance with the District of Columbia or any other jurisdiction's licensing requirements and with any federal certification requirements, including any license revocation or denial; and

(c) The arrest and criminal records of the applicant, including, but not limited to, the following:

(1) Crimes or acts involving abuse, neglect or mistreatment of a person or misappropriation of property of the person;

(2) Crimes or acts related to the manufacture, distribution, prescription, use, or dispensing of a controlled substance;

(3) Fraud, or substantial or repeated violations of applicable laws and rules in the operation of any health care facility or in the care of dependent persons;

(4) A conviction or pending criminal charge which substantially relates to the care of adults or minors, to the funds or property of adults or minors, or to the operation of a residential or health care facility; or

(5) Current investigations by enforcement agencies to include, but not be limited to, the District of Columbia Departments of Health, Health Care Finance, and Consumer and Regulatory Affairs, the Federal Bureau of Investigation, the Office of Inspector General of the United States Department of Health and Human Services, and law enforcement agencies.

10105 FEES

10105.1 As provided in § 302(b) of the Act (D.C. Official Code § 44-103.02(b)), each assisted living residence facility seeking an initial license shall pay a base fee of one hundred dollars ($100.00), plus a fee of six dollars ($6.00) per resident based on license capacity. These fees shall be paid at the time of the facility's application for the initial license.

10105.2 As provided in § 304(d) of the Act (D.C. Official Code § 44-103.04(d)), each assisted living residence facility seeking a renewal of its license shall pay a base fee of one hundred dollars ($100.00), plus a fee of six dollars ($6.00) per resident based on license capacity. These fees shall be paid at the time of the facility's application for the renewal license.

10105.3 Each assisted living residence facility seeking an initial license or renewal license which fails to submit its application timely, as provided in §§ 302(a) and 304(b) of the Act (D.C. Official Code §§ 44-103.02(a), 44-103.04(b)), shall pay, in addition to the base fee and per-resident fee specified herein, a late fee of one hundred dollars ($100.00). This fee shall be paid at the time of the facility's application for the license.

10105.4 As provided in § 305 of the Act (D.C. Official Code § 44-103.05), each assisted living residence facility seeking a revised license as required due to changes within the facility shall pay the following fees, as applicable, which fees shall be paid at the time of the facility's request for revision of the license:

(a) For a revision based on changes any of which require re-inspection of the facility, a base fee of one hundred dollars ($100.00), plus a fee of six dollars ($6.00) per resident based on license capacity; or

(b) For a revision based on changes which do not require re-inspection of the facility, a fee of one hundred dollars ($100.00).

10106 INITIAL ALR LICENSURE

10106.1 To obtain and maintain a license, an applicant shall meet all the requirements of the Act and this chapter, and other applicable federal and local laws and regulations.

10106.2 An application for an initial license to operate an ALR shall be made as prescribed by this section and § 302(a)-(e) of the Act (D.C. Official Code §§ 44-103.02(a)-(e)), or as prescribed by § 304 of the Act (D.C. Official Code § 44-103.04) if an application for renewal.

10106.3 The application shall be submitted to the Director for review and shall not be approved for licensure unless determined by the Director to meet the requirements of the Act and this chapter. The Director shall consider the entirety of the application record when determining whether to approve or deny an application, including the results of a background check conducted pursuant to § 10104 of this chapter and any documents required under this section.

10106.4 In addition to the requirements in § 302(d)(2) of the Act (D.C. Official Code § 44-103.02(d)(2)), an application for an ALR license shall include evidence of a current, valid license issued by the District of Columbia to the assisted living administrator (ALA) named in the application.

10106.5 In addition to the information required under § 302(e)(2) of the Act (D.C. Official Code § 44-103.02(e)(2)), an applicant for licensure shall provide the following information:

(a) The policies and procedures required by §§ 10110.2 and 10110.3 of this chapter;

(b) A floor plan specifying dimensions of the ALR, exits and planned room usage;

(c) Proof that the ALR's proposed location has passed an inspection for compliance with fire codes conducted by the District of Columbia Fire & EMS Department's Fire Prevention Division or a successor entity that becomes responsible for conducting such inspections on behalf of the District; and

(d) Any additional information requested by the Director.

10106.6 The documentation required under § 302(e)(2) of the Act (D.C. Official Code § 44-103.02(e)(2)) and § 10106.05 of this chapter shall be provided to the Director

during the pre-licensure inspection period, after on-site inspection of the applicant's ALR has been conducted.

10106.7 An applicant for an ALR license shall pay the licensure fees set forth in § 10105 of this chapter.

10107 INSPECTIONS BEFORE AND AFTER LICENSURE

10107.1 The Director is authorized to conduct inspections:

(a) At the time of an ALR's application for initial licensure;

(b) Six (6) months after an ALR's initial licensure;

(c) At the time of an ALR's application for each annual renewal of licensure;

(d) To investigate complaints alleging a violation of the Act or this chapter; and

(e) To ensure an ALR or suspected ALR's compliance with the Act and this chapter, at the discretion of the Director.

10107.2 The inspections set forth in § 10107.1 shall be conducted in accordance with the procedures set forth by § 306 of the Act (D.C. Official Code § 44-103.06) and D.C. Official Code § 44-505, and pursuant to the rules set forth in 22-B DCMR § 3101.

10107.3 In addition to the procedures and rules described in § 10107.2, inspections for the purpose of investigating a complaint alleging a violation of the Act or this chapter shall be guided as follows:

(a) The Director shall investigate complaint allegations of a life-threatening nature or those that represent immediate danger within twenty-four (24) hours of receipt of the complaint by the Department. All other complaints shall be investigated by the Director no later than thirty (30) days from their receipt or as deemed appropriate.

(b) The Director shall conduct complaint investigations during time periods and staff shifts consistent with the allegations in the complaint, when deemed appropriate.

(c) The Director shall communicate the findings of the complaint investigation directly to the ALR or suspected ALR, and the complainant, if the complaint is received directly by the Department. If the complaint is referred by another governmental agency, the Director shall send its findings to the referring agency. The referring agency shall be responsible for communicating the findings to the complainant.

10107.4 An ALR or prospective ALR that seeks to accept the Director's suggested remedy to a deficiency or propose its own remedy, pursuant to § 306(e) of the Act (D.C. Official Code § 44-103.06(e)), shall do so by submitting the remedy to the Director in a written, signed and dated plan of corrective action to abate the cited deficiencies. The ALR shall include the plan of corrective action in its response to the Director that is required by § 306(e) of the Act (D.C. Official Code § 44-103.06(e)).

10107.5 The Director, after having conducted an inspection described in paragraphs (b) through (e) of § 10107.1, shall require an ALR it has determined to be in violation of the Act and the rules, but whose deficiencies are not life threatening or seriously endangering to the public's health, safety, and welfare, to correct the deficiencies within thirty (30) days from receipt of the written notice of violations provided by the Director pursuant to § 306(d) of the Act (D.C. Official Code § 44-103.06(d)).

10107.6 An ALR shall be subject to the sanctions provided under § 401 of the Act (D.C. Official Code § 44-104.01) if it fails to correct within thirty (30) days the deficiencies indicated in the written notice of violations provided by the Director pursuant to § 306(d) of the Act (D.C. Official Code § 44-103.06(d)) after the conclusion of any inspection conducted under § 10107.1. The Director may extend this time as he or she determines is appropriate under the circumstances.

10107.7 The Director shall, after having conducted any inspection under § 10107.1, deny, suspend, or revoke an ALR's licensure pursuant to § 10126 of this chapter if the ALR is found to have life threatening deficiencies or deficiencies which seriously endanger the public's health and safety, but which do not pose an immediate threat to warrant an emergency suspension described by § 404 of the Act (D.C. Official Code § 44-104.04).

10108 ADMISSIONS

10108.1 No ALR may have more residents, including respite care residents, than the maximum bed capacity on its license.

10108.2 An ALR shall deny admission to an individual if the individualized service plan (ISP) that is developed prior to the individual's admission, pursuant to section 604(a)(1) of the Act (D.C. Official Code § 44-106.04(a)(1)), does not indicate that the individual requires at least the minimal level of assistance with activities of daily living or instrumental activities of daily living provided by the ALR.

10108.3 For the purpose of § 601(d)(1) of the Act, physical or mental abuse of others or destruction of property shall be considered behavior that significantly and negatively impacts the lives of others. An ALR shall not admit an individual who at the time of initial admission, and as established by the initial assessment, exhibits such behavior where the ALR would be unable to eliminate it through the use of appropriate treatment modalities.

10108.4 An ALR shall consider the availability of mental health treatments offered by the District's network of core service agencies and the Department of Behavioral Health prior to determining whether it can provide, or arrange for a third party service to provide, appropriate services for an individual requiring mental health treatment.

10109 RESIDENT'S RIGHTS AND QUALITY OF LIFE

10109.1 The ALR shall promote and facilitate resident self-determination through support of resident choice and all the rights specified in the Act and this chapter.

10109.2 The ALR shall support the resident (or surrogate) in exercising the resident's rights under this chapter without interference, coercion, discrimination, or threat of retaliation.

10109.3 An ALR shall not discriminate against a resident in treatment or access to services based on reasons prohibited by the District of Columbia Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01 *et seq*. (2016 Repl.)) or any other applicable anti-discrimination law, or rule issued pursuant thereto.

10109.4 An ALR shall honor a duly-executed supported decision-making agreement provided to it by a resident with a disability or a prospective resident with a disability, in accordance with Title III of the Disability Services Reform Amendment Act of 2018 (D.C. Law 22-93; D.C. Official Code §§ 7-2131.01 *et seq.* (2018 Repl.)). An ALR that has received a supported decision-making agreement from a resident shall be advised that all notices required to be sent to that resident under the Act or this chapter must also be sent to the resident's supported decision maker as designated in the resident's supported decision-making agreement, pursuant to § 303(c) of Title III of the Disability Services Reform Amendment Act of 2018 (D.C. Official Code § 7-2133(c)). For the purpose of this subsection, "supported decision-making agreement" and "disability" shall have the meanings prescribed to them by Title III of the Disability Services Reform Amendment Act of 2018 (D.C. Official Code §§ 7-2131.01 *et seq.*).

10109.5 An ALR shall allow notices of upcoming resident group meetings to be posted prominently and conspicuously in designated areas. The ALR shall also include the date, time, and location of upcoming resident group meetings in the calendars or schedules of activities that are published by the ALR for residents on a regular basis, provided that the resident group submits the pertinent information to the ALR prior to the date of the calendar or schedule's publication.

10109.6 By the rights granted under § 505(a)(7) of the Act (D.C. Official Code § 44-105.05(a)(7)):

(a) A resident shall have the right to organize and participate in resident groups in the ALR;

(b) A resident shall have the right to invite staff or visitors, including family members and other individuals interested in the resident's wellbeing, to resident group meetings in the ALR;

(c) The ALR shall provide meeting space of appropriate size and with appropriate seating to accommodate the resident group meeting's attendees; and

(d) The ALR shall designate an employee or employees who shall assist with resident group meetings, and through whom the resident group may submit its written requests to the ALR and shall receive the ALR's response to those requests.

10109.7 An ALR shall consider the written requests and grievances submitted by a resident or resident group and respond within fifteen (15) days, in writing, indicating its intended action or inaction in response to the issues of resident care and life in the ALR raised by the resident or resident group. The ALR shall act promptly to complete the actions indicated in its response within a reasonable amount of time. This subsection shall not be construed to imply that the ALR must implement the requests of a resident or resident group in the exact manner recommended by that resident or resident group.

10109.8 An ALR shall maintain complete written records of the filing and disposition of all requests, grievances, and appeals.

10109.9 An ALR shall permit a resident group meeting to have in attendance family members, visitors, and other guests invited by the resident group's members. ALR staff may attend a resident group meeting only at a resident group member's invitation. This subsection shall not prevent a resident's surrogate from attending a resident group meeting with, or instead of, the resident he or she represents.

10109.10 For the purpose of § 506(a)(1) of the Act (D.C. Official Code § 44-105.06(a)(1)) "the ALA and healthcare records" to which a resident shall have access on demand shall mean the aggregate of the following records maintained by the ALR with respect to a particular resident:

(a) Signed resident agreements written pursuant to § 602 of the Act (D.C. Official Code § 44-106.02), including the financial provisions required by § 603 of the Act (D.C. Official Code § 44-106.03);

(b) Healthcare records, including healthcare notes and progress reports written by ALR staff, the record of prescription medication stored by the ALR

pursuant to § 904 of the Act (D.C. Official Code § 44-109.04) to administer to the resident, and the record of prescription and non-prescription medication and dietary supplements stored by a resident in his or her living unit pursuant to § 10123.3 of this chapter;

(c) Individualized service plans (ISPs), including all SRAs pertaining thereto;

(d) Medication administration records, including records of drug errors and adverse drug reactions; and

(e) Medication and treatment orders.

10109.11 A resident (or surrogate, to the extent that disclosure of the resident's health information of is not prohibited by applicable laws) shall be entitled to access, on demand, the following documents from the ALR, and to obtain a copy at a fee not to exceed that which is reasonable to cover the cost of its reproduction:

(a) The resident's ALA and healthcare records, as described in § 10109.10;

(b) The resident's financial records pertaining to the funds and personal property deposited or managed by an ALR for the benefit of the resident described in § 603(a)(2) of the Act (D.C. Official Code § 44-106.03(a)(2)); and

(c) The results of investigations conducted by the ALR that were prompted by the resident's submission of a complaint.

10109.12 An ALR shall provide a space with adequate privacy for a resident (or surrogate) to review the document or documents he or she requested to access pursuant to § 10109.11. The space shall have the means to view the document in the format in which the ALR presented it. This subsection is not intended to accommodate copies of documents made at a resident's request pursuant to § 10109.11.

10109.13 An ALR shall not name a group, council, meeting, or other gathering of individuals a "resident group," "resident council," "family group," "family council," or combination thereof if the ALR conducts or otherwise controls that gathering beyond providing its resident's the support and services specified in the Act and this chapter.

10109.14 A copy of all signed agreements between an ALR and a resident (or surrogate), and all notifications required under the Act or this chapter, shall be retained in the resident's record. An ALR shall provide its residents (or surrogates) with a copy of signed documents within three (3) business days of signing the document.

10109.15 An ALR shall maintain each resident's record for no less than three (3) years after transfer, discharge, or death.

10110 REQUIRED POLICIES AND PROCEDURES

10110.1 An ALR shall develop and implement dated, written policies and procedures concerning its operation which shall be consistent with the Act, this chapter, and all other applicable District or federal law.

10110.2 Policies developed and implemented pursuant to § 10110.01 shall include, but not be limited to the following, which shall meet the approval of the Director:

(a) Medication management, administration of medication, medication administration errors, and medication storage;

(b) Developing, reviewing, and revising a resident's ISP, including policies on addressing a resident's (or surrogate's) disagreement with an ISP in part or whole and using a shared responsibility agreement (SRA) to resolve remaining discrepancies between the individual resident's right to independence and the ALR's concerns for the safety and wellbeing of the resident and others;

(c) Private duty nurses, aides, and other healthcare professionals;

(d) Companions;

(e) Admission, transfer, and discharge, including guidelines on accommodating a resident's needs prior to an admission, transfer, or discharge;

(f) Complaints and grievances, including policies for use of the mechanism through which a resident may have complaints and grievances addressed, and for review of submitted complaints and grievances;

(g) Protecting residents from the threat of retaliation for expressing complaints and grievances;

(h) Preventing, investigating, reporting, and remediating abuse, neglect, and exploitation of residents;

(i) Criteria to determine the care needs required by each resident upon initial assessment and throughout the duration of the resident's stay, including how staffing, emergency triage, and fees assessed to residents are impacted by the level of care needs assigned to a resident;

(j) Alcohol, tobacco, and marijuana use;

(k) Infection control, sanitation, and universal precautions;

(l) Emergency preparedness, which shall meet the same standards for emergency preparedness as those set for long term care facilities by the Centers for Medicare and Medicaid Services, at 42 CFR § 483.73;

(m) Use of audio-visual monitoring systems to monitor the non-private areas of the ALR's internal and external premises, including length of retention and the destruction of recordings;

(n) Resident's right to visitation, and visitor conduct;

(o) Monitoring of independent contractors performing work on the ALR's premises on behalf of the ALR or resident;

(p) Availability of the ALA to the ALR staff;

(q) Contacting the ALR's registered nurse;

(r) Determining when an ambulance or emergency medical services are contacted during a health emergency;

(s) Resident falls; and

(t) Notification system to inform residents in the event of emergencies such as utility outages, environmental hazards, and other events that pose a substantial threat to the safety of the general ALR community.

10110.3 Procedures developed and implemented in connection with the policies in § 10110.2 shall meet the approval of the Director.

10110.4 An ALR shall train its staff in the proper implementation of its procedures.

10110.5 A resident shall be permitted to view a copy of any policy required under § 10110.2 at his or her request.

10110.6 A resident shall be permitted, at his or her request, to view a copy of the ALR procedures developed in connection with the policies identified in paragraphs (b) and (f) of § 10110.2.

10111 DISCLOSURE

10111.1 An ALR shall not provide any billable service or item that will be at a cost additional to the resident's existing balance for the billing cycle unless the ALR has first:

(a) Provided the resident (or surrogate) with:

(1) Oral and written notice of all fees, rates, and charges he or she will incur for the provision of the service or item; and

(2) The dollar amount, frequency, and number of recurring charges that will occur for the provision of that service or item; and

(b) Obtained the resident's (or surrogate's) signature acknowledging receipt of the advance disclosures required by paragraph (a) of this subsection.

10111.2 An ALR shall keep a copy of the written notice and signed acknowledgment required by this subsection in the resident's record.

10111.3 An ALR shall be excused from the requirements of § 10111.01 if emergency circumstances necessitate the immediate provision of an item or service that would otherwise have required advance disclosure of the fees, rates, and charges. An ALR shall provide the disclosures described in § 10111.01(a) and obtain the signature confirmation described in § 10111.01(b) upon concluding its assessment of the resident following the emergency.

10111.4 If an ALR is unable to obtain a resident's (or surrogate's) signed acknowledgement required by § 10111.1 after diligent efforts, the ALR may make note of its inability to obtain the signature on the signature line, which shall include a brief description of the method and number of attempts made to obtain the signature, the dates the attempts were made, and the name of the employee who made the attempts.

10112 FINANCIAL AGREEMENTS

10112.1 The complete terms of all financial provisions in a resident's agreement shall be made available for the resident (or surrogate) to review prior to admission.

10112.2 Funds deposited with or managed by an ALR for the benefit of the resident that total more than two hundred dollars ($200) shall be deposited in an interest-bearing account in the resident's name in a savings institution. Funds deposited or managed by an ALR for the benefit of the resident that total two hundred dollars ($200) or less may be deposited in an interest-bearing or non-interest-bearing account or secured on-site for the resident's use as petty cash.

10112.3 An ALR shall not commingle residents' funds or personal property with the funds or property of the ALR, the licensee, employees, or any other entity or individual other than another resident. The ALR must maintain a system that assures a complete and separate accounting, according to generally accepted accounting principles, of each resident's funds and personal property entrusted to the ALR on the resident's behalf.

10112.4 The resident's financial records pertaining to the funds and personal property described in § 603(a)(2) of the Act (D.C. Official Code § 44-106.03(a)(2)) shall be

made available to the resident (or surrogate) upon request. The ALR shall provide a report of the resident's financial records to the resident (or surrogate) on a quarterly basis.

10113 INDIVIDUALIZED SERVICE PLANS (ISPs)

10113.1 An ISP shall be developed for each resident not more than thirty (30) days prior to admission.

10113.2 An ALR shall support the involvement of family and friends selected by the resident to participate in the development, review, and renegotiation of his or her ISP under the Act and this chapter, provided that the involvement of the selected family and friends is conducive to the resident's participation in the ISP development, review, or renegotiation. This subsection shall not apply to a resident's surrogate acting in his or her capacity as the resident's surrogate pursuant to law.

10113.3 An ALR shall ensure that the assessments conducted prior to a resident's admission, pursuant to §§ 802 and 803 of the Act (D.C. Official Code §§ 44-108.02 and 44-108.03), are performed by a registered nurse who is licensed to practice in the District, and any other healthcare professional necessary to perform the assessments as required who shall also be licensed or otherwise authorized to practice in the District.

10113.4 In accordance with § 604 of the Act (D.C. Official Code § 44-106.04), the ISP developed following the completion of the "post move-in" assessment shall be based on the following factors:

(a) The medical, rehabilitation, and psychosocial assessment of the resident, conducted by or on behalf of the ALR and in accordance with § 802 of the Act (D.C. Official Code § 44-108.02);

(b) The functional assessment of the resident, conducted by or on behalf of the ALR and in accordance with § 803 of the Act (D.C. Official Code § 44-108.03); and

(c) The reasonable accommodation of the resident's (or surrogate's) preferences.

10113.5 A "post move-in" assessment required by § 604 of the Act (D.C. Official Code § 44-106.04) shall be conducted by or on behalf of the ALR within seventy-two (72) hours of a resident's admission.

10113.6 An ALR shall ensure that the update of a resident's ISP conducted pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)) shall include the involvement of the following personnel on its behalf:

(a) A registered nurse licensed to practice in the District of Columbia;

(b) The ALA or Acting Administrator responsible for the ALR, if the health or safety of the resident is at risk; and

(c) Any additional healthcare professional licensed in the District whose expertise is necessary for the ALR to perform a full and competent review of the services provided in the ISP prior.

10113.7 At or around the time of an ISP review conducted pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)), the ALR shall:

(a) Obtain from the resident (or surrogate) a signed statement confirming that the resident (or surrogate):

(1) Was invited to participate in the review of the ISP; and

(2) Did or did not participate in the review of the ISP; or,

(b) If the resident has refused to give signed confirmation regarding the same ISP review on two (2) separate occasions, document in the resident's record the date, time, and method of each attempt to obtain the resident's signed confirmations and the name of the ALR personnel who made each attempt.

10113.8 An ALR shall provide the resident (or surrogate) no less than seven (7) days' notice prior to the review of a resident's ISP conducted pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)), unless seven days' (7) notice is made impractical due to a significant change in the resident's condition that necessitates review of the resident's ISP at a sooner date. The notice shall:

(a) Include the date, time, and location at which the ALR proposes to conduct the ISP review, and advise the resident (or surrogate) that he or she may request to reschedule the ISP review to another date or time that is mutually agreeable;

(b) Include an outline of the topics to be discussed during the ISP review and no less than a summary of the ALR's proposed changes to the ISP, if any, in order to facilitate the resident's (or surrogate's) informed decision-making;

(c) Encourage the resident (or surrogate) to participate in the ISP review with the involvement of family and friends of the resident's choice in accordance with § 10113.2;

(d) Be delivered to the resident (or surrogate) in writing; and

(e) Be followed by no less than one (1) written reminder encouraging the resident (or surrogate) to participate in the review.

10113.9 An ALR shall permit a resident (or surrogate) to reschedule the review of his or her ISP conducted pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)) to a date and time that is mutually agreeable.

10113.10 If a resident (or surrogate) disagrees with an ISP that is updated pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)), the ALR shall:

(a) Attempt to resolve the disagreement according to its written policy and procedure for addressing a resident's disagreement with his or her updated ISP, which shall be implemented consistent with this subsection and in accordance with all applicable provisions of the Act and this chapter;

(b) Indicate within the ISP the portions that are in dispute;

(c) Document the disagreement in the resident's record;

(d) Record in the resident's record the date, time, and summary of each effort by the parties to discuss and resolve the disputed portions of the ISP, including, if applicable, the resident's (or surrogate's) uncoerced, written, informed consent to implement the portions of the ISP that are not in dispute, pursuant to §§ 10113.11 and 10113.12; and

(e) If attempts to resolve the dispute pursuant to paragraph (a) are unsuccessful, attempt to negotiate a shared responsibility agreement ("SRA") with the resident (or surrogate) according to the ALR's written policy and procedures, which shall be in accordance with § 605 of the Act (D.C. Official Code § 44-106.05) and § 10114 of this chapter.

10113.11 A resident's (or surrogate's) disagreement with an ISP that is updated pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)) and in accordance with the Act and this chapter shall not, in and of itself, prevent the ALR from attempting to implement the ISP, provided that the individuals charged with implementing the ISP do not administer medications or treatments to the resident's person without the resident's (or surrogate's) consent. This subsection shall not be construed to prevent a resident (or surrogate) from engaging in negotiations to reach a SRA in accordance with § 605 of the Act (D.C. Official Code § 44-106.05) and § 10114 of this chapter, for reasons including, but not limited to, resolving a disagreement with respect to that resident's ISP, or exercising that resident's right to refuse participation in a service as provided by § 504(5) of the Act (D.C. Official Code § 44-105.04(5)).

10113.12 Consistent with § 10113.11, an ALR shall be permitted to implement an ISP that has been disputed by the resident (or surrogate) as follows:

(a) Implementation is limited to the portions of the ISP that are not in dispute, and in accordance with the resident's (or surrogate's) uncoerced, written, informed consent. For the purposes of this paragraph, informed consent requires that, prior to giving consent, the resident (or surrogate) has been provided, in writing, the specific ISP services that will not be implemented at that time, and an opportunity to have the ALR explain the consequences of accepting and forgoing the disputed portions of the ISP;

(b) Implementation is in accordance with an SRA that has been reached in order to resolve the resident's (or surrogate's) disagreement with the ISP, pursuant to the ALR's written policy and procedures and in accordance with the Act and § 10114 of this chapter; or

(c) Implementation of a disputed portion of the ISP is necessitated by a health emergency or by the resident's urgent medical needs as explicitly delineated in the signed, written orders of an attending healthcare practitioner or registered nurse.

10113.13 The ALR shall periodically monitor a resident who foregoes an ISP service in order to ascertain whether the resident can continue to forego the service safely.

10113.14 Nothing in this section shall compel an ALR to enter into a SRA that is inconsistent with § 605 of the Act (D.C. Official Code § 44-106.05), § 10114 of this chapter, or other applicable District or federal requirement.

10114 SHARED RESPONSIBILITY AGREEMENTS (SRAs)

10114.1 Shared responsibility agreements (SRAs) may be developed and entered into between an ALR and a prospective or admitted resident (or surrogate), at any time prior to or subsequent to the resident's admittance to the ALR.

10114.2 An ALR shall not enter into a SRA with a prospective or admitted resident (or surrogate) that:

(a) Seeks to directly or indirectly waive the ALR's obligations to the resident, in whole or in part, beyond the scope necessary to accommodate the resident's (or surrogate's) reasonable, requested arrangement or course of action;

(b) Relieves the ALR of its obligation ensure that it makes available for a resident's use all prescription and non-prescription medications and dietary supplements required to be provided to that resident according to his or her ISP developed or updated pursuant to § 604(d) of the Act (D.C. Official Code § 44-106.04(d)), or applicable law;

(c) Violates any applicable District or federal criminal law; or

(d) Violates or will cause the violation of any provision of the Act or this chapter.

10114.3 An SRA shall not have the effect of absolving a party from responsibility for negligent conduct.

10114.4 An ALR may decline to enter into a SRA if satisfaction of the SRA will result in an adverse risk to the health, welfare, or safety of other residents or ALR staff. The ALR shall identify the adverse risks for which it declined to enter the SRA in writing to the resident (or surrogate), and include a copy of that correspondence in the resident's record.

10114.5 Attempts to develop a SRA shall be conducted in good-faith. For purposes of this section, a good-faith attempt to negotiate a SRA shall mean a two-way negotiation between the ALR and the resident (or surrogate), where both parties have equal opportunity to propose and decline terms of the SRA, and suggest reasonable alternatives to accommodate the course of action the resident wishes to pursue.

10114.6 In the event that a good-faith attempt to negotiate a SRA is unsuccessful, the ALR:

(a) Shall document in the resident record the ALR's consultations with the resident (or surrogate) to dissuade the course of action, including but not limited to:

(1) The date and time each consultation was held;

(2) The content of the consultations;

(3) The alternative courses of action proposed by the resident (or surrogate) and ALR, and why the proposed alternatives were not acceptable to the resident (or surrogate) or ALR;

(b) Shall notify the resident (or surrogate) that harm to the resident's person or others as a result of the persisted course of action may result in discharge;

(c) Shall not obstruct the resident from pursuing the course of action sought after, provided that the course of action does not pose a clear and present risk of harm to the health, welfare, or safety of other residents or staff, or otherwise warrant intervention by the ALR in order to maintain an environment that is safe and compliant with the ALR's obligations under the Act and this chapter. This paragraph shall not be construed to authorize either party to violate the terms of the resident agreement entered into between the ALR and resident pursuant to §§ 602 and 603 of the Act (D.C. Official Code §§ 44-106.02 and 44-106.03) as it pertains to resident

conduct, or to prohibit an ALR from enforcing the provisions of its resident agreement in accordance with the Act, this chapter, all applicable law; and

(d) Shall monitor the resident as necessary to ascertain whether the resident's chosen course of action places the resident or others in danger, or other conduct for which subsequent action by the ALR is necessary to maintain an environment that is safe and compliant with the ALR's obligations under the Act and this chapter.

10115 TRANSFER, DISCHARGE, AND RELOCATION

10115.1 The ALA or Acting Administrator shall determine if the care needs of a resident exceed the resources that can be marshalled by the ALR or third-party services in order to safely support the resident, making transfer to another facility necessary. This determination shall only be made after having consulted with the resident (or surrogate) to identify if the ALR can continue to support the resident safely. An ISP review shall satisfy the requirement for this consultation.

10115.2 Except as provided in § 10115.13, an ALR shall conform to the notices and procedures applicable to involuntary relocation, transfer, or discharge provided by subchapter 3 of Chapter 10 of Title 44 of the District of Columbia Official Code (D.C. Official Code §§ 44-1003.02 – 1003.13), and shall conduct the involuntary relocation, transfer, or discharge in accordance with this chapter and § 608(d)-(f) of the Act (D.C. Official Code § 44-106.08(d)-(f)).

10115.3 Prior to transferring a resident to another facility for reasons other than an emergency described in § 608(b) of the Act (D.C. Official Code § 44-106.08(b)), or prior to a discharge, the ALR shall complete and transmit to the receiving facility or, if no receiving facility has been identified, to the resident (or surrogate) any information related to the resident that is necessary to ensure continuity of care and services, including at a minimum, the:

(a) Contact information of the healthcare practitioner or practitioners responsible for the primary care of the resident;

(b) Current medication and treatment orders from the resident's healthcare practitioner or practitioners;

(c) Dosage and date of each medication last administered to the resident;

(d) Resident's most recent ISP, which shall include the resident's assessments;

(e) Resident's name, date of birth, and a personal identifier number, such as a social security number or health insurance information, for purposes of continuing medical care services;

(f) Primary medical diagnoses and allergies;

(g) Name and contact information for the resident's surrogate, if applicable; and

(h) Resident's Advanced Directive information.

10115.4 An ALR shall not transmit the information prescribed in § 10115.3 to the receiving facility without the prior, written, uncoerced consent of the resident (or surrogate). In the event that consent is withheld, an ALR shall transmit the information prescribed in § 10115.3 directly to the resident (or surrogate) prior to transfer or discharge.

10115.5 Although an ALR shall make every effort to avoid discharge, grounds for involuntary discharge may include the following:

(a) Failure to pay all fees and costs as specified in the contract;

(b) Inability of the ALR to meet the care needs of the resident as provided in the ISP, as amended by an SRA when applicable;

(c) Engaging in sexual harassment, exploitation, or other degrading conduct to the detriment of another residents' dignity, in violation of the victim's rights provided under the Act and this chapter;

(d) Resident presents a risk of physical self-harm, or harm to one or more other residents or staff, for which no other reasonable means of mitigation are available;

(e) Discharge is essential to meet the ALR's reasonable administrative needs and no practicable alternative is available;

(f) The ALR is ceasing to operate;

(g) The licensed capacity of the ALR is being reduced by the District; or

(h) The license to operate the ALR is suspended or revoked.

