VOL. 67 – NO. 27 JUNE 26, 2020

District of Columbia REGISTER

HIGHLIGHTS

- Alcoholic Beverage Regulation Administration allows retailers with on-site sales and consumption permits, to sell, serve, and allow consumption of alcoholic beverages on approved outdoor public and private space
- Office of the City Administrator establishes regulations for authorization, payment, and reimbursement of District government employee travel expenses
- D.C. Board of Elections authorizes registered voters to be signatories on petition sheets they have circulated for initiatives, referendums, and recall petitions
- Department of Energy and Environment establishes requirements for operators of demand response generators in the District
- Department of Health Care Finance's Medical Care Advisory Committee solicits membership applications for Fiscal Year 2021
- Department of Human Services announces funding availability for the SNAP Employment and Training Program
- D.C. Zoning Commission revises the General Waterfront Regulations

The Mayor of the District of Columbia initiates Phase Two of Washington, DC Reopening and outlines applicable standards for mass gatherings, non-essential businesses, learning institutions, food and entertainment establishments, places of worship, recreation and exercise, real estate, construction, and health care facilities effective June 22, 2020 (Mayor's Order 2020-075)

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.

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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

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 23-83

"Deputy Mayor for Planning and Economic Development Limited Grant Making Authority for Check IT Enterprises Amendment Act of 2020"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 23-404 on first and second readings February 4, 2020, and March 3, 2020, respectively. Following the signature of the Mayor on March 11, 2020, pursuant to Section 404(e) of the Charter, the bill became Act 23-244 and was published in the March 20, 2020 edition of the D.C. Register (Vol. 67, page 3082). Act 23-244 was transmitted to Congress on March 24, 2020 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 23-244 is now D.C. Law 23-83, effective May 5, 2020.

Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

March	24, 25, 26, 27, 30, 31
April	1, 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 20, 21, 22, 23, 24, 27, 28, 29, 30
May	1, 4

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 http://www.dccouncil.us.

COUNCIL OF THE DISTRICT OF COLUMBIA PROPOSED LEGISLATION

PR23-0833 Security Assurance Management, Inc. Disapproval Resolution of 2020

Intro. 06-19-2020 by Councilmembers Grosso, Allen, Nadeau, R. White, and McDuffie and referred to the Retained by the Council

COUNCIL OF THE DISTRICT OF COLUMBIA
The Wilson Building

NOTICE OF CONTRACT DISAPPROVAL RESOLUTION

The Council of the District of Columbia gives notice that the resolution listed below to disapprove CA 23-572, proposed contract to exercise Option Period Three (3) with Security Assurance Management, Inc. (SAM) in the not-to-exceed amount of $25,000,000.00 is required to provide security guards services to protect persons and property at D.C. Public Schools buildings was filed in the Office of the Secretary on June 17, 2020.

A copy of the approval resolution or the proposed contract is available in the Council's Legislative Services, Room 10, John A. Wilson Building. Telephone: 724-8050. Comments on the proposed contract can be addressed to the Secretary to the Council, Room 5.

PR 23-833: Security Assurance Management, Inc. Disapproval Resolution of 2020

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. 23-107: Request to reprogram $1,323,691 within the Housing Production Trust Fund's (HPTF) was filed in the Office of the