10115.6 A resident's return to an ALR after transfer to, and subsequent discharge from, an acute care facility pursuant to § 608 (c) of the Act (D.C. Official Code § 44-106.08(c)) shall be guided by the following provisions:

(a) Pursuant to § 608(c) of the Act (D.C. Official Code § 44-106.08(c)), a resident's return to his or her ALR from an acute care facility pursuant to an attending healthcare practitioner's written approval shall be a provisional return pending renegotiation of the resident's ISP and the ALA's

determination concerning whether the resident can continue to reside safely at the ALR in accordance with § 10115.1;

(b) It shall be considered an involuntary discharge for the purposes of the Act and this chapter for an ALR to refuse or obstruct a resident's return to the ALR from an acute care facility pursuant to his or her attending healthcare practitioner's written approval. An involuntary discharge described in this paragraph shall be afforded the same notices, procedures, and provisions applicable to involuntary discharges described in the Act, this chapter, and D.C. Official Code §§ 44-1003.02- 44-1003.13;

(c) If the attending healthcare practitioner's written approval to return to an ALR indicates that the resident requires additional supports in order to do so safely, those additional supports shall be arranged consistent with the resident agreement's financial provisions for coordinating and contracting services not covered by the resident agreement;

(d) Except for under the circumstances set forth in D.C. Official Code § 44-1003.02(b)(1) and (2) or the occurrence of a separate event for which a resident may be lawfully discharged under the Act or this chapter, a resident who has returned to the ALR pursuant to an attending healthcare practitioner's written approval shall be permitted to remain in the ALR:

(1) Throughout the ISP renegotiation performed under § 608(c) of the Act (D.C. Official Code § 44-106.08(c));

(2) Throughout the ALA's determination of whether the resident can continue to safely reside in the ALR in accordance with § 10115.1; and

(3) If the ALA determines that the resident must be transferred or discharged because of the ALR's inability to continue supporting the resident safely, throughout the transfer or discharge notice period, and hearing period if applicable, provided by the Act, this chapter, and D.C. Official Code §§ 44-1003.02 and 44-1003.03.

10115.7 As provided for by D.C. Official Code § 44-1003.02(d), the written notice due to a resident prior to an involuntary discharge, transfer, or relocation shall be on a form prescribed by the Director and shall, at a minimum, contain:

(a) The specific reason(s), stated in detail and not in conclusory language, for the proposed discharge, transfer, or relocation;

(b) The proposed effective date of the discharge, transfer, or relocation;

(c) A statement in not less than twelve (12)-point type that reads:

"You have a right to challenge this facility's decision to discharge, transfer, or relocate you. If the decision is to discharge you from the facility or to transfer you to another facility and you think you should not have to leave, you or your representative have 7 days from the day you receive this notice to inform the Administrator or a member of the staff that you are requesting a hearing and to complete the enclosed hearing request form and mail it in the preaddressed envelope provided. If you are mailing the hearing request form from the facility, the day you place it in the facility's outgoing mail or give it to a member of the staff for mailing shall be considered the date of mailing for purposes of the time limit. In all other cases, the postmark date shall be considered the date of mailing. If, instead, the decision is to relocate you within the facility and you think you should not have to move to another room, you or your representative have only 5 days to do the above.

"If you or your representative request a hearing, it will be held no later than 5 days after the request is received in the mail, and, in the absence of emergency or other compelling circumstances, you will not be moved before a hearing decision is rendered. If the decision is against you, in the absence of an emergency or other compelling circumstances you will have at least 5 days to prepare for your move if you are being discharged or transferred to another facility, and at least 3 days to prepare for your move if you are being relocated to another room within the facility.

"To help you in your move, you will be offered counseling services by the staff, assistance by the District government if you are being discharged or transferred from the facility, and, at your request, additional support from the Long-Term Care Ombudsman program. If you have any questions at all, please do not hesitate to call one of the phone numbers listed below for assistance.";

(d) A hearing request form, together with a postage paid envelope preaddressed to the appropriate District official or agency;

(e) The name, address, and telephone number of the person charged with the responsibility of supervising the discharge, transfer, or relocation;

(f) The names, addresses, and telephone numbers of the Long-Term Care Ombudsman program and local legal services organizations; and

(g) The location to which the resident will be transferred.

10115.8 If the tribunal adjudicating a contested transfer, discharge, or relocation finds that the existence of a ground for transfer, discharge, or relocation, respectively, has been proven at a hearing requested by the resident pursuant to D.C. Official Code § 44-1003.03, the resident shall not be:

(a) Discharged or transferred from the facility before the 31st calendar day

following his or her receipt of the transfer or discharge notice required under the Act and § 10115.7, or the 5th calendar day following his or her notification of the hearing decision, whichever is later, unless a condition set forth in D.C. Official Code §§ 44-1003.02(b)(1) and (2) develops in the interim; or

(b) Relocated within the facility before the 8th calendar day following his or her receipt of the relocation notice required under the Act and § 10115.7, or the 3rd calendar day following his or her notification of the hearing decision, whichever is later, unless a condition set forth in D.C. Official Code §§ 44-1003.02(b)(1) and (2) develops in the interim.

10115.9 The involuntary transfer or discharge of a resident shall be canceled, and the resident shall be entitled to remain in the ALR, upon remediation of the ground or grounds for transfer or discharge. Remediation may be, when applicable, the payment of all monies owed at any time prior to discharge, or the negotiation of a new ISP, and SRA if applicable, that meets the care needs of the resident prior to transfer or discharge.

10115.10 The ALR shall return all funds and personal property that have been deposited with or managed by the ALR for the benefit of the resident no later than the time of discharge.

10115.11 Within thirty (30) days after the date of the discharge or death of a resident, the ALR shall:

(a) Provide a final accounting of funds and personal property that have been deposited with or managed by the ALR for the benefit of the resident, which shall be delivered to the resident (or surrogate) in the event of discharge, or to the resident's legal representative in the event of the resident's death; and

(b) Return any refunds due to the resident (or surrogate) in the event of discharge, or to the resident's legal representative in the event of the resident's death.

10115.12 An ALR may temporarily relocate a resident to another living unit within the ALR on an involuntary basis if:

(a) Temporary relocation is necessary to protect the resident from an imminent and physical harm present in, or threatening to enter, the living unit;

(b) The imminent and physical harm is due to a curable condition of the living unit; and

(c) The temporary relocation lasts no longer than necessary to cure the threat to physical harm posed by the condition and return the living unit to its

habitable condition.

10115.13 An involuntary, temporary relocation that is necessitated by the conditions set forth in § 10115.12 shall conform to the notices and procedures for involuntary relocation provided by subchapter 3 of Chapter 10 of Title 44 of the District of Columbia Official Code (D.C. Official Code §§ 44-1003.02 – 1003.13), except when an exigent threat to the resident's physical safety demands an abbreviated notice period.

10115.14 An ALR shall document in the resident's records any relocation, transfer, or discharge of a resident, and the basis for the action taken.

10116 STAFFING STANDARDS

10116.1 An ALR shall be supervised by an assisted living administrator (ALA) who shall be responsible for all personnel and services within the ALR, including, but not limited to, resident care and services, personnel, finances, adherence to the ALR's own policies and procedures, and the ALR's physical premises.

10116.2 A Licensee may designate a person to serve as ALA to supervise the ALR provided that the designee holds a current, valid license to practice assisted living administration issued by the District of Columbia's Board of Long-Term Care Administration. The Licensee shall submit the name of the person designated to be ALA to the Director on a form approved by the Director not more than ten (10) days after the designation is made or the designee has begun employment as the ALA, whichever occurs first.

10116.3 In addition to the staffing standards for ALAs set forth by § 701 of the Act (D.C. Official Code § 44-107.01), an ALA shall meet all requirements to practice assisted living administration prescribed by the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and all requirements to practice assisted living administration set forth by the Director by rulemaking.

10116.4 At all times one (1) or more residents are on the premises of an ALR, an ALA or Acting Administrator shall also be on the premises. At all times an ALA is not on the premises, an ALA shall:

(a) Ensure that an Acting Administrator is designated and assumes the responsibilities of the ALA required by the Act and this chapter, and that the Acting Administrator is a staff member who is at least eighteen (18) years of age, meets the staffing standards for an ALA required by § 701 of the Act (D.C. Official Code § 44-107.01), and is authorized to temporarily practice as an Acting Administrator without an ALA license by rulemaking promulgated by the Director to regulate the practice of assisted living administration; and

(b) Be available to the ALR staff by telephone, at a minimum, and shall respond to the ALR staff's attempts to contact him or her by telephone within 1 hour of the staff's initial attempt, except as provided for in § 10116.6.

10116.5 The Licensee or ALA may, during an ALA's leave of absence, designate a staff member who meets the requirements in paragraph (a) of § 10116.4 to serve as Acting Administrator for the ALR and perform the duties of the ALA for up to six (6) cumulative weeks in a twelve (12) month period. For purposes of this section, a "leave of absence" shall mean an ALA's scheduled or unscheduled absence from his or her supervision of the ALR for more than one (1) work day during which the ALA would normally have been expected to oversee the ALR's day-to-day operations.

10116.6 An ALA shall not be subject to § 10116.4(b) during a leave of absence described in § 10116.5.

10116.7 An Acting Administrator who is designated pursuant to § 10116.5 shall be held responsible for all duties prescribed to an ALA under the Act and this chapter for the duration of the ALA's leave of absence, or until relieved from duty as the Acting Administrator.

10116.8 An Acting Administrator who is designated pursuant to § 10116.5 shall, at all times one (1) or more residents are on the ALR's premises and he or she is not, comply with paragraphs (a) and (b) of § 10116.4.

10116.9 An ALR shall not be administrated by any person other than a licensed ALA for more than six (6) cumulative weeks in a twelve (12) month period without prior, written approval by the Director. A request for written authorization under this subsection shall be submitted to the Director in writing, and shall contain all information deemed necessary by the Director to determine the qualifications of the individual or individuals who will be serving as an Acting Administrator beyond the sixth (6^{th}) cumulative week of the ALA's leave of absence.

10116.10 An ALR shall not permit any person or persons, other than a licensed ALA, to administrate the ALR for more than a total of twelve (12) cumulative weeks in a twelve (12) month period.

10116.11 An ALR shall give to the Director prior written notice if an ALA's leave of absence will be for a period longer than three (3) consecutive weeks in duration. The notice shall include the name or names of the staff member or members designated to serve as Acting Administrator during the ALA's leave of absence, as well as the telephone number by which the Acting Administrators are to be contacted pursuant to § 10116.4(b).

10116.12 An ALR shall be responsible for maintaining accurate record of the ALA's leaves

of absence from the ALR. Record of the ALA's leaves of absence shall be made available to the Director or the Director's designee upon request during an inspection of an ALR authorized by this chapter or the Act.

10116.13 An ALR shall cause no less than one (1) registered nurse to be available to the ALA and the ALR's staff members twenty-four (24) hours a day, seven (7) days a week. For the purpose of this subsection, "available" means the registered nurse is required to:

(a) Be accessible to the ALA and ALR staff members in-person or by real-time communication methods, such as telephone, text message, or video call; and

(b) Respond to the ALA or ALR staff members' attempts to contact him or her within 1 hour; and

(c) Be able to present him or herself, in person, to the ALR's premises to respond to a significant change in a resident's health status if the nurse determines, in his or her professional opinion, that the change in health status necessitates his or her presence.

10116.14 The contact information for the available registered nurse shall be posted conspicuously for, and shall be easily accessible to, the ALR staff.

10116.15 Personnel records maintained by the ALA for each employee pursuant to § 701(d)(11) of the Act (D.C. Official Code § 44-107.01(d)(11)) shall be accurate and current and shall contain documentation including, but not limited to, the following:

(a) A description of the employment, signed and dated by the employee, that includes the employee's duties and responsibilities, and the qualifications required for the position;

(b) Initial date of hire;

(c) Proof of license, registration, certificate, or other authority for the employee to practice his or her profession in the District, if applicable;

(d) A completed criminal background check, performed as required by the District laws and regulations applicable to each individual;

(e) Employee training required by the Act or this chapter, or the individual's exemption therefrom; and

(f) A healthcare practitioner's written statement as to whether the employee bears any communicable diseases, including communicable tuberculosis.

10116.16 Employee records shall be made available for review by the Department of Health upon request during any inspection of an ALR that is authorized by the Act or this chapter.

10116.17 All employees, including the ALA, shall be required on an annual basis to document freedom from tuberculosis in a communicable form. Documentation shall be provided by the employee's licensed healthcare practitioner.

10116.18 All employees shall wear identification badges on their persons, which shall not be obscured, but shall always remain visible while the employee is on the ALR premises. The identification badge shall prominently and conspicuously display the employee's full name and job title.

10116.19 The first name, last name, and job title of the ALA, or Acting Administrator, on duty shall be posted in a manner conspicuous to residents and visitors.

10117 ASSISTED LIVING ADMINISTRATORS (ALAs)

10117.1 The ALA shall maintain a current, valid license to practice assisted living administration in the District at all times he or she is responsible for the administration of an ALR. For purposes of this subsection, an ALA shall not be considered responsible for the administration of an ALR for the period of time he or she is on a leave of absence described in § 10116.5 of this chapter.

10117.2 The ALA shall ensure that the ALR complies with the Act and this chapter.

10117.3 An ALA shall be subject to action by the District of Columbia Board of Long-Term Care Administration for failure to comply with the requirements of this section, or other applicable requirements of the Act or this chapter.

10118 PRIVATE DUTY HEALTHCARE PROFESSIONALS

10118.1 Pursuant to § 701(a) of the Act (D.C. Official Code § 44-107.01(a)), the ALA shall be responsible for all personnel and services within the ALR, and shall cause all private duty healthcare professionals that provide healthcare related services on the ALR's premises to comply with the requirements of this section as a condition of providing service on the ALR's premises.

10118.2 An ALR shall require that private duty healthcare professionals arranged by a resident, surrogate, or party other than the ALR to provide healthcare-related services to the resident on the ALR's premises on a recurring basis:

(a) Be certified, registered, licensed, or otherwise authorized by the District of Columbia to render the healthcare-related service they will provide to the resident;

(b) Maintain an accurate and current personnel record with the ALR that includes, but is not limited to, the following:

(1) A signed and dated description of the services to be rendered to the resident;

(2) A copy of the registration, certification, license, or other authorization required for the nurse, aide, or other healthcare professional to lawfully practice the healthcare-related services being rendered in the District of Columbia;

(3) Initial date and final date, if known, of providing service to resident on the ALR's premises;

(4) A healthcare practitioner's written statement as to whether the nurse, aide, or other healthcare professional bears any communicable diseases, including communicable tuberculosis; and

(5) If the nurse, aide, or other healthcare professional is providing care to the resident under the employ of an agency:

(A) The name, address, telephone number of the agency;

(B) The name and telephone number of the private nurse, aide, or other healthcare professional's immediate supervisor; and

(C) A copy of the agency's license or other authorization to operate in the District;

(c) Administer prescription medication to only the resident for whom the medication was prescribed, or assist in the self-administering of prescription medication for only the resident to whom the medication was prescribed; and

(d) Be subject to immediate removal from the premises upon determination by the ALA or designee that the nurse, aide, or other healthcare professional has, or is suspected to have, a communicable disease, is mentally or physically incapable of performing his or her duties, or otherwise presents a risk to the health and safety of one (1) or more residents in the ALR.

10118.3 An ALR shall inform a resident (or surrogate) promptly if a private duty healthcare professional he or she has contracted has been removed for the premises under § 10118.2(d). The ALR shall include the reason for the removal and its intended duration, and provide the resident (or surrogate) with an opportunity to appeal its decision in accordance with the ALR's internal grievance procedures required by § 10110.2 of this chapter.

10118.4 An ALR shall have a written agreement with each private duty healthcare professional providing healthcare services on the ALR's premises, or the agency that employs him or her, if applicable, requiring the private duty healthcare professional to report the following events to the ALR and describing the procedure by which such reporting shall occur:

(a) Medication errors and adverse drug reactions;

(b) Abuse, neglect, exploitation, or unusual incidents, such as changes in the resident's condition; and

(c) Any restriction of, suspension, revocation, or failure to renew the healthcare professional's license or other authorization to practice his or her healthcare profession in the District.

10118.5 Pursuant to § 607(a)(1) of the Act (D.C. Official Code § 44-106.07(a)(1)), the ALR shall be responsible for the safety and well-being of its residents, including residents receiving services from private duty healthcare professionals on the ALR's premises.

10118.6 An ALR shall have the duty to ensure that all services and supports identified in a resident's ISP are received by the resident. Services provided by a private duty healthcare professional shall not be presumed to have satisfied the ALR's obligation to ensure that the resident receives all services and supports due, pursuant to his or her ISP. An ALR must provide or arrange for the provision of any service or support identified in a resident's ISP that is left unsatisfied by the resident's private duty healthcare professional.

10118.7 Nothing in this section authorizes a private duty healthcare professional to practice outside the scope of their authority to practice their profession in the District.

10118.8 The requirements for a private duty nurse, aide, or other healthcare professional under this section shall not apply to companions of a resident.

10119 COMPANIONS

10119.1 Pursuant to § 701(a) of the Act (D.C. Official Code § 44-107.01(a)), the ALA shall be responsible for all personnel and services within the ALR, and shall cause all companions that provide companion services on the ALR's premises to comply with the requirements of this section as a condition of providing service on the ALR's premises.

10119.2 A companion shall not be permitted to provide any healthcare services to a resident or perform any services that constitute hands-on care of the resident.

10119.3 A companion may provide companion services, including but not limited to cooking, housekeeping, errands, and providing social interaction with a resident. The ALR shall obtain a written description of the type and frequency of services to be delivered to the resident, review the information to determine if the services are acceptable based on the resident's care needs, and notify the companion if the services to be provided are unacceptable.

10119.4 An ALR shall require that, prior to performing companion services for a resident, any companion with direct resident access must provide to the ALR:

(a) A completed criminal background check for unlicensed professionals performed in accordance with D.C. Official Code §§ 44-551 *et seq.* and 22-B DCMR §§ 4700 *et seq*., which shall be free from conviction of an offense listed in 22-B DCMR § 4705.1, or their equivalents, within seven (7) years prior to the criminal background check unless permitted under § 22-B DCMR § 4705.2;

(b) A healthcare practitioner's written statement as to whether the companion bears any communicable diseases, including communicable tuberculosis; and

(c) A signed and dated description of the type and frequency of services to be delivered to the resident, approved pursuant to § 10119.3.

10119.5 A companion shall be subject to immediate removal from the ALR premises upon determination by the ALA or designee that he or she has, or is suspected to have, a communicable disease presents a risk to the health and safety of the residents, is mentally or physically incapable of performing his or her duties, or otherwise presents a risk to the health and safety of the residents. An ALR shall permit a resident (or surrogate) to appeal the removal of his or her companion in accordance with the ALR's internal grievance procedures required by § 10110.2 of this chapter.

10119.6 An ALR shall have a written agreement with each companion providing companion services on the ALR's premises, or the agency that employs him or her, if applicable, requiring the companion to report abuse, neglect, exploitation, or unusual incidents, such as changes in the resident's condition, to the ALR and describing the procedure by which such reporting shall occur.

10119.7 Pursuant to § 607(a)(1) of the Act (D.C. Official Code § 44-106.07(a)(1)), the ALR shall be responsible for the safety and well-being of its residents, including residents receiving companion services from companions on the ALR's premises.

10120 UNLICENSED PERSONNEL CRIMINAL BACKGROUND CHECK

10120.1 No ALR shall employ or contract an unlicensed person for work on the ALR's premises until a criminal background check has been conducted for that person.

10120.2 An ALR shall implement and comply with the criminal background check standards and requirements for unlicensed personnel prescribed by D.C. Official Code §§ 44-551 *et seq.* and 22-B DCMR §§ 4700 *et seq*.

10121 PRE-ADMISSION MEDICATION MANAGEMENT ASSESSMENT

10121.1 In addition to the consultations required by § 902 of the Act (D.C. Official Code § 44-109.02), the ALR shall consult with the prospective resident's healthcare practitioner regarding the prospective resident's ability to self-administer medication within thirty (30) days prior to admission.

10122 ON-SITE MEDICATION REVIEW

10122.1 The on-site medication review by a registered nurse that is arranged to occur every forty-five (45) days, pursuant to § 903 of the Act (D.C. Official Code § 44-109.03), shall include documentation of any changes to the resident's medication profile, including changes in dosing and any medications that have been added or discontinued.

10123 MEDICATION STORAGE

10123.1 Medication that is entrusted to the ALR for storage shall be stored in accordance with the requirements of § 904 of the Act (D.C. Official Code § 44-109.04) and the following:

(a) Each medication shall be stored under proper conditions of light and temperature as indicated on its label; and

(b) Medication requiring refrigeration shall be maintained in a refrigerator that is secured and used exclusively for the storage of medication. The key to the refrigerator shall be kept on the person of the employee on duty who is responsible for administering the medications within.

10123.2 Medication taken from the ALR's storage space for delivery to a resident or elsewhere shall not leave the immediate control of the employee delivering it unless the medication is secured with a locking mechanism or the delivery has been completed. The key to the lock must be kept on the person of the employee who is responsible for delivering the medication for the duration of the delivery.

10123.3 An ALR shall keep a current record of each prescription and non-prescription medication and dietary supplement kept by a resident in his or her living unit pursuant to § 904(e)(8) of the Act (D.C. Official Code § 44-109.04(e)(8)), which shall be retained in the resident's healthcare record and include:

(a) Name of the medication;

(b) Strength of medication and quantity;

(c) Lot number; and

(d) If a prescribed medication:

(1) Name of prescriber;

(2) Name and phone number of the pharmacy that filled the prescription;

(3) Date the prescription was filled; and

(4) The frequency and directions for use provided by the prescriber.

10123.4 In the event of voluntary or involuntary discharge, the ALR shall notify and attempt to return all medications to the resident (or surrogate) or a caregiver at the time of discharge, unless return of the medication is prohibited by federal or other District law. If the resident's medications can't be returned or remains unclaimed for more than thirty (30) days after the resident has been discharged, the medication shall be considered abandoned and destroyed. Witness and documentation of the destruction shall be in accordance with the § 904 of the Act (D.C. Official Code § 44-109.04) and applicable District law.

10124 MEDICATION ADMINISTRATION

10124.1 A resident shall be permitted to self-administer his or her medications, provided that the resident has been determined capable of self-administering his or her own medication as defined in paragraphs (a) or (b) of § 10124.2 by the most recent on-site medication review required under the Act or, if he or she is a new resident, by the initial assessment conducted during the ALR's admission process.

10124.2 The initial assessment and periodic medication review performed pursuant to §§ 901 and 903 of the Act (D.C. Official Code §§ 44-109.01 and 44-109.03) for the purpose of determining whether a resident is capable of self-administering medication shall make one the following findings based on an assessment of the associated tasks below:

(a) A resident is capable of self-administering his or her own medication, provided that the resident can:

(1) Correctly read the label on the medication's container;

(2) Correctly interpret the label;

(3) Correctly follow instructions as to route, dosage, and frequency of administration;

(4) Correctly ingest, inject, or otherwise apply the medication;

(5) Correctly measure or prepare the medication, including mixing, shaking, and filling syringes;

(6) Safely store the medication;

(7) Correctly follow instructions as to the time the medication must be administered; and

(8) Open the medication container, remove the medication from the container, and close the container;

(b) A resident is capable of self-administering his or her own medication, but requires a reminder to take medications or requires physical assistance with opening and removing medications from the container, or both, provided that the resident can:

(1) Correctly read the label on the medication's container;

(2) Correctly interpret the label;

(3) Correctly follow instructions as to route, dosage, and frequency of administration;

(4) Correctly ingest, inject, or otherwise apply the medication;

(5) Correctly measure or prepare the medication, including mixing, shaking, and filling syringes; and

(6) Safely store the medication; or

(c) A resident is not capable of self-administering his or her own medication, provided that the resident needs the assistance of another person to properly carry out one or more of the tasks enumerated in paragraph (b) of this subsection.

10124.3 A resident who has been determined not capable of self-administering medication pursuant to paragraph (c) of § 10124.2, or has elected not to self-administer his or her own medications, or his or her surrogate, may arrange with a third-party for a licensed practical nurse, registered nurse, advanced practice registered nurse, physician, physician assistant, or certified medication aide to administer medication to the resident or assist the resident with taking his or her medications to the extent

of the healthcare professional's authority to do so under District and federal laws or regulations. A healthcare professional arranged to administer or assist in the self-administering of medication to a resident in accordance with this subsection shall be required to conform to the requirements of private duty healthcare professionals provided in § 10118 of this chapter.

10124.4 A resident who has been determined to be capable of self-administering his or her own medication but requires a reminder or physical assistance as defined in paragraph (b) of § 10124.02, shall be permitted to utilize a device or a third-party other than those who are listed in § 10124.3 in order to be reminded to take a medication, to open a medication container, or to remove a medication from its container, only. Under no circumstance shall this subsection be construed to authorize a person, other than a healthcare professional employed as described in § 10124.3, to assist a resident with an activity related to the administration of medication other than reminding that resident to take a medication, opening a medication container at the explicit direction of that resident, or removing a medication from its container at the explicit direction of that resident; nor shall any activity other than reminding a resident to take a medication, opening a medication container at the explicit direction of the resident, or removing a medication from its container at the explicit direction of the resident be construed as permissible for the purpose of this subsection. Activities that are not authorized by this subsection include, but are not limited to, the following: administering a medication, preparing a medication for administration or self-administration, advising or assisting in the administration of a medication, sorting medications, relabeling a medication, transferring medications from one container to another, removing a medication from its container for a purpose other than for the resident to self-administer independently promptly thereafter, or any other activity not expressly authorized by this subsection.

10124.5 An ALR shall provide or arrange for a licensed practical nurse, registered nurse, advanced practice registered nurse, physician, physician assistant, trained medication employee ("TME"), or certified medication aide to administer, or assist in the self-administering of, medication to a resident, provided that:

(a) The resident has been determined not capable of self-administering medication pursuant to paragraph (c) of § 10124.2 or has elected not to self-administer his or her own medications, and he or she has not arranged with a third-party to administer, or assist in the self-administering of, his or her medication in accordance with § 10124.3;

(b) The healthcare professional holds the requisite certificate, registration, or license to practice issued by the District;

(c) The healthcare professional does not exceed his or her authority to administer or assist in the administration of medication to the resident under District and federal laws or regulations;

(d) The ALR discloses, orally and in writing, any fees, rates, or charges associated with providing assistance with or the administration of a medication that are additional to the resident's existing bill, in accordance with § 10111 of this chapter;

(e) Prior to the provision of the medication administration or assistance, the resident (or surrogate) provides in writing:

(1) Acceptance of the medication administration or assistance offered by the ALR; and

(2) Acknowledgment of receiving the ALR's medication administration policy and the disclosure of fees required in paragraph (c) of this subsection; and

(f) The ALR has in place education, remediation, and discipline procedures by which to address recurring medication errors perpetrated by the licensed practical nurse, registered nurse, advanced practice registered nurse, physician, physician assistant, TME, or certified medication aide.

10124.6 An ALR shall require that administration or assistance in the administration of medication to a resident by a healthcare professional pursuant to §§ 10124.3 and 10124.5 be in accordance with the prevailing standard of acceptable medication administration rights in the healthcare professional's field.

10124.7 An ALR shall ensure that all medication administered to a resident by licensed practical nurse, registered nurse, advanced practice registered nurse, physician, physician assistant, TME, or certified medication aide on its premises shall be recorded on a written or electronic medication administration record that is kept as part of the resident's healthcare records.

10124.8 An ALR shall ensure that all employees and all licensed practical nurses, registered nurses, advanced practice registered nurses, physicians, physician assistants, or certified medication aides responsible for administering or assisting in the administration of medication to a resident while on the ALR's premises, immediately report any medication error or adverse drug reactions to the ALR's available registered nurse and ALA upon discovery. The ALR shall require the ALA or Acting Administrator to report the medication error or adverse drug reaction, to the resident's healthcare practitioner, prescriber, pharmacist, and the resident (or surrogate), as appropriate.

10124.9 An ALR shall require all medication errors and adverse drug reactions be documented in the resident's record.

10124.10 An ALR shall initiate an investigation of any reported medication error or adverse

drug reaction within twenty-four (24) hours of discovery. Upon the completion of the investigation, the ALR shall compose a report documenting the findings and conclusion of the investigation, which shall be kept as part of the ALR's records for no less than five (5) years. A report required under this subsection shall also be made available to the Director or the Director's designee upon request during an inspection authorized by the Act or this chapter.

10124.11 An ALR shall submit to the Director a copy of any report of an adverse drug reaction required by § 10124.10 within thirty (30) days of the discovery of the adverse drug reaction, in addition to the requirements of § 10124.10 and the notification requirements of § 10125.4(a) of this chapter.

10124.12 Nothing in this section authorizes a healthcare professional to practice outside the scope of their authority to practice their profession in the District.

10125 REPORTING COMPLAINTS TO THE DIRECTOR; REPORTING ABUSE, NEGLECT, EXPLOITATION, AND UNUSUAL INCIDENTS

10125.1 Notwithstanding a resident's right to address grievances and complaints to representatives of the Office of the Long-Term Care Ombudsman provided by § 505(a)(5) of the Act (D.C. Official Code § 44-105.05(a)(5)), the Director may receive any complaint alleging violations of the Act and this chapter from any person and may conduct an inspection to determine the validity of the complaint pursuant to § 10107.3 of this chapter.

10125.2 An ALR shall immediately notify the Department of Health, the District's Adult Protective Services program, and the District of Columbia Long-Term Care Ombudsman of all suspected or alleged incidents of abuse, neglect, or exploitation. The Department of Health shall be notified by phone immediately, and the ALR shall follow up by written notification to the Department within twenty-four (24) hours or the next business day.

10125.3 The results of an ALR's investigation into allegations of abuse, neglect, or exploitation of a resident pursuant to § 509(b)(3) of the Act (D.C. Official Code 44-105.09(b)(3)) shall be reported to the Director within thirty (30) days of the complaint or fifteen (15) days of the conclusion of the investigation, whichever occurs first.

10125.4 In addition to the requirements to report abuse, neglect, and exploitation of a resident provided in § 509 of the Act (D.C. Official Code § 44-105.09):

(a) An ALR shall notify the Director of any unusual incident that substantially affects a resident. Notifications of unusual incidents shall be made by contacting the Department of Health by phone promptly, and shall be followed up by written notification to the same within twenty-four (24) hours or the next business day; and

(b) An ALR shall notify the Metropolitan Police Department of abuse or any unusual incident involving death or criminal activity at an ALR before notifying the Director pursuant to paragraph (a) of this subsection. Instances of sexual abuse, specifically, shall be directed to the Metropolitan Police Department's Sexual Assault Unit.

10125.5 For purposes of § 10125.4, an "unusual incident" shall mean any occurrence involving a resident or the ALR's physical plant that results in significant harm, or the potential for significant harm, to any resident's health, welfare, or wellbeing. Unusual incidents include, but are not limited to: an accident resulting in significant injury to a resident, unexpected death, a sustained utility outage, environmental hazards, misappropriation of a resident's property or funds, or an occurrence requiring or resulting in intervention from law enforcement or emergency response personnel.

10125.6 An ALR shall keep record of all instances of unusual incidents for no less than three (3) years after the date of occurrence.

10125.7 An ALR shall, upon request, provide an affected resident (or surrogate) with a copy of the results of the ALR's investigation into suspected abuse, neglect, or exploitation of that resident, and any actions taken by the ALR, that are reported to the Department pursuant to § 509(b)(3) of the Act (D.C. Official Code § 44-105.09(b)(3)).

10126 DENIAL, RESTRICTION, SUSPENSION, OR REVOCATION OF A LICENSE

10126.1 The Director may take the following actions with respect to a license issued pursuant to the Act and § 10106 of this chapter:

(a) Refuse to issue, renew, or restore a license;

(b) Issue a provisional license pursuant to § 304(e)(2) of the Act (D.C. Official Code § 44-103.04(e)(2));

(c) Restrict a license for one of the reasons listed in § 401 of the Act (D.C. Official Code § 44-104.01) or § 10127 of this chapter; or

(d) Suspend or revoke the license of an ALR that:

(1) Fails to meet all applicable requirements for renewal, as provided by § 304(e) of the Act (D.C. Official Code § 44-103.04(e));

(2) Violates a condition or requirement of an imposed sanction, as provided by § 401(c) of the Act (D.C. Official Code § 44-104.01(c));

or

(3) Is determined by the Director, after an inspection, to have life threatening deficiencies or deficiencies which seriously endanger the public's health and safety, as provided by § 306(d) of the Act (D.C. Official Code § 44-103.06(d)).

10126.2 Except for an emergency suspension undertaken pursuant to § 404 of the Act (D.C. Official Code § 44-104.14), every applicant for or holder of a license, or applicant for reinstatement after revocation, shall be afforded notice and an opportunity to be heard prior to the action of the Director, if the effect of which would be one of the following:

(a) To deny an initial license for cause which raised an issue of fact;

(b) To suspend a license;

(c) To revoke a license;

(d) To refuse to restore a license;

(e) To issue a provisional renewal license; or

(f) To refuse to issue a renewal license for any cause other than failure to pay the prescribed fees.

10126.3 When the Director contemplates taking any action of the type specified in § 10126.2(a), the Director shall give to the applicant a written notice containing the following statements:

(a) That the applicant has failed to satisfy the Director as to the applicant's qualifications;

(b) The respect in which the applicant has failed to satisfy the Director; and

(c) That the denial shall become final unless the applicant files a request for a hearing with the Director within fifteen (15) days of receipt of the notice.

10126.4 When the Director contemplates taking any action of the type specified in paragraphs (b), (c), (d), (e), and (f) of § 10126.2, the Director shall give the licensee a written notice containing the following statements:

(a) That the Director has sufficient evidence (setting forth the nature of the evidence), which if not rebutted or explained, justifies taking the proposed action; and

(b) That the Director shall take the proposed action unless within fifteen (15) days of the receipt of the notice the ALR files with the Director a written request for a hearing or in the alternative submits documentary evidence for the Director's consideration before the Director takes final action.

10126.5 If the ALR does not respond to a notice required under §§ 10126.3 or 10126.4 within the time specified, the Director may, without a hearing, take the action contemplated in the notice. The Director shall inform the applicant or licensee, in writing, of the action taken.

10126.6 If the ALR chooses to submit documentary evidence but does not request a hearing, the Director shall consider the material submitted and take such action as is appropriate without a hearing. The Director shall notify the ALR in writing of the action taken.

10126.7 Service of any notice required by this section shall be in accordance with the rules provided in 22-B DCMR § 3109.

10127 SANCTIONS

10127.1 Failure of a Licensee to comply with the requirements of this chapter shall be grounds for sanctions, which shall be imposed in accordance with the Act and this chapter.

10127.2 On determining that a Licensee has violated this chapter, the Director may impose, or cause to be imposed, the sanctions set forth in § 401 of the Act (D.C. Official Code § 44-104.01).

10127.3 If the Director determines that the Licensee has violated a condition or requirement of a sanction imposed under the authority of this chapter, the Director may suspend or revoke the license.

10127.4 Appeals under this section may be taken pursuant to § 1201 of the Act (D.C. Official Code § 44-1012.01).

10128 CIVIL PENALTIES

10128.1 The Director may impose, or cause to be imposed, one or more of the civil penalties authorized under § 402 of the Act (D.C. Official Code § 44-104.02) against persons who:

(a) Maintain or operate an unlicensed ALR; or

(b) Otherwise violate provisions of this chapter.

10128.2 Notwithstanding any other provision of law, penalties authorized under § 10128.1

shall not be imposed by the Director unless a violation cited during an inspection:

(a) Is within the control of the ALR; and

(b) Poses an immediate or serious and continuing danger to the health, safety, welfare, or rights of resident.

10128.3 If, during a follow-up inspection, the Director determines that violations of this chapter which are within the control of the ALR and were cited in an immediately prior inspection have not been corrected or have recurred, the Director may impose the penalties authorized under § 402 of the Act (D.C. Official Code § 44-104.02).

10128.4 Appeals under this section may be taken as provided by § 402(d) of the Act (D.C. Official Code § 44-104.02(d)).

10129 CRIMINAL PENALTIES

10129.1 The criminal penalties authorized by § 403 of the Act (D.C. Official Code § 44-104.03) of the Act shall apply to an ALR.

10130 REFERRALS TO REGULATORY ENTITIES

10130.1 The Director may refer an ALA who is alleged to have engaged in conduct prohibited by the Act, this chapter, or other District or federal law or rules issued pursuant thereto, to the District of Columbia Board of Long-Term Care Administration for review of the conduct.

10130.2 The Director may refer any healthcare professional who practices his or her healthcare profession on the premises of an ALR and who is alleged to have engaged in conduct prohibited by the Act, this chapter, or other District of federal law or rules issued pursuant thereto, to the appropriate regulatory entity with jurisdiction over the healthcare professional for review of the conduct.

10130.3 Nothing in this section shall prohibit any person, including the Director, from referring any individual suspected of conduct prohibited by District or federal law or regulation to the appropriate District or federal regulatory entities.

10131–10198 [RESERVED]

10199 DEFINITIONS

10199.1 The definitions of terms provided in the Act (at D.C. Official Code § 44-102.01) shall apply to this chapter, unless provided another definition under § 10199.2.

10199.2 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

"Act" or "the Act" – means the Assisted Living Residence Regulatory Act of 2000, effective June 24, 2000, (D.C. Law 13-127; D.C. Official Code §§ 44-101.01 *et seq.*).

Acting Administrator – means a member of the ALR staff who is designated by the Licensee or Assisted Living Administrator to assume the responsibilities of the Assisted Living Administrator for a temporary period of time.

"Administer" or "Administration" – means, with respect to medication, the direct application of a medication to the body of a person by injection, inhalation, ingestion, or any other means.

ALA – means "Assisted Living Administrator," as defined by the Act (D.C. Official Code § 44-102.01).

ALR – means "Assisted Living Residence," as defined by the Act (D.C. Official Code § 44-102.01).

Audio-Visual Monitoring – means the surveillance of the ALR facility, its employees, or its residents by audio, visual, or audio-visual means.

Certified Medication Aide – means a person certified to practice as a medication aide by the District of Columbia Board of Nursing, who shall not practice independently, but shall work under the supervision of a registered nurse of licensed practical nurse.

Companion – means an individual who is employed, for pay or not-for-pay, to provide companion services to a resident at the discretion of the companion's client, the companion's employer, or the resident. For purposes of this chapter, the definition of a companion shall not include the resident's social guest, unless that social guest is performing companion services on the ALR's premises at the discretion of anyone other than himself or herself.

Companion services – means non-healthcare related services, such as cooking, housekeeping, errands, and social interaction, performed for a resident on the ALR's premises.

Department – means the District of Columbia Department of Health.

Direct Resident Access – means access to a resident that involves, or may foreseeably involve, presence in a room occupied by the resident while not under the immediate and contemporaneous supervision of a licensed health care professional employed by the ALR.

Director – means the Director of the District of Columbia Department of Health.

Employee – means any person who works under the employ of an ALR or a separate entity that is owned or operated or a subsidiary of the ALR; or any person who is contracted through an entity independent of an ALR for the purpose of working under the direction and supervision of the ALR.

Healthcare Professional – means the practitioner of a healthcare occupation, the practice of which requires authorization pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended from time to time.

ISP- means "Individualized Service Plan," as defined by the Act (at D.C. Official Code § 44-102.01).

Medication Error – means any error in the prescribing, dispensing, or administration of a drug, irrespective of whether such errors lead to adverse consequences or not.

Private Duty Healthcare Professional – means a nurse, home health aide, nurse aide, or any other healthcare professional arranged by a resident, surrogate, or party other than the ALR to provide healthcare-related services to the resident on the ALR's premises.

SRA – means "Shared Responsibility Agreement," as defined by the Act (at D.C. Official Code § 44-102.01).

"Staff" or "Staff member" – means "Employee," as defined by this subsection.

Unlicensed Person – means a person who is not licensed pursuant to the Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99, D.C. Official Code §§ 3-1201.01 *et seq.*) and who functions in a complementary or assistance role to licensed health care professionals in providing direct patient care or carrying out common nursing tasks, such as nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides. "Unlicensed person" also includes housekeeping, maintenance, and administrative staff for whom it is foreseeable that the person will come in direct contact with patients.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING
Z.C. Case No. 19-11
(Text Amendment to Subtitles B, C, D, E, F, G, H, I, J, K, and U of Title 11 DCMR to Amend Public School Zoning Regulations)
February 10, 2020

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2013 Repl.)), hereby gives notice of its amendment of the following provisions 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):

- Subtitle B (Definitions);
- Subtitle C (General Rules);
- Subtitle D (Residential House (R) Zones);
- Subtitle E (Residential Flats (RF));
- Subtitle F (Residential Apartment (RA) Zones);
- Subtitle G (Mixed Use (MU) Zones);
- Subtitle H (Neighborhood Mixed-Use (NC) Zones);
- Subtitle I (Downtown (D) Zones);
- Subtitle J (Production, Distribution, and Repair (PDR) Zones);
- Subtitle K (Special Purposes Zones); and
- Subtitle U (Use Permissions).

The text amendment relocates the development standards governing public schools to make it easier to identify the applicable standards to public schools for each zone by relocating these public school regulations from the current location in Chapter 16 of Subtitle C (General Rules) to the specific development standards for individual zones in new Chapters 49 in Subtitles D through K. Although the focus of the amendment is to relocate the current provisions without substantive changes, the text amendment does make the following substantive changes with regard to public schools:

- Penthouse Height – to permit a mechanical penthouse height of eighteen feet-six inches (18 ft. 6 in.), which exceeds the existing limitation of twelve feet (12 ft.), in low-density zones;

- Floor Area Ratio – to increase from 0.9 floor area ratio (FAR) to 1.8 FAR in the R-1-A, R-1-B, and R-2 zones;

- Parking – to allow reductions to minimum parking requirements in R and RF zones where the public school is proximate to transit and to modify the screening standards for public school parking lots;

- Bicycle Parking – to change the long-term bicycle parking requirements to allow bicycle parking outside of the school building;

- Shower and Changing Facilities – to limit the requirement to provide shower and changing facilities within elementary schools to staff only;

- Definition – to add the definition of "structure" to the "public school" definition;

- Front Setback – to clarify that the front setback requirement in low-density zones is not applicable to public schools; and

- Side Yards – to clarify that side yards are only required for public schools in the R-1-A, R-1-B, and R-2 zones.

Office of Planning (OP)
On June 14, 2019, the Office of Planning (OP) filed a report with the Office of Zoning that served as a petition proposing text amendments to Subtitles B through K and U. On June 24, 2019, the Commission voted to set down the petition for a public hearing, which was scheduled for December 5, 2019. OP filed its hearing report on November 25, 2019, as required by Subtitle Z, § 400.6, recommending approval of the proposed text amendment. The hearing report also introduced minor changes to the text as found in the public hearing notice in order to change the sequencing of the development standards in the various Chapter 49s. OP testified in support of the proposed text amendment at the December 5, 2019 public hearing.

In response to the concerns raised by the ANCs and the Commission about the impact of the Daytime School Parking Zone Act of 2018 (D.C. Law 22-226, the Act) on the proposed text amendment, OP submitted a December 23, 2019 supplemental report, stating that DDOT has still not adopted the rules to implement this law, which became effective in February 2019. OP determined that there was no direct connection between the proposed zoning text amendment and the Act, because dedicated parking that might be provided through the Act would not count towards the parking required by the Zoning Regulations. OP therefore continued to recommend the adoption of the text amendment with no changes.

Advisory Neighborhood Commissions (ANCs)
ANC 6B filed a written report, dated November 15, 2019, stating its support of the proposed text amendments. In particular, ANC 6B expressed its support for the reduction of parking requirements, indicating that space devoted to parking could be better devoted to play or educational space.

ANC 6C filed a written report, dated December 5, 2019, and provided testimony at the December 5, 2019 public hearing. Unlike ANC 6B, ANC 6C opposed a reduction to the parking requirement. More specifically, ANC 6C disagreed with the proposed revision to Subtitle C § 702, which would allow public schools located proximate to transit in R or RF zones to reduce the parking minimum by fifty percent (50%). ANC 6C instead proposed that the parking regulations be modified to allow

the parking requirement to be satisfied off of public school property, including potentially in curbside areas along public roadways such as authorized by the Act.

At the close of the December 5, 2019 public hearing, the Commission voted to take **PROPOSED ACTION** to authorize the publication of a notice of proposed rulemaking.

VOTE (December 5, 2019): 4-0-1 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**; Michael G. Turnbull, not present, not voting).

Notice of Proposed Rulemaking

A Notice of Proposed Rulemaking (NOPR) was published in the *D.C. Register* on January 3, 2020. (67 DCR 50, *et seq.*)

National Capital Planning Commission

The Commission referred the proposed amendment to the National Capital Planning Commission (NCPC) for the thirty- (30) day review period required by § 492 of the District Charter on December 9, 2019.

NCPC, through a delegated action dated January 9, 2020, found that the proposed text amendment is not inconsistent with the Comprehensive Plan and would not adversely impact any other identified federal interests. (Exhibit [Ex] 14.)

NOPR Comments

The Commission received no comments in response to the NOPR.

"Great Weight" to the Recommendations of OP

The Commission must 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 Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

The Commission finds OP's recommendation that the Commission take proposed action to adopt the proposed text amendment persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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.); Subtitle Z § 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).) In this case, all ANCs are potentially affected by the changes to the public school standards.

The Commission found ANC 6B's support of the parking reduction as allowing more space for play or education space persuasive and concurs in that judgement. The Commission did not find ANC 6C's proposed modification to allow dedicated street parking to count towards the parking requirement persuasive because no regulations have been issued to implement the Act on which ANC 6C's proposal relied, as confirmed by the OP supplemental report.

At the close of the February 10, 2020 public hearing, the Commission voted to take **FINAL ACTION** to adopt the following rulemaking.

VOTE (February 10, 2020): 5-0-0 (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

The following amendments to Title 11 DCMR, Zoning Regulations of 2016, are hereby adopted:

I. Amendments to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT AND USE CATEGORIES

Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, is amended to revise the definition of "Public School" as follows:

100.2 When used in this title, the following terms and phrases shall have the meanings ascribed:

…[1]

School, Public: A building, structure, or use within a building operated or chartered by the District of Columbia Board of Education or the District of Columbia Public Charter School Board for educational purposes and such other community uses as deemed necessary and desirable.

The term shall include all educational functions, the building or structure required to house them, and all accessory uses normally incidental to a public school, including but not restricted to athletic fields, field houses, gymnasiums, parking lots, greenhouses, playgrounds, stadiums, and open space.

The term also shall include a community-centered school campus; provided, that no part of the building or structure shall be used to house the administrative offices or maintenance and repair shop intended or used for the entire school system, or as a technical or vocational school.

[1] The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the amendment of the text at issue does not signify an intent to repeal those other provisions.

…

II. Amendments to Subtitle C, GENERAL RULES

Section 702, EXEMPTIONS FROM MINIMUM PARKING REQUIREMENTS, of Chapter 7, VEHICLE PARKING, of Subtitle C, GENERAL RULES, is amended to clarify parking requirements for public schools in § 702.1, and to add a new § 702.2, with current §§ 702.2 and 702.3 renumbered as new §§ 702.3 and 702.4, to read as follows:

702.1 Except as provided in Subtitle C § 702.2, within any zone other than an R or RF zone, the minimum vehicle parking requirement identified in the table of Subtitle C § 701.5 shall be reduced by fifty percent (50%) for any site which is located:

(a) …

702.2 In any zone, a public school shall be permitted to reduce its minimum vehicle parking requirement by fifty percent (50%) pursuant to the criteria of Subtitle C § 702.1(a), (b), or (c).

702.3 Any applicant claiming a reduction in required parking …

702.4 Vehicle parking shall not be required …

A new § 714.4 is added to § 714, SCREENING REQUIREMENTS FOR SURFACE PARKING, of Chapter 7, VEHICLE PARKING, of Subtitle C, GENERAL RULES, to read as follows:

714.4 Notwithstanding the requirements of Subtitle C § 714.2, screening for a public school's external surface parking shall be provided in accordance with the following provisions:

(a) Screening shall be provided around the entire perimeter of the surface parking area, except no screening is required to be provided for driveways and pedestrian exits or entrances that open directly onto a street, sidewalk**,** or alley; and

(b) The screening shall be either:

(1) A solid or non-solid fence or wall at least forty-two (42) inches high; or

(2) Evergreen shrubs or trees that are planted between four feet (4 ft.) to six feet (6 ft.) on center, and that are at least forty-two (42) inches in height when planted and maintained in perpetuity.

Section 805, LONG-TERM BICYCLE PARKING SPACE REQUIREMENTS, of Chapter 8, BICYCLE PARKING, of Subtitle C, GENERAL RULES, is amended to clarify bicycle parking requirements for public schools, including adding a new § 805.11, to read as follows:

805.1 Except for Subtitle C § 805.11, all required long-term bicycle parking spaces shall be located within the building of the use requiring them.

…

805.11 Public schools may locate some or all required long-term bicycle parking spaces outside the school building generating the requirement subject to the following conditions:

(a) Required long-term bicycle parking spaces shall be located on the public school property on which the school building is located and shall be available to all occupants of the building;

(b) Required long-term bicycle spaces shall be located in one or more dedicated bicycle parking areas within one-hundred and twenty feet (120 ft.) of a primary entrance to the school building;

(c) Required long-term bicycle spaces shall be provided either as bicycle racks that meet the standards of Subtitle C §§ 801.3 and 801.4, or as bicycle lockers that meet the standards of Subtitle C § 805.7; and

(d) An aisle at least four feet (4 ft.) wide between rows of bicycle parking spaces and the perimeter of the area devoted to bicycle parking shall be provided. Aisles shall be kept clear of obstructions at all times.

A new § 806.3 is added to § 806, REQUIREMENTS FOR SHOWERS AND CHANGING FACILITIES – NON-RESIDENTIAL USES, of Chapter 8, BICYCLE PARKING, of Subtitle C, GENERAL RULES, to clarify the shower and changing facility requirements for public schools, with current §§ 806.3 through 806.5 renumbered as new §§ 806.4 through 806.6, to read as follows:

806.1 The intent of this section …

…

806.3 Notwithstanding the requirements of Subtitle C §§ 806.4 through 806.6, public elementary schools shall provide a minimum of two (2) showers and two (2) clothing lockers for staff and shall not be required to provide shower and changing facilities for students.

806.4 A non-residential use that requires …

806.5 A non-residential use that requires …

806.6 Showers and lockers required by this section …

The title of Chapter 16, PUBLIC EDUCATION, RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

CHAPTER 16 PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES

Subsection 1600.1 of § 1600, GENERAL PROVISIONS, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

1600.1 The provisions of this chapter control the height and bulk of public recreation and community centers and public libraries.

Subsection 1601.1 of § 1601, DEVELOPMENT STANDARDS, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

1601.1 Public recreation and community centers or public libraries subject to this chapter, but not otherwise regulated by the development standards of this chapter, shall be subject to the development standards for the zone in which the building or structure is proposed.

Subsection 1602.1 of § 1602, HEIGHT, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is deleted, with current §§ 1602.2 through 1602.4 renumbered as new §§ 1602.1 through 1602.3, to read as follows:

1602.1 A public recreation and community center may be erected …

1602.2 A public library may be built to …

1602.3 A college or university building or structure …

Section 1603, LOT OCCUPANCY, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended, including deleting references to public schools and deleting §§ 1603.5 and 1603.6, with current §§ 1603.7 and 1603.8 renumbered as new §§ 1603.5 and 1603.6, to read as follows:

1603.1 A public recreation and community center shall not …

…

1603.4 Public libraries shall not occupy a lot in excess of the maximum lot occupancy as set forth in the following table:

TABLE C § 1603.4: MAXIMUM LOT OCCUPANCY FOR PUBLIC LIBRARIES

Zone District	Structure	Maximum Lot Occupancy (%)
RA-6, RA-7, RA-8, RA-9	Public library	40
R-1-A, R-1-B, R-2, R-3, R-6, R-7, R-8, R-9, R-10, R-11, R-12, R-13, R-14, R-15, R-16, R-17, R-19, R-20, R-21, RF-1, RF-2, RF-3	Public library	40
RA-1, RA-2, RC-1	Public library	60
RA-3, RA-4, RA-5, RA-10, RA-11	Public library	75
All other zones	Public library	None prescribed

1603.5 A public recreation and community center may …

1603.6 A public library may be permitted a lot occupancy …

Subsection 1604.2 of § 1604, DENSITY – GROSS FLOOR AREA (GFA) AND FLOOR AREA RATIO (FAR), of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

1604.2 Public recreation and community centers and public libraries shall be permitted a maximum floor area ratio as set forth in the following table:

TABLE C § 1604.2: MAXIMUM FAR FOR PUBLIC RECREATION AND COMMUNITY CENTERS AND PUBLIC LIBRARIES

Zone	Structure	Maximum FAR
R-1-A, R-1-B, R-2, R-6, R-7, R-8, R-9, R-10, R-11, R-12, R-14, R-15, R-16, R-19, R-21	Public libraries	None prescribed
	Public recreation and community center	0.9
R-3, R-13, R-17, R-20	Public libraries	None prescribed
	Public recreation and community center	1.8
RF-1, RF-2, RF-3	Public libraries	None prescribed
	Public recreation and community center	1.8
RF-4, RF-5	Public libraries	2.0
	Public recreation and community center	1.8
RA-1, RA-6	Public libraries	2.0
	Public recreation and community center	0.9
RA-2, RA-7, RA-8, RC-1	Public libraries	2.0
	Public recreation and community center	1.8

RA-3	Public libraries	3.0
	Public recreation and community center	1.8
RA-4, RA-9	Public libraries	3.5
	Public recreation and community center	1.8
RA-5, RA-10	Public libraries	5.0
	Public recreation and community center	1.8
MU-1, MU-2, MU-15, MU-16, MU-23	Public libraries	As permitted by zone
	Public recreation and community center	1.8
All other zones	Public libraries	As permitted by zone
	Public recreation and community center	

Subsections 1605.1 through 1605.4 of § 1605, MINIMUM LOT SIZE AND DIMENSIONS, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, are deleted, with current § 1605.5 renumbered as new § 1605.1, to read as follows:

1605.1 Except in the RA-1 zone, a public recreation and community center …

Subsections 1606.1 and 1606.3 of § 1606, REAR YARD, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, are amended to read as follows:

1606.1 A rear yard shall be provided for each public recreation and community center or public library located in any R, RF, or RA zone, the minimum depth of which shall be as set forth in the following table:

TABLE C § 1606.1: REAR YARD FOR PUBLIC RECREATION AND COMMUNITY CENTER OR PUBLIC LIBRARY

Zone	Minimum Rear Yard (Feet)
R-1-A, R-1-B, R-6, R-7, R-8, R-9, R-11, R-12, R-14, R-15, R-16, R-19, R-21	25 feet
R-2, R-3, R-10, R-13, R-17, R-20, all RF, RA-1, RA-6	20 feet
RA-2, RA-3, RA-4, RA-7, RA-8, RA-9, RC-1	4 in./ft. of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 ft.
RA-5, RA-10	3 in./ft. of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 ft.

1606.2 In the case of a corner lot …

1606.3 In the case of a lot proposed to be used by a public recreation and community center or public library that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

Subsection 1607.1 of § 1607, SIDE YARD, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

1607.1 In the case of a lot proposed to be used by a public recreation and community center or public library that abuts or adjoins on one (1) or more side lot lines a public open space, recreation area, or reservation, no side yard shall be required.

Subsection 1610.2 of § 1610, SPECIAL EXCEPTION, of Chapter 16, PUBLIC RECREATION OR LIBRARY BUILDINGS OR STRUCTURES, of Subtitle C, GENERAL RULES, is amended to read as follows:

1610.2 Exceptions to the development standards of this chapter for a public library shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

III. Amendments to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

The title of § 104, PUBLIC EDUCATION, RECREATION, OR LIBRARY BUILDINGS AND STRUCTURES, of Chapter 1, INTRODUCTION TO RESIDENTIAL HOUSE (R) ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended to read as follows:

104 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

Section 104, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, of Chapter 1, INTRODUCTION TO RESIDENTIAL HOUSE (R) ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended, including adding a new § 104.2, with current § 104.2 renumbered as new § 104.3, to read as follows:

104.1 Public recreation and community centers or public libraries in the R zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

104.2 Public schools in the R zones shall be permitted subject to the conditions of Subtitle D, Chapter 49.

104.3 Development standards not otherwise addressed by Subtitle C, Chapter 16, or Subtitle D, Chapter 49, shall be those development standards for the zone in which the building or structure is proposed.

Subsection 207.7 of § 207, HEIGHT, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is deleted, with current §§ 207.8 and 207.9 renumbered as new §§ 207.7 and 207.8, to read as follows:

207.7 A public recreation and community center …

207.8 Where required by the Height Act, a height in excess ...

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 DENSITY

4902.1 Public schools shall be permitted a maximum floor area ratio of 1.8 in the R zones.

4903 LOT DIMENSIONS

4903.1 Unless otherwise permitted or required, use of an existing or creation of a new lot for public schools shall be subject to the following minimum lot dimensions as set forth in the following table:

TABLE D § 4903.1: MINIMUM LOT WIDTH AND MINIMUM AREA FOR PUBLIC SCHOOLS

Zone	Minimum Lot Area (sq. ft.)	Minimum Lot Width (ft.)
R-1-A, R-1-B	15,000	120
R-2, R-3, R-10, R-13, R-17, R-20	9,000	120
All other R zones	As required by zone	As required by zone

4903.2 Minimum lot area may include adjacent parcels under the same ownership that are separated only by a public alley.

4903.3 On split-zoned lots, the minimum lot width and minimum lot area requirements, if any, of the less restrictive zone shall apply to the entire lot as long as the lot was in existence as of February 13, 2006.

4903.4 On a lot with more than one (1) street front, the minimum lot width may include the measurement of all street frontages, provided the lot width can be measured without interruption by another lot.

4904 HEIGHT

4904.1 Public schools shall be permitted a maximum building height, not including the penthouse, as set forth in the following table:

TABLE D § 4904.1: MAXIMUM HEIGHT FOR PUBLIC SCHOOLS

Zone	Maximum Height, Not Including Penthouse (ft.)	Maximum Number of Stories
R-11, R-12, R-13	40	No Limit
All other R zones	60	No Limit

4905 PENTHOUSES

4905.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4906 FRONT SETBACK

4906.1 A front setback is not required for a public school.

4907 REAR YARD

4907.1 A rear yard shall be provided for each public school the minimum depth of which shall be as set forth in the following table:

TABLE D § 4907.1: MINIMUM REAR YARD FOR PUBLIC SCHOOLS

Zone	Minimum Rear Yard (ft.)
R-2, R-3, R-10, R-13, R-17, R-20	20
All other R zones	25

4907.2 In the case of a lot that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4908 SIDE YARD

4908.1 Two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided in the R-1-A, R-1-B, R-6, R-7, R-8, R-9, R-11, R-12 R-14, R-15, R-16, R-19, and R-21 zones.

4908.2 In the R-2 and R-10 zones, one (1) side yard, a minimum of eight feet (8 ft.) in width, shall be provided for all semi-detached buildings and two (2) side yards, each a minimum of eight feet (8 ft.) in width, shall be provided for all detached buildings.

4908.3 In the R-3, R-13, R-17, and R-20 zones a side yard shall not be required. However, except as provided in Subtitle D §§ 4908.4 and 4908.5, if the yard is provided, it shall be not less than five feet (5 ft.) wide.

4908.4 In the case of a lot that abuts or adjoins a public open space, recreation area, or reservation on one (1) or more side lot line, a required side yard may be reduced or omitted.

4908.5 A side yard may be reduced or omitted along a side street abutting a corner lot in an R zone.

4909 COURT

4909.1 Where a court is provided, it shall have the following minimum dimensions:

TABLE D § 4909.1: MINIMUM COURT DIMENSIONS FOR PUBLIC SCHOOLS

Zone	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
R zones	2.5 in./ft. of height of court; 6 ft. minimum	2.5 in./ft. of height of court; 12 ft. minimum	Twice the square of the required width of court dimension; 250 sq. ft. minimum

4910 LOT OCCUPANCY

4910.1 Public schools shall not occupy a lot in excess of the maximum lot occupancy as set forth in the following table:

TABLE D § 4910.1: MAXIMUM LOT OCCUPANCY FOR PUBLIC SCHOOLS

Zone	Maximum Lot Occupancy (%)
R-6, R-7, R-8, R-9, R-10, R-11, R-14, R-15	30
All other R zones	60

4910.2 A public school subject to the 60% lot occupancy maximum may occupy the lot upon which it is located in excess of sixty percent (60%) subject to all of the following conditions:

(a) The portion of the building, excluding closed court, exceeding the lot coverage shall not exceed twenty feet (20 ft.) in height or two (2) stories; and

(b) The total lot occupancy shall not exceed seventy percent (70%) in the R-2, R-3, R-13, R-17, and R-20 zones.

4911 PERVIOUS SURFACE

4911.1 The minimum percentage of pervious surface of a lot shall be thirty percent (30%).

4912 SPECIAL EXCEPTION

4912.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

IV. Amendments to Subtitle E, RESIDENTIAL FLAT (RF) ZONES

The title of § 104, PUBLIC EDUCATION, RECREATION, OR LIBRARY BUILDINGS AND STRUCTURES, of Chapter 1, INTRODUCTION TO RESIDENTIAL HOUSE (RF) ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended to read as follows:

104 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

Section 104, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, of Chapter 1, INTRODUCTION TO RESIDENTIAL HOUSE (RF) ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended, including by adding new § 104.2 and renumbering existing § 104.2 as new § 104.3, to read as follows:

104.1 Public recreation and community centers or public libraries in the RF zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

104.2 Public schools in the RF zones shall be permitted subject to the conditions of Subtitle E, Chapter 49.

104.3 Development standards not otherwise addressed by Subtitle C, Chapter 16, or Subtitle E, Chapter 49, shall be those development standards for the zone in which the building or structure is proposed.

Subsection 204.1, of § 204, PERVIOUS SURFACE, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended as follows:

204.1 The minimum pervious surface requirements for new construction on a lot in an RF zone are set forth in the following table:

TABLE E § 204.1: MINIMUM PERVIOUS SURFACE REQUIREMENTS

	Lot Size Minimum	Pervious Surface Minimum (%)
Residential use	Less than 1,800 sq. ft.	0
	1,801 to 2,000 sq. ft.	10
	Larger than 2000 sq. ft.	20
All other structures	Not applicable	50

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle E, RESIDENTIAL FLAT (RF) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 DENSITY

4902.1 Public schools shall be permitted a maximum floor area ratio of 1.8 in the RF zones.

4903 LOT DIMENSIONS

4903.1 Unless otherwise permitted or required, use of an existing or creation of a new lot for public schools shall be subject to the following minimum lot dimensions as set forth in the following table:

TABLE E § 4903.1: MINIMUM LOT WIDTH AND MINIMUM LOT AREA FOR PUBLIC SCHOOLS

Zone	Minimum Lot Area (sq. ft.)	Minimum Lot Width (ft.)
RF zones	9,000	120

4903.2 Minimum lot area may include adjacent parcels under the same ownership that are separated only by a public alley.

4903.3 On split-zoned lots, the minimum lot width and minimum lot area requirements, if any, of the less restrictive zone shall apply to the entire lot as long as the lot was in existence as of February 13, 2006.

4903.4 On a lot with more than one (1) street front, the minimum lot width may include the measurement of all street frontages, provided the lot width can be measured without interruption by another lot.

4904 HEIGHT

4904.1 Public schools shall be permitted a maximum building height, not including the penthouse, as set forth in the following table:

TABLE E § 4904.1: MAXIMUM HEIGHT FOR PUBLIC SCHOOLS

Zone	Maximum Height, Not Including Penthouse (ft.)	Maximum Number of Stories
RF-1, RF-2	60	No limit
RF-3	40	No limit
RF-4, RF-5	90	No limit

4905 PENTHOUSES

4905.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4906 FRONT SETBACK

4906.1 A front setback is not required for a public school.

4907 REAR YARD

4907.1 A rear yard with a minimum depth of twenty feet (20 ft.) shall be provided for each public school.

4907.2 In the case of a lot that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4908 SIDE YARD

4908.1 In the RF zones, a side yard shall not be required. However, except as provided in Subtitle E §§ 4908.2 and 4908.3, if the yard is provided, it shall be not less than five feet (5 ft.) wide.

4908.2 In the case of a lot that abuts or adjoins a public open space, recreation area, or reservation on one (1) or more side lot line, a required side yard may be reduced or omitted.

4908.3 A side yard may be reduced or omitted along a side street abutting a corner lot in an RF zone.

4909 COURT

4909.1 Where a court is provided, it shall have the following minimum dimensions:

TABLE E § 4909.1: MINIMUM COURT DIMENSIONS FOR PUBLIC SCHOOLS

Zone	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
RF zones	2.5 in./ft. of height of court; 6 ft. minimum	2.5 in./ft. of height of court; 12 ft. minimum	Twice the square of the required width of court dimension; 250 sq. ft. minimum

4910 LOT OCCUPANCY

4910.1 Public schools shall not occupy a lot in excess of the maximum lot occupancy as set forth in the following table:

TABLE E § 4910.1: MAXIMUM LOT OCCUPANCY FOR PUBLIC SCHOOLS

Zone	Maximum Lot Occupancy (%)
RF-1, RF-2, RF-3	60
RF-4, RF-5	No limit

4910.2 A public school may occupy the lot upon which it is located in excess of the permitted percentage of lot occupancy prescribed in this section subject to all of the following conditions:

(a) The portion of the building, excluding closed court, exceeding the lot coverage shall not exceed twenty feet (20 ft.) in height or two (2) stories; and

(b) The total lot occupancy shall not exceed seventy percent (70%).

4911 PERVIOUS SURFACE

4911.1 The minimum percentage of pervious surface of a lot shall be fifty percent (50%).

4912 SPECIAL EXCEPTION

4912.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

V. Amendments to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES

The title of § 104, PUBLIC EDUCATION, RECREATION, OR LIBRARY BUILDINGS AND STRUCTURES, of Chapter 1, INTRODUCTION TO RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

104 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

Section 104, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, of Chapter 1, INTRODUCTION TO RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended, including by adding new §§ 104.2 and 104.3, to read as follows:

104.1 Public recreation and community centers or public libraries in the RA zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

104.2 Public schools in the RA zones shall be permitted subject to the conditions of Subtitle F, Chapter 49.

104.3 Development standards not otherwise addressed by Subtitle C, Chapter 16, or Subtitle F, Chapter 49, shall be those development standards for the zone in which the building or structure is proposed.

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 DENSITY

4902.1 Public schools shall be permitted a maximum floor area ratio as set forth in the following table:

TABLE F § 4902.1: MAXIMUM FLOOR AREA RATIO (FAR) FOR PUBLIC SCHOOLS

Zone	Maximum FAR
RA-1, RA-2, RA-6, RA-7, RA-8	1.8
RA-3, RA-4, R-5, RA-9, R-10	3.0

4903 LOT DIMENSIONS

4903.1 Unless otherwise permitted or required, use of an existing or creation of a new lot for public schools shall be subject to the following minimum lot dimensions as set forth in the following table:

TABLE F § 4903.1: MINIMUM LOT WIDTH AND MINIMUM AREA FOR PUBLIC SCHOOLS

Zone	Minimum Lot Area (sq. ft.)	Minimum Lot Width (ft.)
RA-1, RA-2, RA-6, RA-7, RA-8, RA-9	9,000	80
RA-3, RA-4, RA-5, RA-10	No minimum	80

4903.2 Minimum lot area may include adjacent parcels under the same ownership that are separated only by a public alley.

4903.3 On split-zoned lots, the minimum lot width and minimum lot area requirements, if any, of the less restrictive zone shall apply to the entire lot as long as the lot was in existence as of February 13, 2006.

4903.4 On a lot with more than one (1) street front, the minimum lot width may include the measurement of all street frontages, provided the lot width can be measured without interruption by another lot.

4904 HEIGHT

4904.1 Public schools shall be permitted a maximum building height of ninety feet (90 ft.), not including the penthouse.

4904.2 Public schools shall not be subject to a maximum number of stories.

4905 PENTHOUSES

4905.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4906 REAR YARD

4906.1 A rear yard shall be provided for each public school, the minimum depth of which shall be as set forth in the following table:

TABLE F § 4906.1: MINIMUM REAR YARD FOR PUBLIC SCHOOLS

Zone	Minimum Rear Yard
RA-1, RA-6	20 ft.
RA-2, RA-3, RA-4, RA-7, RA-8, RA-9	4 in./ft. of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 ft.
RA-5, RA-10	3 in./ft. of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 12 ft.

4906.2 In the case of a lot that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4907 SIDE YARD

4907.1 In the RA-1 zone, one (1) side yard, a minimum of eight feet (8 ft.) in width, shall be provided.

4907.2 In an RA zone other than the RA-1 zone, a side yard shall not be required. However, except as provided in Subtitle F §§ 4907.3 and 4907.4, if the yard is provided, it shall be not less than five feet (5 ft.) wide.

4907.3 In the case of a lot that abuts or adjoins a public open space, recreation area, or reservation on one (1) or more side lot line, a required side yard may be reduced or omitted.

4907.4 A side yard may be reduced or omitted along a side street abutting a corner lot in an RA zone.

4908 COURT

4908.1 Where a court is provided, it shall have the following minimum dimensions:

TABLE F § 4908.1: MINIMUM COURT DIMENSIONS FOR PUBLIC SCHOOLS

Zone	Minimum Width Open Court	Minimum Width Closed Court	Minimum Area Closed Court
RA zones	2.5 in./ft. of height of court; 6 ft. minimum	2.5 in./ft. of height of court; 12 ft. minimum	Twice the square of the required width of court dimension; 250 sq. ft. minimum

4909 LOT OCCUPANCY

4909.1 Public schools shall not occupy a lot in excess of the maximum lot occupancy as set forth in the following table:

TABLE F § 4909.1: MAXIMUM LOT OCCUPANCY FOR PUBLIC SCHOOLS

Zone	Maximum Lot Occupancy (%)
RA-1, RA-2	60
RA-3, RA-4, RA-5, RA-10, RA-11	75
RA-6, RA-7, RA-8, RA-9	40

4909.2 A public school may occupy the lot upon which it is located in excess of the permitted percentage of lot occupancy prescribed in this section provided the portion of the building, excluding closed court, exceeding the lot coverage shall not exceed twenty feet (20 ft.) in height or two (2) stories.

4910 SPECIAL EXCEPTION

4910.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

VI. Amendments to Subtitle G, MIXED-USE (MU) ZONES

A new § 105, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, is added to Chapter 1, INTRODUCTION TO MIXED-USE ZONES, of Subtitle G, MIXED USE (MU) ZONES, to read as follows:

105 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

105.1 Public recreation and community centers or public libraries in the MU zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

105.2 Public schools in the MU zones shall be permitted subject to the conditions of Subtitle G, Chapter 49.

105.3 Development standards not otherwise addressed by Subtitle C, Chapter 16, or Subtitle G, Chapter 49, shall be those development standards for the zone in which the buildings or structures is proposed.

Chapter 10, DEVELOPMENT STANDARDS FOR PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS OR PUBLIC LIBRARIES IN MU ZONES, of Subtitle G, MIXED USE (MU) ZONES, is deleted in its entirety.

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle G, MIXED USE (MU) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 DENSITY

4902.1 Public schools shall be permitted a maximum floor area ratio as set forth in the following table:

TABLE G § 4902.1: MAXIMUM FLOOR AREA RATIO (FAR) FOR PUBLIC SCHOOLS

Zone	Maximum FAR
MU-1, MU-2, MU-10, MU-15, MU-16, MU-22, MU-23, MU-29	3.0
MU-3	1.8
All other MU zones	As permitted for residential (non-IZ) uses by zone

4903 PENTHOUSES

4903.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that

public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4904 REAR YARD

4904.1 A minimum rear yard shall be provided as required by the zone within which the lot is located; provided that no rear yard shall be required for a lot that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation.

4905 SIDE YARD

4905.1 In the case of a lot that abuts or adjoins a public open space, recreation area, or reservation on a side lot line, no side yard shall be required.

4906 SPECIAL EXCEPTION

4906.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

VII. Amendments to Subtitle H, NEIGHBORHOOD MIXED-USE (NC) ZONES

A new § 105, PUBLIC SCHOOLS, is added to Chapter 1, INTRODUCTION TO NEIGHBORHOOD MIXED-USE (NC) ZONES, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, to read as follows:

105 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS AND PUBLIC LIBRARIES

105.1 Public recreation and community centers or public libraries in the NC zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

105.2 Public schools in the NC zones shall be permitted subject to the conditions of Subtitle H, Chapter 49.

105.3 Development standards not otherwise addressed by Subtitle C, Chapter 16, or Subtitle H, Chapter 49, shall be those development standards for the zone in which the building or structure is proposed.

Chapter 10, DEVELOPMENT STANDARDS FOR PUBLIC EDUCATION BUILDINGS AND STRUCTURES, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES FOR NC ZONES, of Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, is deleted in its entirety.

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle H, NEIGHBORHOOD MIXED USE (NC) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 PENTHOUSES

4902.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4903 REAR YARD

4903.1 In the case of a lot proposed to be used by a public school that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4904 SIDE YARD

4904.1 In the case of a lot proposed to be used by a public school that abuts or adjoins a public open space, recreation area, or reservation on a side lot line, no side yard shall be required.

4905 SPECIAL EXCEPTION

4905.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

VIII. Amendments to Subtitle I, DOWNTOWN (D) ZONES

A new § 103, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, is added to Chapter 1, INTRODUCTION TO DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN (D) ZONES, to read as follows:

103 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

103.1 Public recreation and community centers or public libraries in the NC zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

103.2 Public schools in the D zones shall be permitted subject to the conditions of Subtitle I, Chapter 49.

103.3 Development standards not otherwise addressed by Subtitle I, Chapter 49, shall be those development standards for the zone in which the building~~s~~ or structure~~s~~ is proposed.

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle I, DOWNTOWN (D) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 PENTHOUSES

4902.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4903 REAR YARD

4903.1 In the case of a lot proposed to be used by a public school that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4904 SIDE YARD

4904.1 In the case of a lot proposed to be used by a public school that abuts or adjoins a public open space, recreation area, or reservation on a side lot line, no side yard shall be required.

4905 SPECIAL EXCEPTION

4905.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

IX. Amendments to Subtitle J, PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES

The title of § 105, PUBLIC EDUCATION BUILDING AND STRUCTURES, PUBLIC RECREATION AND COMMUNITY CENTERS, OR PUBLIC LIBRARIES, of Chapter 1, INTRODUCTION TO PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, of Subtitle J, PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, is amended to read as follows:

105 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES

Section 105, PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES, of Chapter 1, INTRODUCTION TO PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, of Subtitle J, PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, is amended, including by adding new § 105.2, with current § 105.2 renumbered as new § 105.3, to read as follows:

105.1 Public recreation and community centers or public libraries in the PDR zones shall be permitted subject to the conditions of Subtitle C, Chapter 16.

105.2 Public schools in the PDR zones shall be permitted subject to the conditions of Subtitle J, Chapter 49.

105.3 Development standards not otherwise addressed by Subtitle C, Chapter 16 or Subtitle J, Chapter 49 shall be those development standards for the zone in which the building or structure is proposed.

A new Chapter 49, PUBLIC SCHOOLS, is added to Subtitle J, PRODUCTION, DISTRIBUTION, AND REPAIR (PDR) ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this chapter govern the height and bulk of public school buildings.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this chapter shall govern public schools; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 PENTHOUSES

4902.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4903 REAR YARD

4903.1 In the case of a lot proposed to be used by a public school that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4904 SIDE YARD

4904.1 In the case of a lot proposed to be used by a public school that abuts or adjoins a public open space, recreation area, or reservation on a side lot line, no side yard shall be required.

4905 SPECIAL EXCEPTION

4905.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

X. Amendments to Subtitle K, SPECIAL PURPOSE ZONES

Section 711, PUBLIC EDUCATION BUILDING AND STRUCTURES, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES (RC), of Chapter 7, REED-COOKE ZONES - RC-1 THROUGH RC-3, of Subtitle K, SPECIAL PURPOSE ZONES, is amended, including by adding new §§ 711.2 and 711.3, to read as follows:

711 PUBLIC SCHOOLS, PUBLIC RECREATION AND COMMUNITY CENTERS, AND PUBLIC LIBRARIES (RC)

711.1 Public recreation and community centers and public libraries shall be controlled through the development standards specified in Subtitle C, Chapter 16.

711.2 Public schools shall be controlled through the development standards specified in Subtitle K, Chapter 49.

711.3 Development standards not otherwise addressed in Subtitle C, Chapter 16, or Subtitle K, Chapter 49, shall be those development standards for the zone in which the building or structure is proposed.

A new Chapter 49, PUBLIC SCHOOLS is added to Subtitle K, SPECIAL PURPOSE ZONES, to read as follows:

CHAPTER 49 PUBLIC SCHOOLS

4900 GENERAL PROVISIONS

4900.1 The provisions of this govern the height and bulk of public school buildings, public recreation and community centers, and public libraries in the RC-1 through RC-3 zones.

4901 DEVELOPMENT STANDARDS

4901.1 The specific standards of this section shall govern public schools, public recreation and community centers, and public libraries; in the absence of specific standards, the development standards for the zone in which the building or structure is proposed shall apply.

4902 DENSITY

4902.1 Public schools, public recreation and community centers, and public libraries shall be permitted a maximum floor area ratio as set forth in the following table:

TABLE K § 4902.1: MAXIMUM FLOOR AREA RATIO (FAR) FOR PUBLIC SCHOOLS

Zone	Maximum FAR
RC-1	2.0
RC-2, RC-3	As permitted by zone

4903 HEIGHT

4903.1 The maximum permitted building height, not including the penthouse, shall be as set forth in the following table:

TABLE K § 4903.1: MAXIMUM HEIGHT FOR PUBLIC SCHOOLS

Zone	Maximum Height (ft.)	Maximum Number of Stories
RC-1	90	No limit
RC-2, RC-3	As permitted by zone	As permitted by zone

4904 PENTHOUSES

4904.1 Penthouses shall be subject to the regulations of Subtitle C, Chapter 15, and to the height and story limitations specified in each zone of this subtitle; provided that public schools shall be permitted a mechanical penthouse to a maximum height of eighteen feet six inches (18 ft. 6 in.) or the permitted mechanical penthouse height in the zone, whichever is greater.

4905 REAR YARD

4905.1 A rear yard shall be provided for each public school, the minimum depth of which shall be as set forth in the following table:

TABLE K § 4905.1: MINIMUM REAR YARD FOR PUBLIC SCHOOLS

Zone	Minimum Rear Yard
RC-1	4 in./ft. of vertical distance from the mean finished grade at the middle of the rear of the structure to the highest point of the main roof or parapet wall, but not less than 15 ft.
RC-2, RC-3	As permitted by zone

4905.2 In the case of a lot proposed to be used by a public school that abuts or adjoins along the rear lot line a public open space, recreation area, or reservation, no rear yard shall be required.

4906 SIDE YARD

4906.1 In the case of a lot proposed to be used by a public school that abuts or adjoins a public open space, recreation area, or reservation on a side lot line, no side yard shall be required.

4907 LOT OCCUPANCY

4907.1 Public schools shall not occupy a lot in excess of the maximum lot occupancy as set forth in the following table:

TABLE K § 4907.1: MAXIMUM LOT OCCUPANCY FOR PUBLIC SCHOOLS

Zone	Maximum Lot Occupancy (%)
RC-1	60
RC-2, RC-3	No limit

4907.2 A public school may occupy the lot upon which it is located in excess of the permitted percentage of lot occupancy prescribed in this section provided the portion of the building, excluding closed court, exceeding the lot coverage shall not exceed twenty feet (20 ft.) in height or two (2) stories.

4908 SPECIAL EXCEPTION

4908.1 Exceptions to the development standards of this chapter for public schools shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9.

XI. Amendments to Subtitle U, USE PERMISSIONS

A new paragraph 202.1(m) is added to § 202.1 of § 202, MATTER-OF-RIGHT USES – R USE GROUPS A, B, AND C, of Chapter 2, USE PERMISSIONS RESIDENTIAL HOUSE (R) ZONES, with current paragraphs (n) through (r) renumbered as new paragraphs (o) through (s), to read as follows:

202.1 The following uses shall be permitted as a matter of right in R-Use Groups A, B, and C subject to any applicable conditions:

(a) Any use permitted as a matter of right in Subtitle U §201;

…

(m) Public recreation and community centers and public libraries subject to the development standards of Subtitle C, Chapter 16;

(n) Public schools;

(o) Public schools, collocation …

(p) Temporary buildings for construction …

(q) Temporary use of premises …

(r) Mass transit facility; and

(s) Reuse of former District of Columbia public schools …

Proposed Action
VOTE (December 5, 2019): **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, and Peter G. May to **APPROVE**; Michael G. Turnbull, not present, not voting)

Final Action
VOTE (February 10, 2020): **5-0-0** (Michael G. Turnbull, Peter A. Shapiro, Anthony J. Hood, Robert E. Miller, and Peter G. May to **APPROVE**)

The text amendments shall become effective upon publication of this notice in the *D.C. Register*, that is on April 3, 2020.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING
Z.C. CASE NO. 19-14
(Text Amendment - Subtitles C, D, E, F, and X of Title 11 DCMR)
(Nonconforming Structures)

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following provisions 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):

- Subtitle C (General Rules) § 202.2
- Subtitle D (Residential House (R) Zones) §§ 306.4, 706.4, 1006.3, 1206.4, 5007, 5108, 5200, 5201, & 5204
- Subtitle E (Residential Flat (RF) Zones) §§ 205.5, 5007, 5108, 5200, 5201, & 5204
- Subtitle F (Residential Apartment (RA) Zones) §§ 5005, 5107, 5200, 5201, & 5204
- Subtitle X (General Procedures) § 1001.3

The text amendment proposes to clarify the zoning treatment of enlargements and additions to nonconforming structures. In particular, in Subtitle C § 202.2, the proposed text amendment would clarify that nonconforming structures are permitted to expand as a matter of right so long as the enlargement or addition conforms to the development standards. Where non-compliant, zoning relief would be needed from applicable development standards of each subtitle and not from Subtitle C § 202.2 specifically. Although focused on non-conforming structures, the text amendment also proposes changes to the relief required for principal residential developments on substandard record lots and changes to clarify and reorganize the special exception provisions in Subtitles D – F as follows:

- Subtitle D, Chapter 52, to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;
- Subtitle E, Chapter 52, to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;
- Subtitle F, Chapter 52, to clarify which development standards are eligible for special exception relief; and to consolidate all special exception authority in this chapter by deleting current §§ 5005, 5107, and 5204; and
- Subtitle X, Chapter 10, to remove the reference to Subtitle C § 202.2 as relief from that section is no longer required.

Office of Planning (OP)
The Office of Planning (OP) filed a July 18, 2019 report that served as the pre-hearing report required by Subtitle Z § 501 and as a petition proposing text amendments to the Zoning Regulations.

The Commission voted at its July 29, 2019, public meeting to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General (OAG) to refine the proposed text and add any conforming language as necessary.

OP filed an October 30, 2019 hearing report, as required by Subtitle Z § 400.6, that recommended approval of the proposed text amendment as advertised in the Public Hearing Notice.

At its November 7, 2019 hearing, the Commission heard testimony from OP in support of the proposed text amendment and from Advisory Neighborhood Commission (ANC) 6C, which was supportive of the text amendment but highlighted specific provisions for further revision (as discussed below).

In response to concerns raised by ANCs 6B and 6C and the Commission that the proposed amendment did not address existing ambiguities in the Zoning Regulations, especially the provisions related to building height special exceptions (Subtitle E § 5203) and rooftop or upper floor additions (Subtitle E § 206.1), OP submitted a November 25, 2019 supplemental report (OP Second Report). The OP Second Report indicated that most of the existing problematic text provisions are included in two text amendments currently before the Commission – Z.C. Case No. 19-13 (Alley Lots) or Z.C. Case No. 19-21 (Roof Top or Upper Floor Elements) – and are less suited to resolution in this case, Z.C. Case No. 19-14.

ANC Reports
ANC 5D filed a November 12, 2019 written report expressing support for the proposed text amendment's expanded protection of solar panels.

ANC 6B filed an October 29, 2019 written report in support of the proposed text amendment but also recommended changes including:

- Retaining Subtitle E § 5204, a special exception related to alley lots, rather than consolidating alley lot and non-alley lot standards into a revised Subtitle E § 5201 as proposed;
- Further refinements to the proposed text in Subtitle E § 5201; and
- Improvements to the Office of Zoning user handbook (although not related to the specific text amendment and outside the Commission's purview).

ANC 6C filed a November 6, 2019 written report (ANC 6C's First Report) and provided testimony at the November 7, 2020 public hearing, supporting the proposed text amendments, but also recommending changes including:

- Relief for new principal residential buildings on standard lots (found in proposed text in Subtitle E § 5201);
- Syntax concerns with the proposed text of Subtitle E § 5201.6 and Subtitle F § 5201.6; and
- repetition and circularity between existing Subtitle E § 206.1 and the zoning relief found in Subtitle E § 5203, for which ANC 6C recommended several modifications to improve the clarity of these sections.

In response to OP's Second Report, ANC 6C filed a supplemental report (ANC 6C's Second Report), in which the ANC agreed with OP that most of the issues raised in ANC 6C's First Report could be addressed in pending Z.C. Case No. 19-21 rather than in this case, Z.C. Case No. 19-14.

"Great Weight" to the Recommendations of OP

The Commission must give "great weight" to the recommendations 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).)

The Commission finds OP's recommendation that the Commission take proposed action to adopt the proposed text amendment persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting 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 Z § 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).)

At its November 7, 2020 hearing, the Commission requested that OP provide a detailed response to the issues raised in the reports by ANCs 6B and 6C and to specifically identify which pending Commission cases would address these concerns. Upon review of OP's and ANC's Second Reports, the Commission agreed with OP and ANC 6C that the concerns raised by the ANCs would be better addressed by other pending Commission cases rather than this case, Z.C. Case No. 19-14.

At the close of its January 13, 2020 public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (January 13, 2020): 5-0-0 (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to **APPROVE**)

The complete record in the case, including the OP and ANC reports and transcript of the public hearings, can be viewed online at the Office of Zoning website, through the Interactive Zoning Information System (IZIS), at https://app.dcoz.dc.gov/Content/Search/Search.aspx.

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

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register*.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **~~bold and strikethrough~~** and new text is shown in **bold and underlined**):

I. Proposed amendments to Subtitle C, GENERAL RULES

Subsection 202.2 of § 202, NONCONFORMING STRUCTURES, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:

202.2 Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:

(a) Conform to **the** use and development standard**s** ~~**requirements**~~; ~~**and**~~

(b) Neither increase **n**or extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined**; and**

(c) Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards.

II. Proposed amendments to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

Subsection 306.4 of § 306, REAR YARD, of Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

306.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~**and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6**~~.

Subsection 706.4 of § 706, REAR YARD, of Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

706.4 A rear wall of ~~**an attached**~~ **a** row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~**and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6**~~.

Subsection 1006.3 of § 1006, REAR YARD, of Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONES – R-17, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

1006.3 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~**and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6**~~.

Subsection 1206.4 of § 1206, REAR YARD, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised as follows:

1206.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 ~~**and as evaluated against the criteria of Subtitle D §§ 5201.3(a) through 5201.3(d) and §§ 5201.4 through 5201.6**~~.

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

5007 ~~SPECIAL EXCEPTION~~ [RESERVED]

~~5007.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5201.~~

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

~~5108 SPECIAL EXCEPTION~~

~~5108.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5204.~~

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended as follows:

5200.1 The ~~following~~ provisions **of this chapter** provide for special exception relief ~~to~~ **from** the specified development standards and regulations**,** subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception **authorized by this chapter** shall be processed as a variance **pursuant to Subtitle X, Chapter 10.**

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended to read as follows:

5201 ~~ADDITION TO A BUILDING OR ACCESSORY STRUCTURE~~ SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 ~~The~~ **For an addition to a principal residential building with one (1) principal dwelling unit on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the** Board of Zoning Adjustment may ~~approve as a special exception in the R zones~~ **grant** relief from the following development standards of this subtitle **as a special exception**, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) Lot occupancy **subject to the following table:**

TABLE D § 5201.1(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

Zone	Maximum Lot Occupancy (%)
R-3, R-13, and R-17 R-20 - Row dwellings	70
R-20 - Detached and semi-detached dwellings All other R zones	50

(b) Yards**, including alley centerline setback; and**

~~(c) Courts;~~

~~(d) Minimum Lot dimensions;~~

~~(e)~~ **(c)** Pervious surface~~; and~~**.**

~~(f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.~~

5201.2 ~~Special exception relief under this section is applicable only to the following~~ **For a new or enlarged accessory structure to a residential building with only one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a**

special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) ~~**An addition to a building with only one (1) principal dwelling unit; or**~~ **Lot occupancy subject to the following table:**

TABLE D § 5201.2(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

Zone	Maximum Lot Occupancy (%)
R-3, R-13, and R-17 R-20 - Row dwellings	70
R-20 - Detached and semi-detached dwellings All other R zones	50

(b) ~~**A new or enlarged accessory structure that is accessory to such a building**~~ **Maximum building area of an accessory building;**

(c) Yards, including alley centerline setback; and

~~**(d) Courts; and**~~

(d) Pervious surface.

5201.3 For a new or enlarged principal building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) Yards, including alley centerline setback; and

(b) Pervious surface.

~~**5201.3**~~ **5201.4** An ~~**applicant**~~ **application** for special exception **relief** under this section shall demonstrate that the proposed addition**, new principal building,** or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, ~~**in particular**~~ **specifically**:

(a) The light and air available …[1]

(b) The privacy of use and enjoyment …

[1] The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

(c) The **proposed** addition or accessory structure, together with the original building**, or the new principal building,** as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the ~~subject~~ street **or alley** frontage; **and**

(d) In demonstrating compliance with paragraphs … from public ways~~; and~~**.**

~~(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot as specified in the following table:~~

~~TABLE D § 5201.4: MAXIMUM PERMITTED LOT OCCUPANCY~~

~~Zone~~	~~Maximum Lot Occupancy~~
~~R-3~~ ~~R-13~~ ~~R-17~~	~~70%~~
~~R-20 - attached dwellings only~~	~~70%~~
~~R-20 - detached and semi-detached dwellings~~ ~~All Other R zones~~	~~50%~~

~~5201.4~~ **5201.5** The Board of Zoning Adjustment may require …

~~5201.5~~ **5201.6** This section ~~may~~ **shall** not be used to permit the introduction or expansion of a nonconforming use**, lot occupancy beyond what is authorized in this section, height, or number of stories** as a special exception.

~~5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height, or number of stories as a special exception.~~

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:

(a) District Department of Transportation (DDOT);

(b) Department of Public Works (DPW);

(c) Metropolitan Police Department (MPD);

(d) Fire and Emergency Medical Services Department (FEMS);

(e) DC Water (WASA); and

(f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be deleted as follows:

5204 ~~SPECIAL EXCEPTION CRITERIA ALLEY LOTS~~ [RESERVED]

~~5204.1 The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an R zone pursuant to Subtitle X, Chapter 9~~

III. Proposed amendments to Subtitle E, RESIDENTIAL FLAT (RF) ZONES

Subsection 205.5 of § 205, REAR YARD, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be revised as follows:

205.5 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9 **~~and as evaluated against the criteria of Subtitle E §§ 5201.3 through 5201.6~~**.

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted as follows:

~~5007 SPECIAL EXCEPTION~~

~~5007.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E §§ 5201.~~

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted as follows:

~~5108 SPECIAL EXCEPTION~~

~~5108.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E § 5204.~~

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

5200.1 The ~~following~~ provisions **of this chapter** provide for special exception relief ~~to~~ **from** the specified development standards and regulations**,** subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception **authorized by this chapter** shall be processed as a variance **pursuant to Subtitle X, Chapter 10**.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

5201 ~~ADDITION TO A BUILDING OR ACCESSORY STRUCTURE~~ SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 ~~The~~ **For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the** Board of Zoning Adjustment may ~~approve as a special exception in the RF zones~~ **grant** relief from the following development standards **of this subtitle as a special exception,** subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) Lot occupancy **up to a maximum of seventy percent (70%) for all new and existing structures on the lot;**

(b) Yards**, including alley centerline setback**;

(c) Courts; **and**

~~**(d) Minimum Lot dimension;**~~

~~**(e)**~~ **(d)** Pervious surface~~**; and**~~**.**

~~**(f) The limitations on enlargements or additions to nonconforming structures as set forth in Subtitle C § 202.2.**~~

5201.2 ~~**Special exception relief under this section is applicable only to the following**~~ **For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:**

(a) ~~**An addition to a residential building**~~ **Lot occupancy under Subtitle E § 5003 up to a maximum of seventy percent (70%) for all new and existing structures on the lot;**

(b) ~~**A new or enlarged accessory structure that is accessory to such a building; or**~~ **Yards, including alley centerline setback;**

(c) ~~**A reduction in the minimum setback requirements of an alley lot.**~~ **Courts; and**

(d) Pervious surface.

5201.3 For a new or enlarged building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) Yards, including alley centerline setback; and

(b) Pervious surface.

~~**5201.3**~~ **5201.4** An ~~**applicant**~~ **application** for special exception **relief** under this section shall demonstrate that the proposed addition**, new building,** or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, ~~in particular~~ **specifically**:

(a) The light and air available …

(b) The privacy of use and enjoyment …

(c) The **proposed** addition or accessory structure, together with the original building**, or the proposed new building,** as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the ~~**subject**~~ street **and alley** frontage; **and**

(d) In demonstrating compliance with paragraphs … from public ways~~**; and.**~~

~~(e) **The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).**~~

~~**5201.4**~~ **5201.5** The Board of Zoning Adjustment may require …

~~**5201.5**~~ **5201.6** This section ~~**may**~~ **shall** not be used to permit the introduction or expansion of a nonconforming use**, lot occupancy beyond what is authorized in this section, height, or number of stories,** as a special exception.

~~**5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.**~~

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:

(a) District Department of Transportation (DDOT);

(b) Department of Public Works (DPW);

(c) Metropolitan Police Department (MPD);

(d) Fire and Emergency Medical Services Department (FEMS);

(e) DC Water (WASA); and

(f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted:

5204 ~~SPECIAL EXCEPTION CRITERIA ALLEY LOTS~~ [RESERVED]

~~5204.1 The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an RF zone may be approved as a special exception pursuant to Subtitle X, Chapter 9~~

IV. Proposed amendments to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES

The title of Chapter 50, ACCESSORY BUILDING REGULATIONS (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

Chapter 50, ACCESSORY BUILDING REGULATIONS ~~(RA)~~ FOR RA ZONES

Section 5005, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted as follows:

~~5005 SPECIAL EXCEPTION~~

~~5005.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X and subject to the provisions and limitations of Subtitle F§ 5201.~~

Section 5107, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted as follows:

~~5107 SPECIAL EXCEPTION~~

~~5107.1 Exceptions to the development standards of this chapter shall be permitted as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle F§ 5201.~~

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

5200.1 The provisions of this chapter provide for **special exception** relief to the **specified** development standards and regulations ~~in the RA zones~~ as a special exception**,** subject to the provisions of ~~this chapter~~ **each section** and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception **authorized by this chapter** shall be processed as a **variance pursuant to Subtitle X, Chapter 10.**

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:

5201 ~~ADDITION TO A BUILDING OR ACCESSORY STRUCTURE~~ SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 ~~The~~ **For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the** Board of Zoning Adjustment may grant ~~special exception~~ relief from the following development standards **of this subtitle as a special exception**, subject to the provisions of this section and the general special exception criteria at Subtitle X**,** Chapter 9.

(a) Lot occupancy **up to a maximum of seventy percent (70%) for all new and existing structures on the lot**;

(b) Yards**, including alley centerline setback**; ~~and~~

(c) Courts; and

~~(c)~~ **(d)** Green ~~area ratio~~ **Area Ratio.**

5201.2 ~~Special exception relief under this section is applicable only to the following~~ **For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:**

(a) ~~An addition to an existing residential building; or~~ **Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;**

(b) ~~A new or enlarged accessory structure that is accessory to such a building.~~ **Yards, including alley centerline setback;**

(c) Courts; and

(d) Green Area Ratio.

5201.3 For a new or enlarged building on an Alley Record lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

(a) Yards, including alley centerline setback; and

(b) Green Area Ratio.

~~5201.3~~ **5201.4** An application for special exception **relief** under this section shall demonstrate that the **proposed** addition**, new building,** or accessory structure**,** shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, ~~in particular~~ **specifically**:

(a) The light and air available …

(b) The privacy of use and enjoyment …

(c) The **proposed** addition or accessory structure, together with the original building, **or the new building,** as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the ~~subject~~ street **and alley** frontage; **and**

(d) In demonstrating compliance with paragraphs… from public ways~~; and~~**.**

~~(e) The Board of Zoning Adjustment may approve lot occupancy of all new and existing structures on the lot up to a maximum of seventy percent (70%).~~

~~5201.4~~ **5201.5** The Board of Zoning Adjustment may require …

~~5201.5~~ **5201.6** This section shall not be used to permit the introduction or expansion of a nonconforming use**, lot occupancy beyond what is authorized in this section, height, or number of stories,** as a special exception.

~~5201.6 This section shall not be used to permit the introduction or expansion of nonconforming height or number of stories as a special exception.~~

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty (40) day period established by Subtitle A § 211:

(a) District Department of Transportation (DDOT);

(b) Department of Public Works (DPW);

(c) Metropolitan Police Department (MPD);

(d) Fire and Emergency Medical Services Department (FEMS);

(e) DC Water (WASA); and

(f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be deleted to read as follows:

~~**5204 SPECIAL EXCEPTION CRITERIA ALLEY LOTS**~~

~~**5204.1 The Board of Zoning Adjustment may approve as a special exception a reduction in the minimum yard requirements of an alley lot in an RA zone may be approved as a special exception pursuant to Subtitle X, Chapter 9**~~

V. Proposed amendments to Subtitle X, GENERAL PROCEDURES

Subsection 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended as follows:

1001.3 Examples of area variances are requests to deviate from:

(a) Requirements that …

…

(d) Limitations on the alteration or conversion of certain structures on alley lots as stated in Subtitle D § 1610; Subtitle E § 1104; Subtitle F § 903; and Subtitle G § 1503; **and**

~~**(e) The prohibition against certain enlargements and additions to nonconforming structures as stated at Subtitle C § 202; and**~~

~~**(f)**~~ **(e)** Preconditions to the establishment of … a more intense use.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF SECOND EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211 (2012 Repl. & 2019 Supp.)) and D.C. Official Code §§ 25-351, *et seq.* (2012 Repl.), hereby gives notice of the intent to amend, on an emergency basis, Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR), by amending Section 307 (West Dupont Circle Moratorium Zone).

The emergency rulemaking would: (1) maintain the cap of zero (0) for retailer's licenses, class CN and DN, within six hundred feet (600 ft.) in all directions from 21st and P Streets, N.W.; and (2) create an exemption from the moratorium zone for the "Dupont Underground"; a District-owned former streetcar station located below Square 114E Lot 0800 and below the right of way of Dupont Circle, N.W. and Connecticut Avenue, N.W. and surrounding streets.

BACKGROUND

The West Dupont Circle Moratorium Zone (WDCMZ) has been in effect since 1994. The original WDMZ prohibited the issuance of all alcohol retailer licenses, including restaurants, taverns, and nightclubs. The only exception to this prohibition was for hotel licenses.

The Board has amended the regulation several times since its initial adoption. Most recently, the Board amended the moratorium in 2016 by removing the cap on retailer's licenses, classes A, B, CT, DT, CX, and DX, but retained the cap on nightclub licenses (CN and DN). The 2016 moratorium was effective for three (3) years.

The 2016 moratorium was set to expire on October 27, 2019. In advance of the expiration of the moratorium, Advisory Neighborhood Commission 2B (ANC 2B) submitted a resolution to the Board on June 19, 2019, requesting that it extend the moratorium for an additional three (3) years. Specifically, ANC 2B requested that the Board maintain the existing cap of zero (0) on nightclub licenses located within six hundred feet (600 ft.) of 21st and P Streets, N.W. The ANC, however, did request one (1) modification to the current moratorium. ANC 2B requested that the Board exempt the area known as the "Dupont Underground"; a District-owned former streetcar station located below Square 114E Lot 0800 and below the right of way of Dupont Circle, N.W. and Connecticut Avenue, N.W. and surrounding streets, from the moratorium zone.

On July 24, 2019, the ABC Board held a hearing for purposes of receiving comments from the public on the proposed rules for the WDCMZ. In addition to personal testimony received at the hearing, the Board also allowed interested parties to submit written comments.

On August 7, 2019, the Board adopted the West Dupont Circle Moratorium Zone Notice of Proposed Rulemaking. The proposed rulemaking continues the moratorium for three (3) years,

as the ANC requested, and it creates an exemption for the "Dupont Underground". The proposed rulemaking was published in the *D.C. Register* on September 27, 2019, at 66 DCR 12748, for comment.

The comment period ended on October 27, 2019, the same day the moratorium would have expired but for the Board taking emergency action on October 23, 2019. *See* West Dupont Circle Moratorium Zone Notice of Emergency Rulemaking, published at 66 DCR 15110 (November 8, 2019). After the Board adopted the emergency rulemaking, the West Dupont Circle Moratorium Zone Notice of Proposed Rulemaking was transmitted to the Council for mandatory ninety (90)-day review. In accordance with D.C. Official Code § 25-211(b)(2), the rules were deemed approved, unless disapproved, on March 12, 2020. The emergency rules, however, are set to expire on February 20, 2020; a month before the proposed rules are deemed approved. Continuing the emergency rulemaking is imperative to the public health, welfare, and safety of the community.

There is significant community concern about the moratorium lapsing before the final rules go into effect. As such, emergency action is necessary for purposes of ensuring the moratorium, as modified, remains in effect pending Council review and the Board adopting final rules. Thus, the community supports the emergency action the Board has taken.

For the aforementioned reasons, the Board finds the adoption of the emergency rulemaking is essential to promoting the public health, welfare, and safety of the community, and thus, gives notice that on February 12, 2020, its adoption of the West Dupont Circle Moratorium Zone Notice of Second Emergency Rulemaking by a vote of six (6) to zero (0). The emergency rulemaking takes effect immediately and shall supersede the previously adopted emergency rules; expiring one hundred twenty (120) days later or on June 11, 2020.

The Board did not make any changes to the rulemaking since it was published as proposed on September 27, 2019.

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by amending Section 307, WEST DUPONT CIRCLE MORATORIUM ZONE, in its entirety, to read as follows:

307 WEST DUPONT CIRCLE MORATORIUM ZONE

307.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred feet (600 ft.) in all directions from the intersection of 21st and P Streets, N.W., Washington, D.C., as follows: Class CN or DN - Zero (0). This area shall be known as the West Dupont Circle Moratorium Zone.

307.2 The West Dupont Circle Moratorium Zone is more specifically described as the area bounded by a line beginning at 22nd Street and Florida Avenue, N.W.; continuing north on Florida Avenue, N.W., to R Street, N.W.; continuing east on R Street, N.W., to 21st Street, N.W.; continuing south on 21st Street, N.W., to

Hillyer Place, N.W.; continuing east on Hillyer Place, N.W., to 20th Street, N.W.; continuing south on 20th Street, N.W., to Q Street, N.W.; continuing east on Q Street, N.W., to Connecticut Avenue, N.W.; continuing southeast on Connecticut Avenue, N.W., to Dupont Circle; continuing southwest around Dupont Circle to New Hampshire Avenue, N.W.; continuing southwest on New Hampshire Avenue, N.W., to N Street, N.W.; continuing west on N Street, N.W., to 22nd Street, N.W.; and continuing north on 22nd Street, N.W., to Florida Avenue, N.W. (the starting point).

307.3 Square 114E Lot 0800 and below the right of way of Dupont Circle, N.W. and Connecticut Avenue, N.W. shall be exempt from the West Dupont Circle Moratorium Zone.

307.4 All hotels, whether present or future, shall be exempt from the West Dupont Circle Moratorium Zone. The 1500 block of Connecticut Avenue, N.W., shall be exempt from the West Dupont Circle Moratorium Zone. Establishments located in, or to be located in, the New Hampshire side of One Dupont Circle, N.W., shall be exempt from the West Dupont Circle Moratorium Zone.

307.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class A, B, CR, CT, CX, DR, DT, or DX located within the West Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.

307.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the West Dupont Circle Moratorium Zone to a new location within the West Dupont Circle Moratorium Zone.

307.7 A CN/DN license holder outside the West Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the West Dupont Circle Moratorium Zone.

307.8 Subject to the limitation set forth in subsection 307.9, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.

307.9 No licensee in the West Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CN, or DN.

307.10 A current holder of a retailer's license Class A, B, C, or D within the West Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, unless:

(a) The prior owner or occupant has held within the last five (5) years a retailer's license Class A, B, C, or D; or

(b) The applicant is a Class CR or DR licensee and the prior owner or occupant has held during the last three (3) years, and continues to hold at the time of application, a valid restaurant license from the Department of Consumer and Regulatory Affairs.

307.11 The number of substantial change applications approved by the Board for expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot, as allowed under subsection 307.9, shall not exceed three (3) during the three (3) year period of the West Dupont Circle Moratorium Zone.

307.12 Nothing in this section shall prohibit holders of a retailer's license Class C or D from applying for outdoor seating in public space.

307.13 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

OFFICE OF THE CITY ADMINISTRATOR

NOTICE OF EMERGENCY RULEMAKING

The City Administrator, on behalf of the Mayor, and pursuant to the authority under the second paragraph of the section titled "FOR METROPOLITAN POLICE" of An Act Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred, and for other purposes, approved March 3, 1899 (30 Stat. 1057; D.C. Official Code § 5-129.02 (2019 Repl.)), and Mayor's Order 2015-36, dated January 9, 2015, hereby gives notice of the adoption of emergency amendments to Chapter 21 (Security Officers and Security Agencies) of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking amends 17 DCMR § 2100 (General Provisions) to modify license renewal requirements to extend all current licenses until ninety (90) days after the end of the public emergency and public health emergencies declared by Mayor Muriel Bowser on March 11, 2020.

This emergency rulemaking is necessary to protect the health, safety, and well-being of the District of Columbia as it responds to the COVID-19 global pandemic by eliminating the need for in-person license renewals at the Metropolitan Police Department which will reduce the likelihood of community transmission of COVID-19 to police officers, administrative staff, and special police officers.

This emergency rulemaking was adopted on March 19, 2020 to become effective March 19, 2020. This emergency rulemaking will remain in effect for up to one hundred twenty (120) days from the date of adoption, pursuant to Section 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), unless superseded by a further emergency or final rulemaking.

Chapter 21, SECURITY OFFICERS AND SECURITY AGENCIES, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is amended as follows:

Section 2100, GENERAL PROVISIONS, is amended as follows:

A new Section 2100.8 is added to read as follows:

2100.8 No license under this chapter shall expire until ninety (90) days after the end of the public and public health emergencies declared by Mayor's Orders 2020-45 and 2020-46, dated March 11, 2020, and during any extension of those emergencies.

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY 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 (2018 Repl.)), Mayor's Order 98-141, dated August 20, 1998, Mayor's Order 2020-045, dated March 11, 2020, Mayor's Order 2020-053 (effective March 24, 2020), and Mayor's Order 2020-054, dated March 30, 2020, 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).

The rulemaking requires individuals living in Washington, D.C., to stay at their place of residence, with certain exceptions, to reduce the community transmission of the novel coronavirus that causes COVID-19.

This emergency rulemaking is necessary to immediately implement efforts to reduce the spread of COVID-19. COVID-19 is easily transmitted, mainly from person-to-person, especially between people who are in close contact with one another (within about 6 feet). It is essential that the spread of COVID-19 be slowed to protect the ability of public and private health care providers to handle the influx of new patients and to safeguard public health, safety, and welfare of the persons living or otherwise present in the District of Columbia. The U.S. Centers for Disease Control and Prevention has recommended practicing social distancing - maintaining a distance of at least 6 feet from others to slow the spread of COVID-19. The World Health Organization has declared the COVID-19 outbreak as a pandemic. No specific treatment exists for COVID-19. A vaccination against COVID-19 does not exist. The death rate for COVID-19 is substantially higher than the death rate for influenza (which has a specific treatment and a vaccination). Because of the risk of the rapid spread of the virus, and the need to protect all persons of Washington, DC, and the region, especially residents most vulnerable to suffering prolonged illness or death from the virus, and local health care providers and first responders, the emergency rulemaking requires all individuals anywhere in Washington, DC, to stay in their residences, subject to the limited exceptions and under the terms and conditions more particularly set forth in the rulemaking.

This emergency rulemaking was adopted on March 31, 2020, and became effective immediately on that date. The emergency rulemaking will expire twenty-four (24) days from the date of adoption (*i.e.*, on April 24, 2020). If needed, an appropriate rulemaking will repeal the "Stay at Home" requirement imposed by this rulemaking if the spread of COVID-19 is contained prior to the expiration of this emergency rulemaking.

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

Chapter 2, COMMUNICABLE AND REPORTABLE DISEASES, is amended by adding Section 220 as follows:

220 ORDER TO STAY AT HOME

220.1 Notwithstanding any other rule, all individuals living in Washington, D.C., are ordered to stay at their place of residence, except as specified in these rules.

220.2 Individuals may leave their residences (including their porches and yards) only to engage in Essential Activities including obtaining medical care that cannot be provided through telehealth and obtaining food and essential household goods; to perform or access Essential Governmental Functions; to work at Essential Businesses; to engage in Essential Travel; or engage in Allowable Recreational Activities, as defined in Section 229 of these rules.

220.3 Individuals shall not linger in common areas of apartment buildings and shall not use buildings' facilities, such as gyms, party rooms, and lounges.

220.4 Leaving home for the purposes of engaging in Essential Business Activities or the Minimum Business Operations of businesses not deemed Essential in Mayor's Order 2020-053 is permissible, and persons are allowed to obtain and provide home-based services so long as the services do not involve physical touching and may be carried out in compliance with the Social Distancing Requirements, as defined in Section 229 of these rules.

220.5 When engaging in Essential Travel, the following requirements and restrictions shall apply:

(a) Individuals using public transportation to engage in Essential Travel must comply with the Social Distancing Requirements defined in Section 229 of these rules, to the greatest extent feasible.

(b) Drivers of ride-sharing vehicles may not have more than two (2) other persons not from the same household in their vehicle at any time.

220.6 Under any of the limited circumstances in which an individual is allowed to leave their residence under these rules, the individual shall comply with the Social Distancing Requirements defined herein, to the maximum extent possible.

220.7 Notwithstanding any other provision of these rules, an individual who is suspected or confirmed to be infected with COVID-19 or any other transmissible infectious disease shall not be outside their residence except as necessary to seek or receive medical care in accordance with guidance from public health officials or their health care provider.

220.8 **Enforcement**

Any individual or entity that willfully interferes with any person implementing an emergency executive order or public health emergency executive order issued by the Mayor or that violates the provisions of this regulation, shall be guilty of a misdemeanor and, upon conviction, shall be subject for each violation, to a fine not exceeding five thousand dollars ($5,000), imprisonment for not more than ninety (90) days, or both, consistent with the penalties set forth in D.C. Official Code § 7-140, notwithstanding the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code §§ 22-3571.01 *et seq.*).

229 [STAY AT HOME] DEFINITIONS

229.1 When used in this section, the following words and phrases shall have the meanings ascribed:

Allowable Recreational Activities means outdoor activity with household members that complies with Social Distancing Requirements, as defined herein, and includes the sanitizing of any equipment used both before and after the activity. Individuals from the same household engaging in allowable recreational activities need not comply with social distancing as to each other, but shall comply with social distancing as to all others. Outdoor activities should not be conducted with persons other than those from one's own household. Examples: Walking, hiking, running, dog-walking, biking, rollerblading, scootering, skateboarding, golfing, gardening, and other activities where all participants comply with Social Distancing Requirements and there is no person-to-person contact.

Essential Activities means:

(a) Engaging in an activity or performing a task essential to an individual's own health or safety, or to the health or safety of the individual's family or household members, including pets. Examples: Obtaining medical supplies or medication; visiting a health care professional; or obtaining supplies needed to work from home.

(b) Obtaining services or supplies for an individual's own self or the individual's family or household members; or delivering those services or supplies to others that are necessary to maintain the safety, sanitation, and operation of residences.

(c) Performing work providing essential products and services at an Essential Business or otherwise carrying out activities specifically permitted, including Minimum Basic Operations.

(d) Caring for a family member or pet in another household or serving as a caregiver providing essential services to another. Caregiving involves more than companionship or entertainment, but rather helps a person with activities of daily living, the supervision of children, or otherwise tends to

the immediate physical needs and safety of someone who cannot attend to those needs for him or herself.

(e) Providing or obtaining services at a Health Care Operation.

1. **Health Care Operation** includes hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other health care facilities, health care suppliers, home health care and assisted living services, mental health providers, or any related and/or ancillary health care services.

2. The term "Health Care Operation" also includes veterinary care and all health care services provided to animals.

3. This authorization shall be construed broadly to avoid any impacts to the delivery of health care, broadly defined.

4. The term "Health Care Operation" does not include fitness facilities, exercise gyms, spas, massage parlors, or other similar facilities.

(f) Providing any services or performing any work necessary to the operations and maintenance of Essential Infrastructure.

1. For purposes of these rules, the term "Essential Infrastructure" includes critical or emergency public works or utilities construction, construction, solid waste collection and removal by private and public entities, telecommunications services; provided, that an individual shall provide these services and perform this work in compliance with the Social Distancing Requirements as defined herein, to the extent possible.

2. Other infrastructure and construction activity may be allowable as an Essential Business as set out in subsequent int interpretive guidance made available on the Department of Health website available at https://dchealth.dc.gov/.

Essential Businesses are those defined in Mayor's Order 2020-053 and any additional businesses identified in subsequent interpretive guidance made available on coronavirus.dc.gov.

Essential Government Functions are those defined in Mayor's Order 2020- 053 and include all the tasks performed by persons designated essential or emergency personnel.

Essential Travel means:

(a) Travel related to the provision of, or access to, Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations, including travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions;

(b) Travel to care for elderly, minors, dependents, persons with disabilities, or other vulnerable persons;

(c) Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services;

(d) Travel to return to a place of residence from outside Washington, D.C.;

(e) Travel required by law enforcement or court order;

(f) Travel required for non-residents to return to their place of residence outside Washington, D.C.; and

(g) Travel within the Washington region to engage in allowable activities under that jurisdiction's laws.

Minimum Basic Operations means the following:

(a) The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, and related functions;

(b) The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences; and

(c) The minimum necessary activities to facilitate teleworking or the remote delivery of services formerly provided in-person by the business; to provide for the pay and benefits of the businesses' employees; to provide cleaning and disinfection of a business's facilities; or to provide employee supervision of contractors or employees providing essential maintenance of the facility.

Residences include homes and apartments, hotels, motels, shared rental units, and similar facilities.

Social Distancing Requirements means maintaining at least six (6)-foot social distancing from other individuals.

DEPARTMENT OF HEALTH

NOTICE OF SECOND EMERGENCY RULEMAKING

The Director of the Department of Health ("Department"), pursuant to the authority set forth in Section 5(a) of 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, § 44-504(a) (2012 Repl.)) ("Act"), and in accordance with Mayor's Order 98-137, dated August 20, 1998, hereby gives notice of the adoption, on an emergency basis, of the following new Chapter 99 (Home Support Agencies) of Title 22 (Health), Subtitle B (Public Health and Medicine), of the District of Columbia Municipal Regulations (DCMR).

As a result of investigating complaints and communicating with individuals, providers and relevant associations, the Department has determined there are not enough licensed providers of non-medical personal care services in the District to meet the current need. There are thousands of people in the District who require assistance with activities of daily living, such as dressing, eating, bathing and toileting.

The Director has been delegated the authority under Section 2(b) of the Act (D.C. Official Code § 44-501(b)) to determine the need for licensed facilities other than those already defined in the Act. The Director has determined that a new licensure category is required for home support facilities that only provide these non-medical health care services. These rules establish this category of facility and state the process and requirements for licensure. Among other things, the rules require home support agencies to ensure that aides are certified as home health aides, assess clients to determine whether they have needs beyond those that can be addressed by a home support agency, maintain sufficient personnel and supervision to deliver safe services, implement written client service policies to which the clients and the Department will have access, and report complaints to the Department.

The rules are issued on an emergency basis because they are necessary for the immediate preservation of the public health, safety, and welfare of the individuals currently receiving unlicensed personal care services. The rules will allow for the prompt licensure of home support agencies so that vulnerable residents will receive the quality assistance they need without suffering a break in service when the Department begins enforcement action against unqualified, unlicensed providers.

This emergency rule was adopted on November 25, 2019, and became effective on that date. It will expire on March 24, 2020. These rules are identical to the Notice of Emergency and Proposed Rulemaking published in the *D.C. Register* on November 1, 2019 at 66 DCR 14466, and adopted on July 24, 2019.

Title 22-B DCMR, PUBLIC HEALTH AND MEDICINE, is amended by adding a new Chapter 99, HOME SUPPORT AGENCIES, to read as follows:

CHAPTER 99 HOME SUPPORT AGENCIES

9900 GENERAL PROVISIONS

9900.1 These regulations are implemented pursuant to Sections 2(b) and 5 of the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983 ("Act"), effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501(b) and 44-504(a)).

9900.2 Each home support agency serving one or more clients in the District of Columbia shall be licensed and shall comply with the requirements in this chapter and, except as otherwise provided herein, with the regulations in Chapter 31 of Title 22-B of the District of Columbia Municipal Regulations ("DCMR"), which contains provisions on inspections, licensing and enforcement actions pertaining to facilities authorized under the Act.

9900.3 Each home support agency shall comply with all other applicable federal and District laws and regulations.

9901 OPERATING OFFICE

9901.1 Each home support agency shall maintain an operating office within the District of Columbia. This office shall be staffed at least eight (8) hours per business day.

9901.2 The business hours of the operating office shall be posted publicly so that they are visible from the outside of the office. The home support agency shall maintain a public website that provides, at a minimum, the home support agency's business hours, services provided, ownership information, key personnel, and contact information that includes a phone number and email address.

9901.3 A separate license shall be required for each operating office maintained by a home support agency.

9901.4 Each operating office shall either store at the office in paper form or have immediately available electronically the following records:

(a) Client records for all clients served within the District of Columbia;

(b) Personnel records for all employees;

(c) Home support agency policies and procedures;

(d) Incident reports and investigations; and

(e) Complaint reports and investigations.

9901.5 All other records and documents required under this chapter and other applicable laws and regulations that are not maintained within the operating office shall be produced for inspection within two (2) hours after a request by the Department, or within a shorter time if the Department so specifies.

9901.6 Each home support agency shall post its license in a conspicuous place within the operating office.

9901.7 Prior to any change in office location, a home support agency shall:

(a) Notify the Department in writing at least sixty (60) days prior to the change;

(b) Provide the following documentation to the Department:

(1) The new address;

(2) A copy of the lease agreement for the new office location, if applicable;

(3) A certificate of insurance reflecting the new address;

(4) A certificate of occupancy reflecting the new address;

(5) A Clean Hands certificate in accordance with the D.C. Official Code §§ 47-2861 *et seq.*; and

(6) A Certificate of Good Standing for a corporation to be obtained from the Office of the Registrar of Corporations at the Department of Consumer and Regulatory Affairs; and

(c) Notify clients and staff in writing at least thirty (30) days prior to the change.

9901.8 The operating office shall be open to employees, clients, client representatives, and prospective clients and their representatives during business hours.

9902 APPLICATION FOR LICENSURE

9902.1 Applications for licensure shall be processed in accordance with this section and Chapter 31 of Title 22-B DCMR.

9902.2 The submission of an application does not guarantee that the Department will issue a license.

9902.3 Applicants for licensure shall submit the following information to the Department as part of the application:

(a) The names, addresses, and types of all entities owned or managed by the applicant;

(b) A copy of the applicant's operating policies and procedures manual for the home support agency;

(c) The identity of each officer and director of the corporation, if the entity is organized as a corporation, including name, address, phone number, and email;

(d) A copy of the Articles of Incorporation and Bylaws, if the entity is organized as a corporation;

(e) A copy of the Partnership Agreement and the identity of each partner if the entity is organized as a partnership, including name, address, phone, number, and email;

(f) A copy of the Articles of Formation and Operating Agreement, if the entity is organized as a limited liability company;

(g) The identity of the members of the governing body, including name, address, phone number, and email;

(h) The identity of any officers, directors, partners, managing members or members of the governing body who have a financial interest of five percent (5%) or more in an applicant's operation or related businesses, including name, address, phone number, and email;

(i) Disclosure of whether any officer, director, partner, employee, or member of the governing body has a felony criminal record;

(j) The name of the Director who is responsible for the management of the home support agency and the name of the Client Service Coordinator, if applicable;

(k) A list of management personnel, including their credentials; and

(l) Any other information required by the Department.

9902.4 Each applicant shall be responsible for submitting a complete application, including all information required pursuant to § 9902.3. The Department reserves the right to return an incomplete application to the applicant: The return of an incomplete application to the applicant shall not be considered a denial of the application.

9902.5 If the Department returns the application with identified deficiencies:

(a) The applicant shall have thirty (30) days to correct the identified deficiencies and return the application to the Department; and

(b) If the applicant resubmits the application to the Department and has not corrected all the deficiencies, the application shall be deemed incomplete and returned the applicant. The applicant shall have the option of filing a new application along with a new processing fee.

9902.6 As part of its review of a home support agency's application, the Department shall conduct an on-site walk through of the business location to verify the that the office is capable of operating.

9903 LICENSURE

9903.1 At the beginning of a home support agency's license year, the Department shall issue a provisional license for a period of ninety (90) days to each home support agency that has completed the application process consistent with these regulations, has passed the on-site walk through by the Department, and whose policies and

procedures demonstrate compliance with the rules and regulations pertaining to home support agency licensure.

9903.2 A provisional license shall permit a home support agency to hire staff and establish a client caseload;

9903.3 To be eligible for a permanent license, the home support agency shall:

(a) Obtain and demonstrate that the home support agency has a client census equal to or greater than five (5) clients by the end of the ninety (90) day provisional license period;

(b) Notify the Department that is has a client census of at least five (5) clients;

(c) Complete an on-site survey during the provisional license period, provided they have a demonstrated client census of five (5) or more clients; and

(d) Demonstrate during the on-site survey, that it meets the definition of a home support agency in these regulations, complies with these regulations, and is in operation and caring for clients.

9903.4 The Department may, at its discretion, renew a provisional license for up to an additional ninety (90) days in order for the licensee to meet the definition of a home support agency, have a demonstrated client census of five (5) or more clients, and come into substantial compliance with these regulations:

(a) The Department shall designate the conditions and the time period for the renewal of a provisional license;

(b) An initial provisional license issued to a home support agency that is not in substantial compliance with these regulations following an on-site survey by the Department shall not be renewed unless the Department approves a corrective action plan for the home support agency; and

(c) If a home support agency is not in substantial compliance with these regulations after two (2) provisional license periods, the home support agency shall be denied a permanent license.

9903.5 The Department shall grant a permanent license for a period of twelve (12) months, including the provisional license period, to a home support agency that the Department has determined meets the definition of a home support agency, complies with these regulations, and has a demonstrated client census of five (5) or more clients.

9903.6 An existing licensed home support agency shall apply for renewal of its license at least ninety (90) days prior to its expiration.

9903.7 A renewal license shall not be issued to a home support agency that at the time of renewal:

(a) Does not meet the definition of a home support agency as contained within these regulations;

(b) Is not in substantial compliance with these regulations as determined by the Department;

(c) Does not have a demonstrated client census of five (5) or more clients; or

(d) Has one or more deficient practice which presents an immediate threat to the health and safety of its clients.

9903.8 A home support agency that undergoes a modification of ownership or control is required to re-apply for licensure as a new home support agency.

9903.9 The Department shall issue each license only for the premises and the person or persons named as applicant(s) in the license application. The license shall not be valid for use by any other person or at any place other than that designated in the license. Any transfer of the home support agency to a new person or place without the approval of the Department shall result in the immediate forfeiture of the license.

9903.10 A home support agency licensed pursuant to this chapter shall not use the word "health" in its title.

9904 LICENSE FEES

9904.1 License fees for home support agencies shall be based upon a census of clients served in the District of Columbia at the time of applying for the issuance or renewal of a license. The fees shall be as follows:

(a)	Initial Application Processing Fee	$1200
(b)	License Fee	$400
(c)	1 – 50 Clients Annual Renewal Processing Fee	$800
(d)	51 – 150 Clients Annual Renewal Processing Fee	$1400
(e)	151 – 350 Clients Annual Renewal Processing Fee	$2200

(f)	351 or more Clients Annual Renewal Processing Fee	$2600
(g)	Duplicate of License	$100
(h)	Late Fee for Renewal Application	$100

9905 INSURANCE

9905.1 Each home support agency shall maintain the following minimum amounts of insurance coverage:

(a) Blanket malpractice insurance for all professional employees in the amount of at least one million dollars ($1,000,000) per incident; and

(b) Comprehensive general liability insurance covering personal property damages, bodily injury, libel and slander in the amount of at least one million dollars ($1,000,000) per incident or occurrence and two million dollars ($2,000,000) aggregate.

9906 GOVERNING BODY

9906.1 Each home support agency shall have a governing body that shall be responsible for the operation of the home support agency.

9906.2 The governing body shall:

(a) Establish and adopt by-laws, policies, and procedures governing the operation of the home support agency;

(b) Designate a full-time Director who is qualified in accordance with Section 9907 of this chapter;

(c) Review and evaluate, on an annual basis, all policies and procedures governing the operation of the home support agency to ensure that services promote client care that is appropriate, adequate, effective and efficient. This review and evaluation shall include the following:

(1) A review of feedback from a representative sample consisting of either ten percent (10%) of total District of Columbia clients or forty (40) District of Columbia clients, whichever is less, regarding services provided to those clients; and

(2) A review of all complaints and incidents involving the home support agency, including the nature of each complaint or incident, the home support agency's response, and the resolution;

(d) A written report of the results of the evaluation shall be prepared and shall include recommendations for modifications of the home support agency's overall policies or practices, if appropriate; and

(e) The evaluation report shall be acted upon by the governing body at least annually. The results of the action taken by the governing body shall be documented, maintained, and available for review by the Department.

9907 DIRECTOR

9907.1 The Director shall be responsible for managing and directing the home support agency's operations, serving as a liaison between the governing body and staff, employing qualified personnel, and ensuring that staff members are adequately and appropriately trained.

9907.2 The Director shall be available at all times during the business hours of the home support agency.

9907.3 The Director shall designate, in writing, a similarly qualified person to act in the absence of the Director.

9907.4 The home support agency shall advise the Department in writing within fifteen (15) days following any change in the designation of the Director.

9907.5 The Director shall:

(a) Be a registered nurse licensed in the District of Columbia; or

(b) Have training and experience in health services administration, including at least one (1) year of supervisory or administrative experience in health services or related health programs.

9907.6 If the Director is not a registered nurse, the home support agency shall also have a full-time Client Service Coordinator appointed by the Director who is a registered nurse licensed in the District of Columbia.

9907.7 The Client Service Coordinator, or the Director if the Director is a registered nurse, shall:

(a) Be responsible for implementing, coordinating and assuring the quality of client services;

(b) Be available at all times during the business hours of the home support agency;

(c) Participate in all aspects of services provided, including the development of clients' service plans and the assignment of qualified personnel; and

(d) Provide general supervision and direction of the services offered by the home support agency.

9907.8 The Director, Client Service Coordinator, or an individual designated by the Director in writing, must be on-call outside of the home support agency's business hours.

9908 POLICIES AND PROCEDURES

9908.1 Each home support agency shall develop and implement written operational policies and procedures that govern the day-to-day operations of the home support agency. These policies and procedures shall be approved by the governing body and shall be available for review by the Department.

9908.2 The home support agency's written policies and procedures shall govern the following topics, at a minimum:

(a) Personnel;

(b) Admission and denials of admission;

(c) Discharges and referrals;

(d) Coordination of services;

(e) Records retention and disposal;

(f) Client rights and responsibilities;

(g) Complaint process;

(h) Each service offered;

(i) Billing for services;

(j) Supervision of services;

(k) Infection control; and

(l) Management of incidents.

9908.3 Staff shall be oriented towards the written policies and procedures. The written policies and procedures shall be readily available for use by staff at all times.

9908.4 Written policies and procedures shall be available to clients, prospective clients, and client representatives, upon request.

9909 PERSONNEL

9909.1 Each home support agency shall have written personnel policies that shall be available to each staff member and shall include the following:

(a) The terms and conditions of employment, including but not limited to wage scales, hours of work, personal and medical leave, insurance, and benefits;

(b) Provisions for an annual evaluation of each employee's performance by appropriate supervisors;

(c) Provisions pertaining to probationary periods, promotions, disciplinary actions, termination and grievance procedures;

(d) A position description for each category of employee; and

(e) Provisions for orientation, periodic training or continuing education, and periodic competency evaluation.

9909.2 Each home support agency shall maintain accurate personnel records, which shall include the following information for each employee:

(a) Name, address and social security number;

(b) Current professional license, registration, or certification, if any;

(c) Resume of education, training certificates, skills checklist, and prior employment, and evidence of attendance at orientation and in-service training, workshops or seminars;

(d) Documentation of current CPR certification, if required;

(e) Health certification as required by Section 9909.7 of this chapter;

(f) Verification of previous employment;

(g) Documentation of reference checks;

(h) Copies of completed annual evaluations;

(i) Documentation of any required criminal background check;

(j) Documentation of all personnel actions;

(k) A position description signed by the employee;

(l) Results of any competency testing;

(m) Documentation of acceptance or declination of the Hepatitis Vaccine; and

(n) Documentation of insurance, if applicable.

9909.3 Each home support agency shall comply with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*), for its employees who are not licensed, certified or registered in accordance with the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*) ("HORA"), and shall ensure that employees who are licensed, registered, or certified in accordance with the HORA are in compliance with the criminal background check requirements of D.C. Official Code § 3-1205.22.

9909.4 Each home support agency shall maintain its personnel records for all personnel serving clients within the District of Columbia in its operating office in paper form or have these records immediately available electronically.

9909.5 Each employee shall have a right to review his or her personnel records.

9909.6 At the time of initial employment, the home support agency shall verify that the employee, within the six months immediately preceding the date of hire, has been screened for and is free of all communicable diseases.

9909.7 Each employee shall be screened for communicable diseases according to the guidelines issued by the federal Centers for Disease Control and Prevention, and shall be certified free of communicable diseases.

9909.8 No employee may provide personal care services, and no home support agency may knowingly permit an employee to provide personal care services, if the employee:

(a) Is under the influence of alcohol, any mind-altering drug or combination thereof; or

(b) Has a communicable disease which poses a confirmed health risk to clients.

9909.9 Each employee who is required to be licensed, certified or registered to provide services in the District of Columbia shall be licensed, certified or registered under the laws and rules of the District of Columbia.

9909.10 Each home support agency shall document the professional qualifications of each employee to ensure that the applicable licenses, certifications, accreditations or registrations are valid.

9909.11 Each home support agency shall ensure that each employee presents a valid home support agency identification prior to entering the home of a client.

9910 ADMISSIONS

9910.1 Each home support agency shall develop and implement written policies on admissions, which shall include, at a minimum, the following:

(a) Admission criteria and procedures;

(b) A description of the services provided;

(c) The amount charged for each service;

(d) Policies governing fees, payments and refunds;

(e) Execution and location of client advance directives (living will and durable power of attorney for health care), as applicable;

(f) Execution and location of client Medical Orders for Scope of Treatment ("MOST"), as applicable;

(g) Communication with the client representative, if applicable;

(h) Client service agreements; and

(i) Client consent for interagency sharing of information.

9910.2 A written summary of the home support agency's admissions policies, including all of the items specified at Subsection 9909.1 of this chapter, shall be made available to each prospective client upon request, and shall be given to each client upon admission.

9910.3 The home support agency shall only admit those individuals whose needs can be met by the home support agency.

9910.4 Each home support agency shall conduct an initial assessment by a registered nurse to ensure that the client does not require services outside of the scope of personal

care services. The assessment shall include a home visit and a review of information provided by the prospective client or the client representative and any other pertinent data and shall take place prior to the time that personal care services are initially provided to the client. The assessment must determine whether the home support agency has the ability to provide the necessary services in a safe and consistent manner.

9910.5 The home support agency shall notify each individual requesting services from the home support agency of the availability or unavailability of service, and the reason(s) therefor, within forty-eight (48) hours after the referral or request for services.

9910.6 A home support agency shall maintain records on each person requesting services whose request is not accepted. The records shall be maintained for at least one (1) year from the date of non-acceptance and shall include the nature of the request for services and the reasons for not accepting the client.

9911 CLIENT SERVICE AGREEMENT

9911.1 There shall be a written service agreement between each client and the home support agency. The agreement shall:

(a) Specify the services to be provided by the home support agency, including but not limited to:

(1) Frequency of visits including scheduled days and hours;

(2) Accompaniment and/or transportation agreements as appropriate;

(3) Procedures for emergency medical response; and

(4) Conditions for discharge and appeal;

(b) Specify the procedure to be followed when the home support agency is not able to keep a scheduled client visit;

(c) Specify financial arrangements, which shall minimally include:

(1) A description of services purchased and the associated cost;

(2) An acceptable method of payment(s) for services;

(3) An outline of the billing procedures, including any required deposits, if applicable;

(4) A requirement that all payments by the client for services rendered shall be made directly to the home support agency or its billing representative and no payments shall be made to or in the name of individual employees of the home support agency; and

(5) The home support agency's policies for non-payment;

(d) Identify the client representative, if applicable;

(e) Specify the home support agency's emergency contact information during both business and non-business hours;

(f) Specify the number for the Department of Health's Complaint Hotline;

(g) Be signed by the client or client representative, if applicable, and the representative of the home support agency prior to the initiation of services;

(h) Be given to the client or client representative, if applicable, and a copy shall be kept in the client record; and

(i) Be reviewed and updated as necessary to reflect any change in the services or the financial arrangements.

9912 DISCHARGES, TRANSFERS, AND REFERRALS

9912.1 Each home support agency shall develop and implement written policies that describe discharge, transfer, and referral criteria and procedures, including timeframe for discharge, transfer, or referral if a need for services beyond personal care services is identified.

9912.2 Each client shall receive written notice of discharge or referral no less than seven (7) days prior to the action. The seven (7) day written notice shall not be required, and oral notice may be given at any time, if the transfer, referral or discharge is the result of:

(a) A medical or social emergency;

(b) A physician's order to admit the client to an in-patient facility;

(c) A determination by the home support agency that the referral or discharge is necessary to protect the health, safety, or welfare of the home support agency's staff; or

(d) The refusal of further services by the client or the client representative.

9912.3 Each home support agency shall document activities related to discharge, transfer, or referral planning for each client in the client's record.

9913 CLIENT SERVICE PLAN

9913.1 The home support agency shall provide services in accordance with a written client service plan in agreement with the client or client representative, if applicable.

9913.2 A registered nurse shall develop a service plan on admission based upon the initial assessment of the client and in accordance with Section 9917.4.

9913.3 The service plan shall include at least the following:

(a) The scope and types of services, frequency and duration of services to be provided, including any diet, equipment, and transportation required;

(b) Parameters related to services provided pursuant to Subsection 9917.4(e)-(f) of this chapter;

(c) Functional limitations of the client;

(d) Activities permitted; and

(e) Safety measures required to protect the client from injury.

9913.4 A registered nurse shall review and evaluate the service plan at least every ninety (90) days.

9913.5 A copy of the service plan shall be available to the client or client representative upon request.

9913.6 The personnel assigned to each client shall be oriented to the service plan.

9914 CLIENT RECORDS

9914.1 Each home support agency shall establish and maintain a complete and accurate client record of the services provided to each client in accordance with this chapter and accepted professional standards and practices.

9914.2 Each client record shall include the following information related to the client:

(a) Admission data, including name, address, date of service inquiry, date of birth, sex, next of kin, name and contact information of the client representative (if applicable), date accepted by the home support agency to receive services, and source of payment;

(b) Source of referral;

(c) Initial assessment and on-going evaluation;

(d) Signed client services agreement;

(e) Advance directives (living will and durable power of attorney for health care), if applicable;

(f) General Power of Attorney or Guardianship, if applicable;

(g) MOST, if applicable;

(h) Service plan;

(i) History of sensitivities and allergies;

(j) Medication list;

(k) Service delivery notes signed and dated as appropriate by staff;

(l) Documentation of supervision of personal care services;

(m) Documentation of discharge planning, if appropriate;

(n) Discharge summary, including the reason for termination of services and the effective date of discharge;

(o) Documentation of coordination of services, if applicable;

(p) Communications between the home support agency and all health care professionals involved in the client's care; and

(q) Documentation of training and education given to the client and the client's caregivers.

9915 RECORDS RETENTION AND DISPOSAL

9915.1 Each home support agency shall maintain a records system that shall include the following:

(a) Written policies that provide for the protection, confidentiality, retention, storage, and maintenance of home support agency records; and

(b) Written procedures that address the transfer or disposition of home support agency records in the event of dissolution of the home support agency.

9915.2 If a home support agency is dissolved and there is no identified new owner, the home support agency records shall be retained either electronically or in paper form so as to be retrievable upon request by the client or the client representative for a period of five (5) years following the date of dissolution. The records shall be produced to the client or client representative within thirty (30) days of receipt of a request and at no cost to the client or the client representative.

9915.3 Each home support agency shall inform the Department and each client in writing, within thirty (30) days of dissolution of the home support agency, of the location of the client records and how each client may obtain his or her records.

9915.4 A home support agency shall maintain client records for at least five (5) years after the date of discharge of the client.

9915.5 A home support agency shall maintain records of complaints and incidents for a minimum of five (5) years.

9915.6 A home support agency shall maintain the personnel records of each staff member for at least five (5) years after the date of termination or separation.

9915.7 Department authorities shall have access to home support agency records at all times.

9916 CLIENT RIGHTS AND RESPONSIBILITIES

9916.1 Each home support agency shall develop a written statement of client rights and responsibilities that shall be given, upon admission, to each client who receives personal care services or the client representative, if applicable.

9916.2 Each home support agency shall develop policies to ensure that each client who receives personal care services has the following rights:

(a) To be treated with courtesy, dignity, and respect;

(b) To control his or her own household and lifestyle;

(c) To be informed orally and in writing of the following:

(1) Services to be provided by the home support agency, including any limits on service availability;

(2) The amount charged for each service, and procedures for billing and non-payment;

(3) Prompt notification of acceptance, denial or reduction of services;

(4) Complaint process; and

(5) The telephone number of the Complaint Hotline maintained by the Department;

(d) To receive services consistent with the service agreement and with the client's service plan;

(e) To participate in the planning and implementation of his or her personal care services;

(f) To receive services by competent personnel who can communicate with the client;

(g) To refuse all or part of any service and to be informed of the consequences of refusal;

(h) To be free from mental and physical abuse, neglect, and exploitation by home support agency employees;

(i) To be assured confidential handling of client records as provided by law;

(j) To be educated about and trained in matters related to the services to be provided;

(k) To voice a complaint or other feedback to the Department or the home support agency in confidence and without fear of reprisal from the home support agency or any home support agency personnel, in writing or orally, including an in-person conference if desired, and to receive a timely response to a complaint as provided in these rules; and

(l) To have access to his or her own client records.

9916.3 Each home support agency shall inform all clients that they have the right to make complaints and to provide feedback concerning the services rendered by the home support agency to the Department, in confidence and without fear of reprisal from the home support agency or any home support agency personnel, in writing or orally, including an in person conference if desired.

9916.4 Each home support agency shall develop a statement of client responsibilities regarding the following:

(a) Treating home support agency personnel with respect and dignity;

(b) Providing accurate information when requested;

(c) Informing the home support agency when instructions are not understood or cannot be followed;

(d) Cooperating in making a safe environment for care within the home; and

(e) Providing prompt payment for services.

9916.5 Written policies on client rights and responsibilities shall be made available to the general public.

9916.6 The home support agency shall take appropriate steps to ensure that all information is conveyed, pursuant to these rules, to any client who cannot read or who otherwise needs accommodations in an alternative language or communication method. The home support agency shall document in the client's records the steps taken to ensure that the client has been provided effectively with all required information.

9917 MANAGEMENT OF COMPLAINTS AND INCIDENTS

9917.1 Each home support agency shall develop and implement policies and procedures for receiving, processing, documenting, and investigating complaints and incidents.

9917.2 A complaint may be presented to the home support agency orally or in writing.

9917.3 A written summary of the complaint process shall be given to the client or client representative upon acceptance or denial of services.

9917.4 The telephone number of the Complaint Hotline maintained by the Department shall be posted in the home support agency's operating office in a place where it is visible to all staff and visitors.

9917.5 Each home support agency shall respond to each complaint received by it within fourteen (14) days of receipt, shall investigate the complaint as soon as reasonably possible, and shall, upon completion of the investigation, provide the complainant with the results of the investigation.

9917.6 If the client indicates that he or she is not satisfied with the response, the home support agency shall respond in writing within thirty (30) days from the client's expression of dissatisfaction. The response shall include the telephone number and address of all District government agencies with which a complaint may be filed and the telephone number of the Complaint Hotline maintained by the Department.

9917.7 The home support agency shall report all incidents involving a client occurring in the presence of staff to the Department within forty-eight (48) hours in addition to other reporting requirements prescribed by law.

9917.8 The home support agency shall investigate all incidents. The home support agency shall forward a complete investigation report to the Department within thirty (30) days of the occurrence or of the date that the home support agency first became aware of the incident.

9917.9 Each home support agency shall develop and implement a system of documenting complaints and incidents, which shall reflect all complaint, incident, and investigative activity for each year, and which shall include, for each complaint or incident:

(a) The name, address and phone number of the complainant or client involved in the incident, if known;

(b) If the complaint is anonymous, a statement so indicating;

(c) The date on which the complaint is received or the incident occurred;

(d) A description of the complaint or incident, including the names of any staff involved;

(e) The date on which the investigation is completed;

(f) Whether the complaint is substantiated; and

(g) Any subsequent action taken as a result of the complaint or incident, and the date on which the action was taken.

9917.10 Each home support agency shall report any action taken by, or any condition affecting the fitness to practice of, a registered nurse or home health aide that might be grounds for enforcement or disciplinary action under HORA or Home Health Aide Regulations of Chapter 93 of Title 17 of the District of Columbia Municipal Regulations to the Department within five (5) business days of the home support agency's receipt of the relevant information.

9917.11 The Department may receive and investigate a complaint alleging violation of any provision of this chapter and may investigate any incident.

9917.12 Based on a licensee's or applicant's violation of any provision of this chapter, the Department may initiate an enforcement action which may include license denial, license suspension, license summary suspension, or license revocation.

9917.13 As an alternative to denial, suspension, or revocation of a license when a home support agency has numerous deficiencies or a serious single deficiency with respect to the standards established under this chapter, the Director may:

(a) Issue a provisional license if the home support agency is taking appropriate ameliorative action in accordance with a mutually agreed upon timetable; or

(b) Issue a restricted license that prohibits the home support agency from accepting new clients or delivering certain specified services that it would otherwise be authorized to deliver, if appropriate ameliorative action is not forthcoming.

9917.14 A provisional or restricted issued under this section may be granted for a period not exceeding ninety (90) days, and may be renewed no more than once.

9917.15 When a provisional or restricted license has expired the Department may choose to initiate enforcement action in accordance with this section.

9918 PERSONAL CARE SERVICES

9918.1 A home support agency may offer personal care services and shall employ qualified home health aides pursuant to 17 DCMR §§ 9300 *et seq* to perform those services.

9918.2 Each home health aide shall be supervised by a registered nurse. On-site supervision of personal care services shall take place at least once every ninety (90) days.

9918.3 The home support agency shall have an adequate number of registered nurses to supervise the implementation of personal care services.

9918.4 Personal care services may include the following:

(a) Basic personal care including bathing, grooming, dressing, and assistance with toileting;

(b) Assisting with incontinence, including bed pan use, changing urinary drainage bags, protective underwear, and monitoring urine input and output;

(c) Assisting the client with transfer, ambulation, and exercise as prescribed;

(d) Assisting the client with self-administration of medication;

(e) Reading and recording temperature, pulse, and respiration;

(f) Measuring and recording blood pressure, height, and weight;

(g) Observing, recording, and reporting the client's physical condition, behavior, or appearance;

(h) Meal preparation in accordance with dietary guidelines, and assistance with eating;

(i) Implementation of universal precautions to ensure infection control;

(j) Tasks related to keeping the client's living area in a condition that promotes the client's health and comfort;

(k) Accompanying or transporting the client to medical and medically-related appointments, to the client's place of employment, and to recreational activities;

(l) Assisting the client at his or her place of employment;

(m) Shopping for items related to promoting the client's nutritional status and other health needs; and

(n) Providing companion services.

9919 COORDINATION OF SERVICES

9919.1 A home support agency shall develop and implement policies and procedures relating to:

(a) The delineation of services provided by the home support agency when the home support agency coordinates services within the home support agency or with another provider; and

(b) Notification to the client or client representative of the home support agency's responsibilities to coordinate services when appropriate.

9919.2 Personnel providing services shall communicate with each other to assure their efforts effectively complement one another and support the objectives outlined in the client service plan.

9919.3 The client record or minutes of case conferences shall establish that effective interchange, reporting, and coordinated client evaluation and planning occurs.

9999 DEFINITIONS

9999.1 For the purposes of this chapter, the following terms shall have the meanings ascribed below:

Admission - A home support agency's acceptance of client to provide personal care services.

Business day - Monday through Friday between the hours of 8:00am and 6:00pm, excluding public holidays.

Business hours - The hours during the day in which business operations are commonly conducted in the operating office by the licensee.

Client - The individual receiving home support agency services as defined in this chapter.

Client record - A written account of all services provided to a client by the home support agency, as well as other pertinent information necessary to provide care.

Client representative - A person designated in writing by the client in the service agreement or a person acting in a representative capacity under a durable power of attorney, durable power of attorney for health care, or guardianship pursuant to District law, or other legal representative arrangement.

Client Service Coordinator - A registered nurse who is sufficiently qualified to provide general supervision and direction of the services offered by the home support agency and who has at least one (1) year administrative or supervisory experience in personal care, home health care, or related health programs.

Client service plan - A written plan developed by the registered nurse in agreement with the client or client representative, if applicable, that specifies the tasks that are to be performed by the aide primarily in the client's residence. The written plan specifies scope, frequency, and duration of services.

Companion services - Non-healthcare related services, such as cooking, housekeeping, errands, and social interaction.

Complaint - Any occurrence or grievance reported by a client or client representative related to the nature of the services provided by the home support agency.

Department - The District of Columbia Department of Health.

Director - The individual appointed by the governing body to act on its behalf in the overall management of the home support agency.

Full-time - Employment period by the home support agency, at minimum, during each of the home support agency's established business days.

Governing body - The individual, partnership, group, or corporation designated to assume full legal responsibility for the policy determination, management, operation, and financial liability of the home support agency.

Home health aide - A person who performs home health and personal care services, and who is qualified to perform such services pursuant to Chapter 93 of Title 17 of the District of Columbia Municipal Regulations.

Home support agency - An entity licensed in accordance with this chapter that employs home health aides to provide personal care services to clients.

Incident - Any occurrence that results in significant harm, or the potential for significant harm, to a client's health, welfare, or well-being. Incidents include an accident resulting in significant injury to a client, death, misappropriation of a client's property or funds, or an occurrence requiring or resulting in intervention from law enforcement or emergency response personnel.

License - Formal permission granted by the Department to act as a home support agency in accordance with law.

Licensee - The individual or entity to whom the Department has granted formal permission to act as a home support agency in accordance with law.

Modification of ownership and control - The sale, purchase, transfer or re-organization of ownership rights.

Medical Orders for Scope of Treatment (MOST) Form - A set of portable, medical orders on a form issued by the Department that results from a client's or a client representative's informed decision-making with a health care professional pursuant to D.C Official Code §§ 21-2221 *et seq*.

Operating Office - The physical location at which the business of the home support agency is conducted and at which the records of personnel, clients, incidents, and complaints of the home support agency are stored either electronically or physically.

Personal care services - Services that are limited to individual assistance with or supervision of activities of daily living, companion services, homemaker services, reporting changes in client's condition, and completing reports. Personal care services do not include skilled services.

Registered nurse - An individual who is currently licensed to practice nursing under the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq*.)

Service delivery notes - Documentation of the duties or tasks completed per shift by a home health aide, nursing supervision, and any other pertinent information related to the provision of services.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC DEVELOPMENT

NOTICE OF EMERGENCY RULEMAKING

The Deputy Mayor for Planning and Economic Development (Deputy Mayor), pursuant to the authority set forth in § 2316 of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective March 17, 2020 (D.C. Act 23-0247; 67 DCR 3093 (March 20, 2020)), Mayor's Order 2020-045, dated March 11, 2020, Mayor's Order 2020-046, dated March 11, 2020, and Mayor's Order 2020-052, dated March 23, 2020, hereby gives notice of the adoption, on an emergency basis, of the following amendment to Chapter 8 (Local, Small, and Disadvantaged Business Contracting) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR).

The world is facing an unprecedented global health crisis. COVID-19 is a highly contagious communicable disease. Presently, there is neither a vaccine to protect against nor a medical treatment combat COVID-19. To slow the spread of the virus in the District of Columbia, public health measures are necessary to protect District residents and persons who work and visit the city. As such, Mayor Muriel Bowser issued Mayor's Orders 2020-045 and 2020-046 to declare both a Public Emergency and a Public Health Emergency.

On March 17, 2020, the Council of the District of Columbia passed the COVID-19 Response Emergency Amendment Act of 2020 (D.C. Act 23-0247). This legislation provides, on an emergency basis, additional authority to the Executive to address critical needs of District residents and businesses during the current public health emergency. This includes a new Public Health Emergency Small Business Grant Program to be administered by the Deputy Mayor.

The Deputy Mayor believes that emergency rules are needed to support the Public Health Emergency Small Business Grant Program, to ensure that eligible small businesses receive desperately needed assistance on an expedited basis.

The Deputy Mayor finds the adoption of these emergency rules to be essential to supporting our local businesses during the current state of emergency. Therefore, the Deputy Mayor gives notice that on March 23, 2020, it has adopted the Public Health Emergency Small Business Grant Program Emergency Rulemaking, to take effect immediately.

The emergency rulemaking shall remain in effect for the duration of the Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days, unless superseded.

Chapter 8, LOCAL, SMALL, AND DISADVANTAGED BUSINESS CONTRACTING, of Title 27, CONTRACTS AND PROCUREMENT, is amended as follows:

A new Section 853, entitled PUBLIC HEALTH EMERGENCY SMALL BUSINESS GRANT PROGRAM, is added to read as follows:

853 PUBLIC HEALTH EMERGENCY SMALL BUSINESS GRANT PROGRAM

853.1 The Deputy Mayor for Planning and Economic Development ("DMPED") may modify or waive the conditions to making grants or subgrants under the Citywide Grants Manual and or the DMPED Grants Manual for the purpose of issuing grants pursuant to the Public Health Emergency Small Business Grant Program ("**Grant Program")** established pursuant to Section 2316 of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective March 17, 2020 (D.C. Act 23-0247) and Mayor's Order 2020-052, dated March 23, 2020.

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. 774; 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 104 (Cost-Based Medicaid Reimbursement to Eligible Providers of Emergency Medical Ground Transportation Services) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

DHCF is proposing to establish a cost-based reimbursement methodology for eligible governmental emergency medical ground transportation providers participating in the District of Columbia Medicaid Program. DHCF first published notice of the proposed methodology in the March 29, 2019 issue of the *D.C. Register* at 66 DCR 003925. This rulemaking provides additional detail regarding the methodology, which will allow eligible providers to receive cost-based reimbursement on the later of either April 1, 2019 or the effective date established by the Centers for Medicaid and Medicaid Services following approval of the corresponding State Plan Amendment.

Under this new methodology, eligible providers will be able to receive annual payments for allowable costs in excess of total Medicaid fee-for-service payments. Under the prior fee schedule methodology, providers were experiencing shortfalls in payments for the costs associated with providing emergency services to Medicaid beneficiaries. This proposed methodology ensures eligible providers will be reimbursed for the actual allowable costs associated with providing services to Medicaid beneficiaries. The estimated aggregate fiscal impact of the new reimbursement methodology is an increase of $ 975,000 in fiscal year (FY) 2019 and an increase of $ 1,950,000 in FY 2020.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of beneficiaries who use emergency transportation services. Current shortfalls in reimbursement threaten the viability of emergency services provided to District Medicaid beneficiaries. Any delay in implementation of this new cost-based reimbursement methodology could threaten emergency transport providers' capacity to provide life-saving services to Medicaid beneficiaries.

These emergency rules were adopted on March 24, 2020 and shall be effective for services delivered on or after the effective date established in the corresponding SPA. The emergency and proposed rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until July 22, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

Chapter 104, MEDICAID REIMBURSEMENT TO ELIGIBLE PROVIDERS OF EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES, of Title 29 DCMR, PUBLIC WELFARE, is added to read as follows:

CHAPTER 104 MEDICAID REIMBURSEMENT TO ELIGIBLE PROVIDERS OF EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES

10400 GENERAL PROVISIONS

10400.1 The purpose of this chapter is to establish principles of reimbursement for eligible providers of emergency medical ground transportation services participating in the District of Columbia Medicaid program.

10400.2 Medicaid reimbursement to eligible providers of emergency medical ground transportation services shall be consistent with the requirements of the cost-based reimbursement methodology set forth in this chapter.

10400.3 In order to receive Medicaid reimbursement, an eligible provider shall enter into a provider agreement with the Department of Health Care Finance (DHCF) for the provision of emergency medical ground transportation services and comply with the screening and enrollment requirements set forth in Chapter 94 (Medicaid Provider and Supplier Screening, Enrollment, and Termination) of Title 29 of the District of Columbia Municipal Regulations (DCMR).

10400.4 Emergency medical ground transportation services shall be provided in accordance with the licensure, certification, and service delivery requirements set forth in Chapter 5 (Emergency Medical Services) of Title 29 DCMR.

10401 COST-BASED REIMBURSEMENT OF DISTRICT EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICES

10401.1 DHCF will reimburse eligible providers enrolled to provide Medicaid emergency medical ground transportation services in the District of Columbia in accordance with the cost-based reimbursement methodology set forth in this chapter.

10401.2 Total Medicaid reimbursement to eligible providers shall equal the sum of:

(a) Medicaid fee-for-service reimbursement as described in § 10402.1; and

(b) Reimbursement for total allowable costs in excess of Medicaid fee-for-service reimbursement and reimbursement from other sources for emergency medical ground transportation services to Medicaid-eligible beneficiaries, or reconciled costs as defined in § 10405.

10401.3 DHCF will only provide cost-based reimbursement for allowable costs that are in excess of Medicaid fee-for-service reimbursement described in § 10402.1.

10401.4 Total Medicaid reimbursement shall not exceed one hundred percent (100%) of actual allowable costs. DHCF shall determine allowable costs in accordance with the reconciliation standards outlined in § 10405 and the cost reporting and auditing processes outlined in § 10406.

10401.5 An eligible provider shall certify costs attributable to services provided to Medicaid beneficiaries through submission of the annual cost report in accordance with the requirements set forth in § 10406.

10401.6 For each cost reporting period that an eligible provider's reconciled costs are greater than the sum of fee-for-service payments received from DHCF and reimbursement from other sources for emergency medical ground transportation services, DHCF shall make a payment to the eligible provider, following auditing of submitted cost reports and final determination of reconciled costs, equal to the amount of the difference, less the local Medicaid funding amount.

10401.7 For each cost reporting period that an eligible provider's reconciled costs are less than fee-for-service payments received from DHCF and reimbursement from other sources for emergency medical ground transportation services to Medicaid-eligible beneficiaries for the cost reporting period, the eligible provider shall make a payment to DHCF, following auditing of submitted cost reports and final determination of reconciled, equal to the amount of the difference.

10402 INTERIM ~~RATE~~ PAYMENT METHODOLOGY

10402.1 DHCF will provide fee-for-service reimbursement of emergency medical ground transportation services provided to District Medicaid-enrolled beneficiaries to

eligible providers in accordance with the reimbursement rates set forth in the District of Columbia Medicaid Fee Schedule. The Medicaid Fee Schedule is located on the DHCF website at: https://www.dc-medicaid.com/dcwebportal/home. Medicaid fee-for-service reimbursement for emergency medical ground transportation services includes reimbursement for the services outlined below:

(a) Advanced Life Support 1;

(b) Advanced Life Support 2;

(c) Basic Life Support; and

(d) Ground Mileage.

10402.2 All claims paid using interim rates for services provided during the reporting period, shall be subject to the reconciliation process set forth in § 10405.

10402.3 Reconciliation of payments, pursuant to the process set forth in § 10405, may result in the identification and remittance of an additional payment owed to the eligible provider or identification and recoupment of any overpayment due to DHCF.

10402.4 Following the close of each reporting year, DHCF may utilize audited financial data in the cost report to update interim rates for covered emergency medical ground transportation services, as identified in § 10402.1, for eligible governmental providers.

10402.5 All future updates to the reimbursement rates for emergency medical ground transportation services shall comply with the public notice requirements set forth under § 988.4 of Chapter 9 of Title 29 DCMR and provide an opportunity for meaningful comment.

10402.6 A public notice of emergency medical ground transportation rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change and shall include a link to the Medicaid fee schedule and information on how written comments can be submitted to DHCF.

10403 ELIGIBLE EMERGENCY MEDICAL GROUND TRANSPORTATION SERVICE PROVIDERS

10403.1 To be eligible for cost-based reimbursement, emergency medical ground transportation service providers shall be a part of, owned by, or operated by the District of Columbia government.

10403.2 Emergency medical ground transportation service providers that are not part of, owned by, or operated by the District of Columbia government are not eligible to receive cost-based reimbursement described in this chapter.

10403.3 Eligible emergency medical ground transportation services providers shall be enrolled with the District of Columbia Medicaid Program for the period claimed on the annual cost report.

10404 ALLOWABLE COSTS

10404.1 Allowable costs shall include expenses incurred by the eligible provider in provision of emergency medical ground transportation services as identified in the cost reporting template and audited by DHCF in accordance with the requirements set forth in § 10406.

10404.2 Allowable costs shall include items of expense incurred by the eligible provider within the following categories:

(a) Capital related (*i.e.*, expenditures associated with depreciation of buildings and equipment, leases and rentals, property insurance, and other capital related costs);

(b) Employee salary and fringe benefits;

(c) Administrative (*i.e.*, expenditures associated with general supplies, housekeeping, postage, and other administrative costs); and

(d) Operational (*i.e.*, expenditures associated with medical supplies, minor medical equipment, communications, and other operational costs).

10404.3 An eligible provider may request reimbursement of allowable costs, up to the reconciled costs, as determined in accordance with § 10405. Total Medicaid reimbursement to eligible providers shall not exceed one hundred percent (100%) of actual allowable costs.

10404.4 DHCF and eligible providers shall calculate and allocate allowable costs in accordance with the CMS Provider Reimbursement Manual (CMS Pub. 15-1), CMS non-institutional reimbursement policies, and 2 CFR Part 225 (Cost Principles for State, Local, and Indian Tribal Governments), which establish principles and standards for determining allowable costs and the methodology for allocating and apportioning those expenses to the District of Columbia Medicaid program.

10405 CALCULATION OF RECONCILED COSTS

10405.1 Reconciled costs shall be equal to an eligible provider's audited allowable costs less the sum of Medicaid fee-for-service payments and other sources of reimbursement.

10405.2 DHCF shall apportion an eligible provider's allowable costs per medical transport to calculate a cost per medical transport rate, as defined in § 10405.3. The cost per medical transport rate will be based on the allowable costs included in the submitted cost report.

10405.3 The cost per medical transport rate shall equal the sum of actual allowable direct and indirect costs of providing emergency medical ground transportation services and dry runs (or treat and refer services) to Medicaid-enrolled beneficiaries, divided by the number of actual medical transports in the applicable service period. Nonmedical consults that do not result in transportation to a medical facility are excluded from the numerator.

10405.4 Direct costs for the provision of emergency medical ground transportation services shall only include: the unallocated payroll costs for personnel who dedicate one hundred percent (100%) of their time to providing medical transport services; medical equipment and supplies; and other costs directly related to the delivery of covered services, such as first-line supervision, materials and supplies, professional and contracted services, capital outlay, travel, and training.

10405.5 Indirect costs shall be determined in accordance to one of the following options, as authorized by DHCF prior to the start of the reporting period:

(a) Eligible providers that receive more than thirty-five million dollars ($35,000,000.00) in direct federal awards must either have a Cost Allocation Plan (CAP) or a cognizant agency approved indirect rate agreement in place with its federal cognizant agency to identify indirect cost. If the eligible provider does not have a CAP or an indirect rate agreement in place with its federal cognizant agency and it would like to claim indirect cost in association with a non-institutional service, it must obtain one or the other before it can claim any indirect cost;

(b) Eligible providers that receive less than thirty-five million dollars ($35,000,000.00) of direct federal awards are required to develop and maintain an indirect proposal for purposes of audit. In the absence of an indirect rate proposal, the eligible provider may use methods originating from a CAP to identify its indirect cost. If the eligible provider does not have an indirect rate proposal on file or a CAP in place and it would like to claim indirect cost in association with a non-institutional service, it must obtain one or the other before it can claim any indirect cost;

(c) Eligible providers that receive no direct federal funding may use any of the following previously established methodologies to identify indirect cost:

(1) A CAP with DHCF or the District government;

(2) An indirect rate negotiated with DHCF or the District government; or

(3) Direct identification through use of a cost report; or

(d) If the eligible provider never established any of the above methodologies, it may do so, or it may elect to use the ten percent (10%) de minimis rate to identify its indirect cost.

10405.6 Total allowable costs, determined in accordance with the requirements of § 10404, shall equal the cost per medical transport, identified in §§ 10405.2 and 10405.3, times the total number of Medicaid fee-for-service transports.

10405.7 The primary source of paid claims data, managed care encounter data, and other Medicaid reimbursement data is the Medicaid Management Information System (MMIS). The number of paid Medicaid fee-for-service transports, as identified in is § 10405.6, is derived from and supported by the MMIS reports for services during the applicable reporting period.

10405.8 Payment of reconciled costs, by DHCF or the eligible provider, shall be made in accordance with the requirements set forth in §§ 10401.6 or 10401.7.

10406 COST REPORTING, AUDITS, AND RECORD MAINTENANCE

10406.1 Eligible providers shall submit an annual cost report to DHCF within one hundred eighty days (180) days of the close of the provider's cost reporting period, which shall be concurrent with the District of Columbia government’s fiscal year.

10406.2 Cost reports shall be submitted on the DHCF approved form and shall be completed according to the cost report instruction manual. If forms and instructions are modified, DHCF will provide advance notice in writing to each eligible provider and on the DHCF website.

10406.3 If an eligible provider does not submit the cost report within the timeframe indicated in §10406.1 and has not received an extension of the deadline from DHCF based upon a showing of good cause for the delay, DHCF may issue a delinquency notice to the eligible provider.

10406.4 Only one (1) extension of time shall be granted to a provider for a cost reporting year and no extension of time shall exceed sixty (60) calendar days.

10406.5 Eligible providers shall submit one (1) original hard-copy and (1) one electronic copy (in excel format) of the cost report. The eligible provider shall submit an original hard copy to DHCF that is signed by an authorized representative.

10406.6 The requirements for cost reports shall be detailed in the DHCF Emergency Ground Medical Transportation Services cost report instruction manual. Each cost report shall meet the following requirements:

(a) Be properly completed in accordance with program instructions and forms and accompanied by supporting documentation; and

(b) Include copies of financial statements or other official documents submitted to a governmental agency justifying revenues and expenses.

10406.7 Eligible providers must ensure that computations included in the cost report are accurate and consistent with other related computations and the treatment of costs shall be consistent with the requirements set forth in this chapter.

10406.8 In the absence of specific instructions or definitions contained in these rules or cost reporting forms and instructions, DHCF's decision of whether a cost is allowable shall be determined in accordance with the Medicare Principles of Reimbursement and the guidelines set forth in the Centers for Medicare and Medicaid Services Provider Reimbursement Manual as identified in § 10404.4.

10406.9 All cost reports shall cover, at most, a twelve (12) month cost reporting period, which shall be the same as the District's fiscal year, unless DHCF has approved an exception.

10406.10 A cost report that is not complete shall be considered an incomplete filing and the eligible provider shall be notified of the deficiency and requested to submit a corrected and complete version.

10406.11 Each eligible provider shall maintain adequate financial records and statistical data for proper determination of allowable costs and in support of the costs reflected on each line of the cost report. The financial records shall include the provider's accounting and related records including the general ledger and books of original entry, all transactions documents, statistical data, lease and rental agreements and any original documents which pertain to the determination of costs.

10406.12 Eligible providers shall maintain the records pertaining to each cost report as described in § 10406.11 for a period of not less than ten (10) years after filing of

the cost report. If the records relate to a cost reporting period under audit or appeal, records shall be retained until the audit or appeal is completed.

10406.13 All records and other information may be subject to periodic verification and review. Each cost report may be subject to a desk review.

10406.14 Eligible providers shall:

(a) Use the accrual method of accounting; and

(b) Prepare the cost report in accordance with generally accepted accounting principles, the requirements of § 10404.4, and DHCF program instructions.

10407 ACCESS TO RECORDS

10407.1 Eligible providers shall allow appropriate DHCF personnel, representatives of the United States Department of Health and Human Services and other authorized agents or officials of the District of Columbia government and federal government full access to all records during announced and unannounced audits and reviews.

10408 APPEALS

10408.1 At the conclusion of each audit, an eligible provider shall receive an audited cost report including a description of each audit adjustment and the reason for each adjustment.

10408.2 Within thirty (30) calendar days of the date of receipt of the audited cost report, an eligible provider that disagrees with the audited cost report may request an administrative review by sending a written request for administrative review to DHCF.

10408.3 Any written request for an administrative review shall include an identification of the specific audit adjustment to be reviewed, the reason for the request for review of each audit adjustment and documentation supporting the request.

10408.4 DHCF shall mail a formal response to the eligible provider no later than forty-five (45) calendar days from the date of receipt of the written request for administrative review.

10408.5 Decisions made by DHCF and communicated in the formal response described in § 10408.4 may be appealed to the Office of Administrative Hearings within thirty (30) calendar days of the date of issuance of the formal response.

10499 DEFINITIONS

10499.1 When used in this chapter, the following terms shall have the meanings ascribed:

Accrual Method of Accounting - A method of accounting where revenue is recorded in the period earned, regardless of when collected and expenses are recorded in the period incurred, regardless of when paid.

Advanced Life Support - Special services designed to provide definitive prehospital emergency medical care, such as, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration with drugs and other medicinal preparations, and other specified techniques and procedures.

Basic Life Support - Emergency first aid and cardiopulmonary resuscitation procedures to maintain life without invasive techniques.

Cognizant Agency – Shall have the same meaning as set forth in Title 2 of the Code of Federal Regulations Part 200 Section 19.

Direct Costs - Costs incurred for the sole objective of meeting emergency medical transportation requirements or delivering covered medical transport services, such as unallocated payroll costs for the shifts of personnel, medical equipment and supplies, professional and contracted services, travel, training, and other costs directly related to the delivery of covered medical transport services.

Dry Run - Services (basic and advanced life support services) provided by the eligible provider to an individual who is released on the scene without transportation by ambulance to a medical facility.

Indirect Costs - Costs incurred for a common or joint purpose benefitting more than one District entity which are allocated using an agency-approved indirect rate or an allocation methodology.

Reporting Period - The span of time from which financial information is gathered to be recorded in cost reports; typically October 1 through September 30 of each District of Columbia fiscal year.

Comments on these rules should be submitted in writing to Melisa Byrd, Senior Deputy/State Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742 or via email at DHCFPubliccomments@dc.gov within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-054
March 30, 2020

SUBJECT: Stay at Home Order

ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); in accordance with the COVID-19 Response Emergency Amendment Act of 2020, effective March 17, 2020, D.C. Act 23-247, and any substantially similar subsequent emergency or temporary legislation; section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002, D.C. Law 14-194, D.C. Official Code § 7-2304.01 (2018 Repl.); and 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 *et seq.* (2012 Repl.), it is hereby **ORDERED** that:

I. BACKGROUND

1. This Order is issued based on the increasing number of confirmed cases of COVID-19 within Washington, DC, and throughout the metropolitan Washington region. Scientific evidence and public health practices show that the most effective approach to slowing the community transmission of communicable diseases like COVID-19 is through social distancing. The age and health of a significant portion of the population of Washington, DC, places thousands of residents at risk for serious health complications, including death, from COVID-19.

2. Due to the outbreak of the COVID-19 virus, Mayor's Order 2020-045, dated March 11, 2020, and Mayor's Order 2020-046, dated March 11, 2020 issued declarations of a public emergency and public health emergency. Mayor's Order 2020-050, dated March 20, 2020, extended those declarations of a public emergency and public health emergency through April 24, 2020. Mayor's Order 2020-048, dated March 16, 2020, Mayor's Order 2020-051, dated March 20, 2020, Mayor's Order 2020-053, dated March 24, 2020, and several directives from the Department of Health provided for additional steps required to protect public health. The COVID-19 Emergency Response Amendment Act of 2020 (D.C. Act 23-247), which was approved by the Council and the Mayor on March 17, 2020, empower the District government with additional tools to address

COVID-19. In addition, the President declared a national emergency on March 13, 2020, and the World Health Organization on March 11, 2020, characterized COVID-19 as a pandemic.

3. The findings of prior COVID-19 Mayor's Orders are incorporated here by reference.

4. Because of the risk of the rapid spread of the virus, and the need to protect all members of Washington, DC, and the region, especially residents most vulnerable to suffering the prolonged illness or death from the virus, and local health care providers and first responders, this Order requires all individuals anywhere in Washington, DC, to stay in their residences except to perform essential activities, engage in essential business, provide or obtain essential government services, or engage certain authorized recreational activities not involving close contact with other persons.

5. The intent of this Order is to:

   a. Keep the maximum number of people in their residences to the maximum extent feasible, consistent with protecting their own health and the health of others, while enabling essential activities, government services, and business to continue;

   b. Significantly slow the spread of COVID-19;

   c. Reduce COVID-19 virus infections, COVID-19 illness, and death caused by COVID-19 and its complications;

   d. Protect the health, safety, and welfare of the residents of Washington, DC, and other individuals located in Washington, DC;

   e. Allow essential activities, businesses, and government services to operate and be delivered in relative safety; and

   f. To preserve a sphere of personal freedom by allowing outside recreational activities under conditions designed to minimize health risks.

II. ORDER TO STAY AT HOME

1. a. All individuals living in Washington, DC, are ordered to stay at their place of residence, except as specified in this Order.

   b. Individuals experiencing homelessness are exempt from the provisions of section II.1.a., but are strongly urged to obtain shelter, and District agencies shall, and other public and private entities are strongly urged to,

make such shelter available as soon as possible and to the extent practicable, and to use COVID-19 risk mitigation practices in their operations. The District's 24-hour shelter hotline shall remain open and accessible at 202-399-7093.

2. Individuals may leave their residences (including their porches and yards) only to engage in Essential Activities including obtaining medical care that cannot be provided through telehealth and obtaining food and essential household goods; to perform or access Essential Governmental Functions; to work at Essential Businesses; to engage in Essential Travel; or engage in Allowable Recreational Activities, as defined in section IV of this Order.

3. Individuals shall not linger in common areas of apartment buildings and shall not use buildings' facilities, such as gyms, party rooms, lounges, rooftop, or courtyard spaces. Such spaces are unlikely to be disinfected often and could otherwise exposed individuals to the COVID-19 virus.

4. Leaving home for the purposes of engaging in Essential Business Activities or the Minimum Business Operations of businesses not deemed Essential in Mayor's Order 2020-053 is permissible, and persons are allowed to obtain and provide home-based services so long as the services do not involve physical touching and may be carried out in compliance with the Social Distancing Requirements, as defined in section IV.8 of this Order.

5. When engaging in Essential Travel, the following requirements and restrictions shall apply:

   a. Individuals using public transportation to engage in Essential Travel must comply with the Social Distancing Requirements defined in subsection IV.8 of this Order, to the greatest extent feasible. Entry through the back door of any bus or van with a back door is encouraged for the protection of the drivers.

   b. Drivers of ride-sharing vehicles engaged in Essential Travel must have disinfecting wipes in their vehicles and must wipe down all surfaces potentially touched by a passenger after each ride. Drivers of ride-sharing vehicles may not have more than two (2) other persons in their vehicle at any time.

   c. Individuals using shared personal mobility devices such as scooters and bicycles are strongly encouraged to bring their own disinfecting wipes and wipe down the parts of the device they touch before and after riding.

   d. Public and private transit officials shall make provisions for frequently disinfecting buses, subway cars, and any other vehicles they operate, to the highest feasible standards.

6. Under any of the limited circumstances in which an individual is allowed to leave their residence under this Order, the individual shall comply with the Social Distancing Requirements defined in section IV.8 of this Order, to the maximum extent possible.

7. Notwithstanding any other provision of this Order, an individual who is suspected or confirmed to be infected with COVID-19 or any other transmissible infectious disease shall not be outside their residence except as necessary to seek or receive medical care in accordance with guidance from public health officials or their health care provider.

III. OPERATION OF ESSENTIAL BUSINESSES & MINIMUM BUSINESS OPERATIONS

1. The provisions of Mayor's Order 2020-053 regarding which businesses are essential; promoting telework; and allowing Minimum Business Operations of Non-Essential Businesses and subsequent guidance published on coronavirus.dc.gov remain in effect.

2. Additionally, at any time, the Department of Consumer and Regulatory Affairs (DCRA) may request and an Essential Business must provide, its plans for complying with the requirement to minimize person-to-person contact and achieve to the greatest extent feasible, Social Distancing.

3. Likewise, Non-Essential Businesses conducting Minimum Business Operations pursuant to Mayor's Order 2020-053 or fuller operations under a Waiver granted by HSEMA may be asked to show their operational plan and why the activities they are conducting, and how they are conducting them, fit within allowable limits.

4. The DCRA may impose penalties including summary closure of businesses, subject to subsequent hearings at the Office of Administrative Hearings; Notices of Infractions and Orders to Show Cause why a Business Should not be Closed; Notices of Infractions and Penalties of up to $1,000 per day for violations per site operating in violation of this Order or Mayor's Order 2020-053; and penalties of up to $5,000 per day per site for operation after an Order to close, or a visit by an inspector that resulted in a warning or a request to close, that was immediately complied with.

5. Any Essential Business or Government Building or Facility that remains open to the public with an expected occupancy or attendance of more than ten (10) people shall promptly and conspicuously post in the building or facility a copy of the requirements for social distancing found on the coronavirus.dc.gov website as may be amended from time to time by the District of Columbia Department of Health (DC Health).

6. These penalties are in addition to any that may be imposed by the Alcohol

Beverage Control Administration, including revocation of liquor licenses or permission for delivery services.

IV. DEFINITIONS

For the purposes of this Order, the following terms shall mean:

1. "**Allowable Recreational Activities**" means outdoor activity with household members that complies with Social Distancing Requirements, as defined in section IV.8 of this Order, and includes the sanitizing of any equipment used both before and after the activity. Outdoor activities should not be conducted with persons other than those from one's own household.

   Examples: Walking, hiking, running, dog-walking, biking, rollerblading, scootering, skateboarding, playing tennis, golfing, gardening, and other activities where all participants comply with Social Distancing Requirements and there is no person-to-person contact.

2. "**Essential Activities**" means:

   a. Engaging in an activity or performing a task essential to an individual's own health or safety, or to the health or safety of the individual's family or household members, including pets.

      Examples: Obtaining medical supplies or medication; visiting a health care professional; or obtaining supplies needed to work from home.

   b. Obtaining services or supplies for an individual's own self or the individual's family or household members; or delivering those services or supplies to others that are necessary to maintain the safety, sanitation, and operation of residences.

   c. Performing work providing essential products and services at an Essential Business or otherwise carrying out activities specifically permitted in this Order, including Minimum Basic Operations.

   d. Caring for a family member or pet in another household or serving as a caregiver providing essential services to another. Caregiving involves more than companionship or entertainment, but rather helps a person with activities of daily living, the supervision of children, or otherwise tends to the immediate physical needs and safety of someone who cannot attend to those needs for him or herself.

   e. Providing or obtaining services at a Health Care Operation.

i. For purposes of this Order, the term "Health Care Operation" includes hospitals, clinics, dentists, pharmacies, pharmaceutical and biotechnology companies, other health care facilities, health care suppliers, home health care and assisted living services, mental health providers, or any related and/or ancillary health care services.

ii. The term "Health Care Operation" also includes veterinary care and all health care services provided to animals.

iii. This authorization shall be construed broadly to avoid any impacts to the delivery of health care, broadly defined.

iv. The term "Health Care Operation" does not include fitness facilities, exercise gyms, spas, massage parlors, or other similar facilities.

f. Providing any services or performing any work necessary to the operations and maintenance of Essential Infrastructure.

i. For purposes of this Order, the term "Essential Infrastructure" includes critical or emergency public works or utilities construction, construction, solid waste collection and removal by private and public entities, telecommunications services; provided, that an individual shall provide these services and perform this work in compliance with the Social Distancing Requirements as defined in section IV.8 of this Order, to the extent possible.

ii. Other infrastructure and construction activity may be allowable as an Essential Business under section IV.3—of this Order.

3. **"Essential Businesses"** are those defined in Mayor's Order 2020-053 and subsequent interpretive guidance.

4. **"Essential Government Functions"** are those defined in Mayor's Order 2020-053 and include all the tasks performed by persons designated essential or emergency personnel.

5. "**Essential Travel**" means:

a. Travel related to the provision of, or access to, Essential Activities, Essential Governmental Functions, Essential Businesses, or Minimum Basic Operations, including travel to and from work to operate Essential Businesses or maintain Essential Governmental Functions;

b. Travel to care for elderly, minors, dependents, persons with disabilities, or

other vulnerable persons;

c. Travel required to visit a house of worship;

d. Travel to or from educational institutions for purposes of receiving materials for distance learning, for receiving meals, and any other related services;

e. Travel to return to a place of residence from outside Washington, DC;

f. Travel required by law enforcement or court order;

g. Travel required for non-residents to return to their place of residence outside Washington, DC; and

h. Travel within the Washington region to engage in allowable activities under that jurisdiction's laws.

6. "**Minimum Basic Operations**" means the following:

a. The minimum necessary activities to maintain the value of the business's inventory, ensure security, process payroll and employee benefits, and related functions;

b. The minimum necessary activities to facilitate employees of the business being able to continue to work remotely from their residences; and

c. The minimum necessary activities to facilitate teleworking or the remote delivery of services formerly provided in-person by the business; to provide for the pay and benefits of the businesses' employees; to provide cleaning and disinfection of a business's facilities; or to provide employee supervision of contractors or employees providing essential maintenance of the facility.

7. "**Residences**" include homes and apartments, hotels, motels, shared rental units, and similar facilities.

8. "**Social Distancing Requirements**" include:

a. Maintaining at least six (6)-foot social distancing from other individuals;

b. Washing hands with soap and water for at least twenty (20) seconds or using hand sanitizer frequently, or after contact with potentially-infected surfaces, to the greatest extent feasible;

c. Covering coughs or sneezes, preferably with a tissue immediately

disposed of, or into the sleeve or elbow, not hands;

d. Regularly cleaning high-touch surfaces; and

e. Not shaking hands.

V. ENFORCEMENT

1. Any individual or entity that knowingly violates this Order shall be subject to all civil, criminal, and administrative penalties authorized by law, including sanctions or penalties for violating D.C. Official Code § 7-2307, including $1,000 fines, summary suspension or revocation of business licensure.

2. Any individual who willfully violates this Order may be guilty of a misdemeanor and, upon conviction, subject to a fine not exceeding $5,000, imprisonment for not more than 90 days, or both.

3. An officer or employee of the District of Columbia government that violates this Order or any related personnel issuance shall be subject to appropriate administrative discipline, including, when circumstances warrant, suspension from duty without pay or removal from office.

VI. SEVERABILITY

If any provision of this Order or its application to any person or circumstance is held to be invalid, then the reminder of the Order, including the application of such part or provision to other persons or circumstances, shall not be affected and shall continue in full force and effect.

VII. EFFECTIVE DATE

This Order shall become effective at 12:01 a.m. on April 1, 2020 and will continue to be in effect through April 24, 2020, or until it is extended, rescinded, superseded, or amended in writing by a subsequent Order.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General

ATTORNEY GENERAL
KARL A. RACINE

Office Order No. 2020-10

SUBJECT: Revision to procedures for receipt of service of process on behalf of the Attorney General for the District of Columbia

Pursuant to Reorganization No. 50 of June 26, 1953, as amended, and Office Order No. 2005-28:

The procedures set forth in Office Order 2018-20, designating employees to receive service of process in person on behalf of the Attorney General when service is required to be made on the Attorney General or the District pursuant to Rule 4(j) or the Superior Court Rules of Civil Procedure or pursuant to Mayor's Order, will be temporarily suspended while the Office of the Attorney General engages in telework due to the COVID-19 pandemic. In-person service of process will not be accepted during this time.

Litigants may continue to serve process by mail, pursuant to applicable court rules. Alternatively, for the duration of time that the Office of the Attorney General operates on telework status, a litigant may serve process by emailing all required papers to chad.copeland@dc.gov, stephanie.litos@dc.gov, and tonia.robinson@dc.gov, in lieu of in-person service of process. For service to be accepted, the required papers must be emailed to all three email addresses.

This office order will take effect immediately and supersedes all previous Orders, including Office Order No. 2018-20 (September 14, 2018), to the extent of any inconsistency.

Karl A. Racine/by JD
Karl A. Racine
Attorney General

Dated this 1st day of April, 2020

BASIS DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

SCHOOL PSYCHOLOGY SERVICES

BDC-2020/2021

Basis DC, A Public Charter School is advertising the opportunity to submit proposals for Psychology Services for children enrolled at the school for the 2020-2021 school year with a possible extension of (3) one-year renewals. Submit all Proposals by emailing, Head of Operations, Portia Cameron @ Portia.cameron@basised.com . All proposals need to be submitted before May 4, 2020 by 3pm to be considered. BASIS DC reserves the right to select, re-advertise and/or reject any proposal for any reason including apparent conflicts of interest.

Proposals received after 3pm on posted date will not be considered.

OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION

NOTICE OF FUNDING AVAILABILITY

DC Early Head Start Home-Based Program Grant

Request for Application Release Date: Monday, March 23, 2020 12:00 p.m.

Rescinded

The Office of the State Superintendent of Education (OSSE) released the Notice of Funding Availability (NOFA) for the DC Early Head Start Home-Based Program Grant on Friday, March 6, 2020. Effective immediately, the Request for Application (RFA) release date of March 23, 2020 has been cancelled for the time being. OSSE will provide more updates as they become available. This notice supersedes the notice published in DC Register on March 6, 2020 Vol 67/10.

Pursuant to Section 107(a) of the Birth to Three for All DC Act of 2018 (D.C. Law 22-179; D.C. Code § 4-651.07(a)) the Office of the State Superintendent of Education (OSSE) is soliciting applications from organizations interested in providing an Early Head Start (EHS) home-based program to families with an infants and toddlers experiencing homelessness residing in DC General Family Shelter replacement units. This grant aims to deliver a research-based curriculum that delivers developmentally, linguistically and culturally appropriate home visits and group socialization activities that support children's cognitive, social and emotional growth ensuring families have access to programs that meet the Head Start Program Performance Standards (HSPPS) see: https://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii.

Services are meant to support the full range of health, nutrition and family engagement services a child and their family needs from birth through the age of 36 months, or for a limited number of additional months following the child's third birthday.

Services will be delivered through a District wide entity. The recipient of funds will oversee the EHS home-based program for the entire city and deliver comprehensive services as outlined in the HSPPS see: https://eclkc.ohs.acf.hhs.gov/policy/45-cfr-chap-xiii.

Eligibility and Selection Criteria: OSSE's Division of Early Learning will accept applications from eligible non-profit organizations that are licensed as a child development facility within the District of Columbia. Applicants are encouraged to propose bold and innovate strategies to achieve the objectives of the RFA. Additional eligibility requirements will be specified in the RFA.

Applications will be scored on the following selection criteria: applicant mission, history, and strategic logic; organizational knowledge; process to provide and monitor adherence to HSPPS; and financial management and proposed budget

Length of Award: The period for this grant will end Sept. 30, 2020.

Available Funding for Awards: The total funding available for implementing the EHS home-based program is approximately $1,000,000 in local funds.

OSSE/DEL anticipates issuing one award from this funding opportunity. OSSE maintains the right to adjust the grant award and amount based on funding availability. Successful applicants may be awarded amounts less than requested. Grant funds shall only be used to support activities authorized by the relevant statues and included in the applicant's submission.

Application Process: OSSE will make the funds available through a competitive process to identify eligible organizations interested in implementing the EHS home-based program. Applications that meet all eligibility and application requirements will be evaluated, scored and rated by an OSSE/DEL designated review panel.

OSSE will use external peer reviewers to review and score the applications received for this RFA. External peer reviewers may include employees of the District of Columbia government who are not employed by OSSE. An external peer reviewer is an expert in the field or the subject matter. The final decision to fund applicants rests solely with OSSE. After reviewing the recommendations of the review panel and any other relevant information, OSSE shall decide which applicant to fund.

Applications must be submitted by May 4, 2020 at 3:00 p.m. OSSE anticipates that awards will be announced by June 30, 2020.

For additional information regarding this competition, applicants are advised that the authorized contact persons for matters concerning this RFA are:

Tara Dewan-Czarnecki
Program Manager
Division of Early Learning
Office of the State Superintendent of Education
Phone: (202) 741-7637
Tara.Dewan-czarnecki@dc.gov

Rebecca Shaw
Director of Operations and Management
Division of Early Learning
Office of the State Superintendent of Education
Phone: (202) 727-5045
Rebecca.Shaw@dc.gov

The RFA will be available on OSSE's website at https://osse.dc.gov/service/early-learning-grants-and-funding. All applications will be submitted through the Enterprise Grants Management System (EGMS) at grants.osse.dc.gov. OSSE will conduct both a pre-application meeting and make a recorded EGMS training available. Please see the RFA for more details.

DISTRICT OF COLUMBIA
BOARD OF ELECTIONS

Certification of Filling a Vacancy
In Advisory Neighborhood Commission

Pursuant to D.C. Official Code §1-309.06(d)(6)(D), If there is only one person qualified to fill the vacancy within the affected single-member district, the vacancy shall be deemed filled by the qualified person, the Board hereby certifies that the vacancy has been filled in the following single-member district by the individual listed below:

Marcia Shia
Single-Member District **1B07**

Christopher Jackson
Single-Member District **1C08**

DISTRICT OF COLUMBIA OFFICE OF EMPLOYEE APPEALS

CANCELLATION OF APRIL BOARD MEETING

Due to the COVID-19 Response Emergency Amendment Act of 2020, the April 7, 2020 Board Meeting is cancelled. Those matters that were scheduled to be considered at the April 7, 2020 meeting, will be rescheduled for our May 19, 2020 Board Meeting. The meetings are held at 955 L'Enfant Plaza, Suite 2500, SW, Washington, D.C. A copy of the draft agenda for each meeting will be posted on the agency's website and the lobby of the Office of Employee Appeals. For further information, please contact the front desk at 202.727.0004. This schedule is subject to change.

DATE	TIME	ROOM NUMBER
Tuesday, April 7, 2020	CANCELLED	CANCELLED
Tuesday, May 19, 2020	11:00 AM	Conference Room
Tuesday, June 30, 2020	11:00 AM	Conference Room

GIRLS GLOBAL ACADEMY PUBLIC CHARTER HIGH SCHOOL

REQUEST FOR PROPOSAL (RFP)

Girls Global Academy Public Charter School is seeking proposals from individuals or companies to provide the following services for the 2020-2021 school year:

1) **Furniture and Fixtures** including delivery and installation for 5 classrooms, 2 office spaces, and other shared spaces. To request a full copy of the Furniture and Fixtures RFP, send email to the Point of Contact, jason@girlsglobalacademy.org. Send your proposal by **12 (noon) on April 17th 2020** via e-mail to: jason@girlsglobalacademy.org.

2) **Information Technology Services and Hardware** including delivery of hardware for in-school deployment and support for those devices. To request a full copy of the Information Technology Services and Hardware RFP, send email to the Point of Contact, jason@girlsglobalacademy.org. Send your proposal by **12 (noon) on April 17th 2020** via e-mail to: jason@girlsglobalacademy.org.

3) **Minor Renovation and Maintenance Services** including painting, cleaning, and installation of fixtures for school. To request a full copy of the Minor Renovation and Maintenance Services RFP, send email to the Point of Contact, jason@girlsglobalacademy.org. Send your proposal by **12 (noon) on April 17th 2020** via e-mail to: jason@girlsglobalacademy.org.

Proposals that do not address the areas as outlined in the RFPs or proposals received past the deadline will not be considered.

For additional information, please contact: jason@girlsglobalacademy.org.

KIPP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Summer School Programming

KIPP DC is soliciting proposals from qualified vendors to provide Summer School Programming. 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 April 14, 2020. Questions should be addressed to emmanuelle.stjean@kippdc.org.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF 2020 BOARD MEETINGS

The District of Columbia Public Charter School Board ("DC PCSB") hereby gives notice, of DC PCSB's intent to hold a public meeting at 6:30pm on the following dates:

Monday, January 27, 2020

Monday, February 24, 2020

Monday, March 23, 2020

Monday, April 20, 2020

Monday, May 18, 2020

Monday, June 22, 2020

Monday, July 20, 2020

Monday, August 17, 2020 (tentative)

Monday, September 21, 2020

Monday, October 19, 2020

Monday, November 16, 2020

Monday, December 21, 2020

For questions, please call 202-328-2660. An agenda for each meeting will be posted 48 business hours in advance of the meetings on www.dcpcsb.org. The location for all meetings is currently to be determined.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

SUMMARY: The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to comment on a written request from DC Bilingual Public Charter School (DC Bilingual PCS) to amend its charter by increasing its enrollment ceiling. DC Bilingual PCS submitted its request on March 17, 2020.

Currently in its sixteenth year of operation, DC Bilingual PCS educates students in pre-kindergarten 3 through fifth grade at a single campus located in Ward 5. DC Bilingual PCS is authorized to enroll 500 students. The school requests approval to enroll 712 students by school year (SY) 2027-28. DC Bilingual PCS is adding 27,000 square feet to its facility to serve the additional 212 students. The school estimates the building expansion project will be complete by SY 2021-22. DC Bilingual PCS proposes the enrollment ceiling increase to better meet demand for its program.

Pursuant to the School Reform Act, D.C. Code 38-1802 et seq., a charter school must submit a petition to revise its charter, which includes its enrollment ceiling.

DATES:

- Comments must be submitted on or before May 19, 2020.
- The public hearing will be held on May 19, 2020 at 6:30 pm. For the location, please check www.dcpcsb.org.
- The vote will be held on June 15, 2020, at 6:30 pm. For the location, please check www.dcpcsb.org.

ADDRESSES: You may submit comments, identified by "DC Bilingual PCS - Notice of Petition to Amend Charter – Enrollment Ceiling Increase," by any one of the methods listed below.

1. Submit a written comment via
   a) E-mail: public.comment@dcpcsb.org
   b) Mail, Hand Delivery, or Courier: Attn: Public Comment, DC Public Charter School Board, 3333 14th Street NW, Suite 210, Washington, DC 20010

2. Sign up to testify in-person at the public hearing on May 19, 2020 by emailing a request to public.comment@dcpcsb.org no later than 4:00 pm on Thursday, May 14, 2020.

FOR FURTHER INFORMATION, CONTACT: Melodi Sampson, Senior Manager of School Quality and Accountability, at msampson@dcpcsb.org or 202-330-4046.

DISTRICT OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD

NOTIFICATION OF CHARTER AMENDMENT

SUMMARY: The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a written request submitted by The Next Step Public Charter School/El Proximo Paso (Next Step PCS) on January 27, 2020 to operate at an additional facility, effective for school year (SY) 2020-21.

The Next Step PCS is currently in its twenty-fourth year of operation educating adult students ages 16-24. The school is a single campus local education agency that currently operates in Ward 1. The school's primary campus is located at 3047 15th Street NW, and effective for SY 2020-21, the school proposes to operate a second facility at 1420 Columbia Road NW.

Pursuant to the School Reform Act, D.C. Code 38-1802 et seq., a charter school must submit a petition to revise its charter, which includes its campus/facility locations.

DATES:

- Written comments must be submitted on or before March 16, 2020.
- The public hearing will be held on April 20, 2020, at 6:30 pm. For the location, please check www.dcpcsb.org.
- The vote will be held on April 20, 2020, at 6:30 pm. For the location, please check www.dcpcsb.org.

ADDRESSES: You may submit comments, identified by "Next Step PCS - Notice of Petition to Amend Charter – Additional Facility," by any one of the methods listed below.

1. Submit a written comment via
   a) E-mail: public.comment@dcpcsb.org
   Mail, Hand Delivery, or Courier: Attn: Public Comment, DC Public Charter School Board, 3333 14th Street NW, Suite 210, Washington, DC 20010

2. Sign up to testify in-person at the public hearing on April 20, 2020, by emailing a request to public.comment@dcpcsb.org no later than 4:00 pm on Thursday, April 16, 2020.

FOR FURTHER INFORMATION CONTACT: Melodi Sampson, Senior Manager of School Quality and Accountability, at msampson@dcpcsb.org or 202-330-4046.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

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

and

FORMAL CASE NO. 1155, IN THE MATTER OF THE APPLICATION OF THE POTOMAC ELECTRIC POWER COMPANY FOR APPROVAL OF ITS TRANSPORTATION ELECTRIFICATION PROGRAM,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,[1] of its intent to act upon the Potomac Electric Power Company's (Pepco or Company) Residential Service Plug-In Vehicle Charging Schedule "R-PIV" (On-Peak and Off-Peak Generation Service Charges) in not less than fifteen (15) days from the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. On March 11, 2020, Pepco filed with the Commission a proposed update to Schedule "R-PIV" On-Peak and Off-Peak Generation Service Charges.[2] In the filing, Pepco shows the current and proposed On-Peak and Off-Peak Schedule "R-PIV" Generation Service Charges. Pepco proposes to amend the following tariff page to reflect the update in its Schedule "R-PIV:"

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
(Former) Original Page No. R-19
(New) First Revised Page No. R-19

3. According to Pepco, as of March 11, 2019, there are no customers receiving service under Schedule "R-PIV."[3] Pepco explains that the updated rates reflect the following changes: 1) a correction of two clerical errors in the model used to develop Schedule "R-PIV;" and 2) the use of updated PJM Interconnection data and customer

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

[2] *Formal Case No. 1130, In the Matter of the Investigation into Modernizing the Energy Delivery System for Increased Sustainability ("Formal Case No. 1130"), and Formal Case No. 1155, In the Matter of the Application of the Potomac Electric Power Company for Approval of its Transportation Electrification Program ("Formal Case No. 1155"),* Potomac Electric Power Company's proposed update to Schedule "R-PIV" On-Peak and Off-Peak Generation Service Charges, filed March 11, 2020 ("Pepco's Service Charge Update").

[3] *Formal Case Nos. 1130 and 1155,* Pepco's Service Charge Update.

usage data for calendar year 2019 in the model used to develop Schedule "R-PIV."[4] Pepco is requesting that the proposed updates, such as the new Schedule "R-PIV," be approved and become effective on and after April 1, 2020.

4. Any person interested in commenting on the subject matter of this NOPT may submit written comments not later than fifteen (15) days after publication of this Notice in the *D.C. Register* to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C., 20005, or electronically on the Commission's website at https://edocket.dcpsc.org/public/public_comments. Copies of this NOPT may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPT should call (202) 626-5150 or send an email to psc-commissionsecretary@dc.gov. After the comment period has expired, the Commission will take final action on Pepco's On-Peak and Off-Peak Schedule "R-PIV" Generation Service Charges.

[4] *Formal Case Nos. 1130, 1155*, Pepco's Service Charge Update.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

WGPOR-2020-01, IN THE MATTER OF THE INVESTIGATION INTO THE ESTABLISHMENT OF A PURCHASE OF RECEIVABLES PROGRAM FOR NATURAL GAS SUPPLIERS AND THEIR CUSTOMERS IN THE DISTRICT OF COLUMBIA,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Code and in accordance with Section 2-505 of the District of Columbia Code,[1] of its intent to act upon the Washington Gas Light Company's (WGL or Company) Rate Schedule No. 5, Component No. 6 – Reconciliation Factor of its General Regulations Tariff in not less than thirty (30) days from the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. On March 10, 2020, WGL filed with the Commission a proposed change to Rate Schedule No. 5, Component No. 6 – Reconciliation Factor of its General Regulations Tariff.[2] In the filing, WGL states that pursuant to Order No. 19772, WGL was directed to track and report all revenues of the Purchase of Receivables (POR) program at the end of the first year of operation and annually file POR discount rate calculations and new tariff pages reflecting the updated discount rates.[3] Accordingly, WGL's filing provides the POR discount rate calculations for WGL's residential and non-residential customers, which reflect the costs and revenues for the first year of the program. WGL explains that consistent with the Commission's directive in Order No. 19719 that the POR program should be self-contained and that all costs should be covered entirely by POR natural gas supplier participants, WGL is proposing a change to its tariff. WGL states that the tariff changes describe how the POR discount rate will be calculated and updates the Reconciliation Factor to include bad debt expense and cash working capital costs.[4] WGL proposes to amend the following tariff page to reflect the update in its Component No. 6 – Reconciliation Factor:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
(Former) Original Page No. 27GG, Section B (6)
(New) Original Page No. 27GG, Section B (6)

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1 D.C. Code § 2-505 (2019 Repl.) and D.C. Code § 34-802 (2012 Repl.).

2 *WGPOR-2020-01, In the Matter of the Investigation into the Establishment of a Purchase of Receivables Program for Natural Gas Suppliers and Their Customers in the District of Columbia ("WGPOR*"), Washington Gas Light Company's Annual POR Discount Rate Calculations and Proposed Tariff Revision ("WGL's Proposed Tariff"), filed March 10, 2020.

3 *WGPOR*, WGL's Proposed Tariff, at 1.

4 *WGPOR*, WGL's Proposed Tariff, at 1.

3. According to WGL, Component No. 6, Reconciliation Factor, which WGL seeks to change, adjusts for any under- and over-collection of costs associated with the POR program.[5] Thus, WGL is seeking to include bad debt expense and cash working capital costs in the calculation of the Reconciliation Factor, because the Company experienced an over-collection of bad debt expense and cash working capital costs during the first year of POR implementation.[6] WGL further explains that refunding of over-collection ensures that the natural gas suppliers pay for the complete cost of the program, an approach consistent with Commission Order No. 19719.[7] WGL also states that, if in the future, there is an under-collection of bad debt expense or cash working capital costs from natural gas suppliers, then including these costs in the Reconciliation Factor will prevent sales customers from subsidizing the POR program and ensure that natural gas suppliers pay for the full costs of the POR program.[8]

4. Any person interested in commenting on the subject matter of this NOPT may submit written comments not later than thirty (30) days after publication of this Notice in the *D.C. Register* to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C., 20005, or electronically on the Commission's website at https://edocket.dcpsc.org/public/public_comments. Copies of this NOPT may be obtained by visiting the Commission's website at www.dcpsc.org or at cost, by contacting the Commission Secretary at the address provided above. Persons with questions concerning this NOPT should call (202) 626-5150 or send an email to psc-commissionsecretary@dc.gov. After the comment period has expired, the Commission will take final action on WGL's Rate Schedule No. 5, Component No. 6 – Reconciliation Factor of its General Regulations Tariff.

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5 *WGPOR*, WGL's Proposed Tariff, at 2.

6 *WGPOR*, WGL's Proposed Tariff, at 2.

7 *Formal Case No. 1140, In the Matter of the Investigation into the Establishment of a Purchase of Receivables Program for Natural Gas Suppliers and Their Customers in the District of Columbia*, Order No. 19719, rel. October 17, 2018 (Order No. 19719). By Order No. 19719, the Commission directed WGL to implement a POR program consistent with the Commission's policy that that all costs for the program should be covered entirely from participating natural gas suppliers.

8 *WGPOR*, WGL's Proposed Tariff, at 2.

TWO RIVERS PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Copier Units

Two Rivers PCS is soliciting proposals from commercial copier companies to acquire 8 copiers. To request a copy of the RFP, email Gail Williams at procurement@tworiverspcs.org. Proposals are due by April 24, 2020.

Commercial Painting Services

Two Rivers PCS is soliciting price quotes from painting companies to paint 3 school buildings in July and August. To request a copy of the RFP, email Gail Williams at procurement@tworiverspcs.org. Proposals are due by April 24, 2020.

School Uniforms

Two Rivers PCS is soliciting price quotes from custom apparel companies to produce school uniform tops. To request a copy of the RFP, email Gail Williams at procurement@tworiverspcs.org. Proposals are due by April 24, 2020.

THE OFFICE OF VICTIM SERVICES AND JUSTICE GRANTS

NOTICE OF FUNDING AVAILABILITY

FY 2021 VICTIM SERVICES

Announcement Notice for the Funding Alert

Office of Victim Services and Justice Grants
Executive Office of the Mayor
Government of the District of Columbia
http://opgs.dc.gov and DC Register

Notice of Funding Availability

Victim Services 2021 Consolidated Request for Funding
The Office of Victim Services and Justice Grants announces the availability of grant funds under the Fiscal Year 2021 consolidated funds to maintain the comprehensive network of trauma informed services available to victims of violent crime; to address the issues of domestic violence, dating violence, stalking, and sexual assault in a manner that promotes victim safety and offender accountability; to improve the treatment of victims of crime by providing them with the assistance and services necessary to aid their restoration after a violent criminal act; and to support and aid them as they move through the criminal and civil justice processes.

The Request for Applications (RFA) will be available electronically beginning **Friday, April 10, 2020** at http://ovsjg.dc.gov and https://zoomgrants.com/gprop.asp?donorid=2121&limited=1902. The deadline for applications is **11:59 p.m. on Monday May 18, 2020**. For more information, contact *Cheryl Bozarth, Deputy Director of Victim Services*, Office of Victim Services and Justice Grants at *202-374-6109 or Cheryl.Bozarth@dc.gov*.

WASHINGTON LEADERSHIP ACADEMY PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS

School Technology

Washington Leadership Academy Public Charter School, an approved 501(c)3 organization, requests proposals for the following Chromebook technology:

Quantity: 200

Required Specifications:
Screen: 11.6 inch screen w/ webcam (1366 x 768 resolution or better)
CPU: Intel N3060 Celeron or better
RAM: 4GB or more
SSD/HDD: 16 GB MMC or better
OS: Chrome OS

Additional Specifications:
Require 1 Chromebook Management License per device.

Please exclude convertible or tablet models.

Purchase Reference model: Samsung Chromebook 3 (XE500C13)
Current Models in-use: Samsung Chromebook 3 (XE500C13), HP Chromebook 11 G6, HP Chromebook 11 G5

Please email proposals to mleiter@wlapcs.org. We request proposals by Wednesday, April 15th.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
BZA Application No. 19134C

The Board of Zoning Adjustment for the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of its intention to not disapprove, or in the alternative, disapprove the following at its public meeting of May 6, 2020:

Application of The Embassy of Zambia, pursuant to 11 DCMR Subtitle Y § 703, for a modification of consequence to the time limit condition of BZA Order No. 19134-B to allow the temporary location of a chancery in the in the R-3 Zone at premises 2200 R Street N.W. (Square 2512, Lot 808).

Notice of the modification request was provided to the affected **Advisory Neighborhood Commission (ANC) 2D**. Additionally, any updates to the scheduling of the Board's public meeting on this application will be reflected on the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

In order to review exhibits in the case, follow these steps:

- Visit the OZ website at www.dcoz.dc.gov
- Click on "Case Records" under "Services".
- Enter the BZA application number indicated above and click "Go".
- The search results should produce the case. Click "View Details".
- On the right-hand side, click "View Full Log".
- This list comprises the full record in the case. Simply click "View" on any document you wish to see, and it will open a PDF document in a separate window.

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record. Visit the Interactive Zoning Information System (IZIS) on our website at https://app.dcoz.dc.gov/Login.aspx to make a submission. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

BOARD OF ZONING ADJUSTMENT FOR THE DISTRICT OF COLUMBIA
NOTICE OF PROPOSED RULEMAKING
BZA Application No. 20254

The Board of Zoning Adjustment for the District of Columbia (BZA), pursuant to the authority set forth in Section 206 of the Foreign Missions Act, approved August 24, 1982 (96 Stat. 286, D.C. Official Code § 6-1306), and the Zoning Regulations of the District of Columbia (Regulations), hereby gives notice of its intention to not disapprove, or in the alternative, disapprove the following at the May 6, 2020 hearing:

Application of The Government of the Republic of the Zambia, pursuant to 11 DCMR Subtitle X, Chapter 2, to permit the renovation of the chancery building in the R-1-B Zone at premises 2419 Massachusetts Avenue, N.W. (Square 2506, Lot 22).

Notice of the public hearing date will be mailed to property owners within 200 feet of the subject property and the affected **Advisory Neighborhood Commission (ANC) 2D**. Additionally, it will be published in the *DC Register*, the public hearing calendar of the Office of Zoning (OZ) website at http://dcoz.dc.gov/bza/calendar.shtm, and on public hearing notices available at the OZ office. A final determination on an application to locate, replace, or expand a chancery shall be made no later than six months after the date of the filing of the application.

HOW TO FAMILIARIZE YOURSELF WITH THE CASE

In order to review exhibits in the case, follow these steps:

- Visit the OZ website at www.dcoz.dc.gov
- Click on "Case Records" under "Services".
- Enter the BZA application number indicated above and click "Go".
- The search results should produce the case. Click "View Details".
- On the right-hand side, click "View Full Log".
- This list comprises the full record in the case. Simply click "View" on any document you wish to see, and it will open a PDF document in a separate window.

HOW TO PARTICIPATE IN THE CASE

Members of the public may participate in a case by submitting a letter in support or opposition into the record or participating as a witness. Visit the Interactive Zoning Information System (IZIS) on our website at https://app.dcoz.dc.gov/Login.aspx to make a submission. Please note that party status is not permitted in Foreign Missions cases.

If you have any questions or require any additional information, please call OZ at 202-727-6311.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 01-17E
Z.C. Case No. 01-17E
The George Washington University
(PUD Modification of Significance to Condition 8 –
Temporary Housing Plan for Renovation of Thurston Hall)
December 2, 2019

Pursuant to notice, at its public hearing on December 2, 2019, the Zoning Commission for the District of Columbia (the "Commission") considered an application (the "Application") from The George Washington University (the "University") for review and approval of a modification of significance to Condition 8 of Z.C. Order No. 746-C ("Original Order"), which approved modifications to a planned unit development ("PUD") and related Zoning Map amendment for Lot 29 in Square 122 with an address of 1959 E Street, N.W. (the "Property") to allow for the temporary use of the Property for housing second-year undergraduates of the University normally housed in Thurston Hall while that dormitory undergoes renovation.

The Commission reviewed the Application pursuant to the Commission's Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the "Zoning Regulations"] to which all subsequent citations refer unless otherwise specified) and for the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

Background

1. Pursuant to the Original Order, the Commission approved a modification of an approved PUD as a second-stage PUD for the Property, which limited the uses of the Property, including restricting residence to juniors, seniors, and graduate students of the University, as well as University students enrolled in an honors program. (Exhibit ["Ex."] 2E.)

2. The Property is located within the boundaries of the Foggy Bottom Campus Plan of 2006-2025 (the "Approved Campus Plan"), approved by Z.C. Order No. 06-11, and the related first-stage PUD (the "Approved PUD," and collectively with the Approved Campus Plan, the "Approved Campus Plan/PUD") that was approved by Z.C. Order No. 06-11/06-12 (the "Campus Plan/PUD Order"), and which governs development and operation of the University's Foggy Bottom Campus (the "Campus"). (Z.C. Order No. 06-11/06-12 at 6.)

Notice

3. The University mailed a Notice of Intent on April 19, 2019, to file an application to modify Condition 8 of the Original Order to:
   - Advisory Neighborhood Commission 2A ("ANC 2A"), the "affected ANC" per Subtitle Z § 101.8;

- West End Citizens Association ("WECA"), as a party to a case preceding that of the Original Order and as an active participant in the case approved by the Original Order;
- The Foggy Bottom Association ("FBA"), which was not a party to the case that culminated in the Original Order, but which was a party to Campus Plan / PUD Order; and
- All property owners within 200 feet of the Property. (Ex. 2F.)

4. At its public meeting on September 23, 2019, the Commission voted to set down the modification for a public hearing. (September 23, 2019, Public Meeting transcript at 51; Ex. 13.)

5. The Office of Zoning published the Notice of Public Hearing on October 1, 2019, pursuant to Subtitle Z § 402.1. (Ex. 16.)

6. The University filed affidavits stating that it had posted notice of the hearing on the Property on October 22, 2019 and maintained such notice in pursuant to Subtitle Z § 402. (Ex. 19, 29.)

Parties

7. The University and ANC 2A were automatically parties to the proceeding pursuant to Subtitle Z § 403.5.

8. WECA filed a request for party status in support of the Application on October 15, 2019. (Ex. 17.)

9. The Commission granted WECA's request for party status at its December 2, 2019 public hearing.

The Property

10. The Property is located at the intersection of 20th and E Streets, N.W.

11. The Property is located in the C-3-C zone pursuant to a PUD-related rezoning.[1] (Ex. 2D.)

The Application

12. The Application was one of four applications simultaneously filed by the University with the Commission to authorize the renovation of Thurston Hall (the "Renovation") and the temporary relocation of students housed in Thurston Hall during the Renovation, which were heard together at a public hearing on December 2, 2019. The other three applications were:

    a. Z.C. Case No. 06-11R, for further processing of the Approved Campus Plan to permit the Renovation and related zoning relief (the "Further Processing Application"); and

[1] The equivalent of the C-3-C zone under the Zoning Regulations of 2016 is the MU-9 zone.

b. Z.C. Case Nos. 06-11Q and 06-12Q (collectively, the "Modification Applications"), for modifications to the Approved Campus Plan and Approved PUD, respectively, to allow for the temporary housing of students normally housed at Thurston Hall while it undergoes Renovation.

13. Thurston Hall is an on-campus residence hall which currently contains approximately 1,080 beds for first-year students. (Ex. 2.) To accommodate the loss of these beds during Renovation, the University worked with ANC 2A, FBA, and WECA to develop a "temporary housing plan" that ensures first- and second-year students remain housed on campus and addresses remaining undergraduate housing demand, as well as steps the University will take to minimize any adverse impact on the surrounding residential neighborhoods related to student housing during the Renovation ("Temporary Housing Plan"). (Ex. 23A.)

14. The Temporary Housing Plan includes a combination of three measures to address undergraduate housing demand:

a. A planned undergraduate enrollment decrease;

b. Increased utilization of existing on-campus beds; and

c. The use of certain off-campus properties to accommodate third- and fourth-year students during renovation.

15. The Temporary Housing Plan also includes a series of commitments regarding duration of the Temporary Housing Plan, penalties, and mitigation measures agreed to by the University and memorialized in a voluntary agreement between the University, ANC 2A, and FBA (the "ANC Agreement"). (Ex. 11, 23C.)

16. The Approved Campus Plan/PUD generally requires that all first- and second-year undergraduate students are housed on the Campus. First-year beds currently located at Thurston Hall will be re-accommodated in other on-campus residence halls during the Renovation; this in turn will displace some beds that are currently used to house second-year students. Therefore, the University proposes to use the Property for second-year housing in order to maintain its Approved Campus Plan/PUD commitment regarding second-year student housing on campus. (Ex. 2, 23.)

17. The Application requested modification of Condition 8 to temporarily allow second-year undergraduate students not enrolled in an honors program to reside at the Property for the duration of the Temporary Housing Plan. (Ex. 2, 23.)

18. On September 27, 2019, the University filed a prehearing submission that included a map illustrating the Temporary Housing Plan, a summary of the ANC Agreement, and proposed conditions of approval. (Ex. 12-12B.)

19. The University also provided a Comprehensive Transportation Review ("CTR") prepared by Rob Schiesel of Gorove/Slade. (Ex. 18-18A.) The CTR concluded that the Temporary Housing Plan "[would] not adversely impact the local transportation network." The CTR also noted that the University had proposed a Traffic Demand Management ("TDM") Plan for the facilities associated with the Temporary Housing Plan in order to promote non-vehicular modes of travel for students and to mitigate any adverse impacts.

20. On November 12, 2019, the University filed a supplemental prehearing submission that refined the terms of the Temporary Housing Plan and related modifications based on the ANC Agreement. The submission reattached the map of the Temporary Housing Plan, the ANC Agreement, and the proposed conditions of approval. (Ex. 23- 23C.)

21. At the public hearing held on December 2, 2019, Alicia Knight, the University's Senior Associate Vice President for Operations, testified on behalf of the University. Rob Schiesel of Gorove/Slade Associates appeared on behalf of the University as an expert witness in transportation planning.

Responses to the Application

Office of Planning ("OP")

22. On September 13, 2019, OP filed a report that recommended the Commission set down the Application for the modification of Condition 8 because the Application was not inconsistent with the Comprehensive Plan (the "CP") or the intent of the Approved PUD. (Ex. 10.)

23. On November 22, 2029, OP filed a report that recommended approval of the Application with no comments or conditions (the "OP Report"). (Ex. 27.) The OP Report concluded that the Application was not inconsistent with the CP or the intent of the Approved PUD. The OP Report also noted that the proposed change was limited in scope and temporary in duration.

24. At the public hearing on December 2, 2019, OP recommended approval of the Application and rested on the record of its report. (12/2/19 Transcript ["12/2 Tr."] at 36.)

Department of Transportation

25. By a report dated November 22, 2019, DDOT expressed no objection to the Application on the condition that the University implement the TDM Plan proposed in the CTR. (Ex. 28.)

ANC 2A

26. ANC 2A submitted a report (the "ANC Report"), stating that at its regularly-scheduled, duly-noticed public meeting on September 18, 2019, at which a quorum present, it voted to support the Application's Temporary Housing Plan and related modification to Condition 8 of the Original Order, subject to the terms and commitments set forth in the ANC Agreement. (Ex. 14.)

27. At the public hearing on December 2, 2019, both Chairperson Smith and Commissioner Epstein from ANC 2A testified in support of the Application and commended the University on its extensive public outreach and willingness to compromise on the Further Processing and Modification Applications. The ANC commissioners described the process by which the ANC had negotiated with the University regarding the Temporary Housing Plan and how the terms of the ANC Agreement had been reached. (12/2 Tr. at 37-43.)

Parties and Persons in Support

28. On December 2, 2019, WECA submitted a letter expressing support for the University's plan to minimize adverse effects related to the Temporary Housing Plan as set forth in the University's Agreement with ANC 2A. (Ex. 34.)

29. At the public hearing on December 2, 2019, Sara Maddux, President of WECA, testified on behalf of WECA as a party in support of the Application. (12/2 Tr. at 45-49.)

Other Responses

30. The Commission received numerous letters from University students in support of the Application and its importance in facilitating the renovation of Thurston Hall. (Ex. 30, 33.)

31. At the public hearing on December 2, 2019, three students from the University testified in support of the Application, focusing on the importance of renovating Thurston Hall. (12/2 Tr. at 51-61.)

CONCLUSIONS OF LAW

Modification of Significance Approval

1. Subtitle Z § 704 authorizes the Commission to review and approve modifications of significance to final orders of the Commission.

2. Subtitle Z § 703.5 defines a Modification of Significance as a "modification to a contested case order or the approved plans of greater significance than a modification of consequence." Subtitle Z § 703.6 includes "changes to proffered public benefits" and "additional relief or flexibility" as examples of a modification of significance.

3. Subtitle Z § 703.5 requires the Commission to hold a public hearing on a modification of significance. Pursuant to Subtitle Z § 704.4, the scope of the hearing is limited to the impact of the modification on the subject of the original application and does not permit the Commission to revisit its original decision.

4. The Commission concludes that the University has satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 2A and WECA.

5. The Commission concludes that the Application properly qualifies as a modification of significance within the meaning of Subtitle Z §§ 703.5 and 703.6, as a request to modify conditions of approval that change proffered commitments approved by the Original Order.

The Commission also notes the desire of the University to have both the Modification Applications and the Further Processing Application considered at the same hearing due to the interconnected nature of the various applications.

Impact on the Campus Plan/PUD

6. The Commission concludes that the Application will not materially impact the planning, uses, amenities, benefits, and impacts that formed the basis for the Commission's prior approval of the Original Order because the proposed use of the Property for second-year students is limited in duration and scope. Moreover, the Temporary Housing Plan will facilitate the renovation of on-campus housing, which is central to the goals of the approved Campus Plan.

Not Inconsistent with the Comprehensive Plan

7. The Commission concludes that the Application is not inconsistent with the Future Land Use Map designations of the Property for Institutional Use in the Comprehensive Plan.

8. The Commission further concludes that the Application furthers the goals of the Education Facilities element to provide quality on-campus student housing and the goals of the Economic Development element to support the growth of higher education.

9. Finally, the Commission concludes the Application is not inconsistent with the Near Northwest Area element's goals of coordination between the University and the community and providing quality student housing on campus. Although the Application results in second-year housing at the Property in the near term, its purpose is to facilitate the long-term renovation and enhancement of on-campus housing, and the University and community have worked together to reach a mutually acceptable compromise that will address the impacts of the Temporary Housing Plan.

"Great Weight" to the Recommendations of OP

10. The Commission must 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 Z § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

11. The Commission finds persuasive OP's recommendation that the Commission approve the Application and therefore concurs in that judgment.

"Great Weight" to the Written Report of the ANC

12. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 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).)

13. The Commission finds that the ANC Report did not raise any issues or concerns regarding the Application that were not addressed through the ANC Agreement. The Commission notes the ANC Report's support for the Application persuasive and concurs in that judgment.

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the application for a modification of significance to temporarily modify Condition 8 of Z.C. Order No. 746-C as follows (with all other conditions of that Order remaining unchanged and in effect) to facilitate the Temporary Housing Plan, subject to the following conditions (deleted text in ~~**bold and strikethrough**~~; new text in **bold and underlined**):

8. The University shall restrict residential occupancy in the project to juniors, seniors, graduate students, and students enrolled in an honors program, **except as allowed in Condition No. 8A below**.

8A. During the Limited Period (as defined below) of the Temporary Housing Plan (defined below), sophomores may reside in the 1959 E Street Residence Hall ("1959 E Street") subject to additional requirements set forth below:

i. Enrollment Caps - The University shall continue to operate within the Campus Plan enrollment caps as set forth in Z.C. Order No. 06-11/06-12;

ii. The Limited Period:

a. The University shall be permitted to house second-year students at 1959 E Street (the "Temporary Housing Plan") for a period of no more than 24 consecutive months during the Thurston Hall renovation (the "Limited Period");

b. For purposes of this order, the "Limited Period" shall be a period of 24 consecutive months commencing from the date upon which a second-year undergraduate student who would not be otherwise permitted to reside in the property under Condition 8 of Z.C. Order No. 746-C moves into 1959 E Street to facilitate the Thurston Hall renovation. The Limited Period shall end on the date when the last such second-year undergraduate student moves out of 1959 E Street; and

c. Following commencement of the Thurston Hall renovation, the University shall pursue diligent completion of the work and reopen Thurston Hall so

that the Temporary Housing Plan use for 1959 E Street as set forth above will last no more 24 consecutive months;

iii. Mitigation of Objectionable Impacts:

a. For 1959 E Street, the University shall provide residential engagement support to service the University student population, including resident advisors, faculty in-residence and in-residence professional staff living at each property. The Residential Conduct Guidelines that govern student behavior in and around university residential facilities shall apply, as well as the Student Code of Conduct; and

b. The University shall continue to provide a mechanism for reporting issues concerning student behavior to the GW University Police Department, and violations of DC law may be reported to the Metropolitan Police Department;

iv. Duration and Penalty: Should the University continue the Temporary Housing Plan by occupying 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period or remain out of compliance with Condition 8 of Z.C. Order No. 746-C after the Limited Period, the University will pay as liquidated damages a fee of $1,000,000 to the Foggy Bottom Defense and Improvement Corporation (the "Trust") for every semester or any part thereof in which the University occupies 1959 E Street pursuant to the Temporary Housing Plan after the expiration of the Limited Period; and

v. Compliance:

a. The University shall provide ANC 2A and FBA with written notice within five business days of both the start date and end date and affirm that it has resumed compliance with Condition 8 of Z.C. Order No. 746-C as of the end date. The University will also provide ANC 2A and FBA with an opportunity to visually inspect the properties in order to confirm such student move-in/move-out activity;

b. Prior to the issuance of a Certificate of Occupancy for the renovated Thurston Hall, the Applicant shall provide the Zoning Administrator with evidence, and the Zoning Administrator shall determine, that the University has ended the Temporary Housing Plan or made the required liquidated damages payment in accordance with this condition; and

c. The Zoning Administrator shall file with the Zoning Commission his/her determination that the University has ended the Temporary Housing Plan and has resumed compliance with Condition 8 of Z.C. Order No. 746-C.

VOTE (Dec. 2. 2019): 5-0-0 (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May; and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 01-17E shall become final and effective upon publication in the *D.C. Register*; that is, on April 3, 2020.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 20-06
1333 M Street, LLC
(Consolidated PUD, 1st-Stage PUD, and Related Map Amendment
@ Square 1025E, Lot 802, Square 1048S, Lots 1, 801, & 802;
and Reservations 129 and 299)
March 18, 2020

THIS CASE IS OF INTEREST TO ANC 6B

On March 13, 2020, the Office of Zoning received an application from 1333 M Street, LLC (the "Applicant") for approval of a consolidated and a first-stage planned unit development ("PUD") and a related map amendment for the above-referenced property.

The property that is the subject of this application consists of Lot 802 in Square 1025E, Lots 1, 801, and 802 in Square 1048S, and Reservations 129 and 299 in southeast Washington, D.C. (Ward 6) at 1333 M Street, S.E. (adjacent to Historic Boat House Row). The property is currently zoned PDR-4. The Applicant is proposing, for purposes of this project, to rezone the property to the MU-9 zone. The Applicant proposes to redevelop the site with a mixed-use project consisting of three buildings containing a total of 791,063 gross square feet, with a maximum height of 130 feet and overall density of 6.20 floor area ratio ("FAR"). The project will include 168 parking spaces.

This case was filed electronically through the Interactive Zoning Information System ("IZIS"), which can be accessed through http://dcoz.dc.gov. For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.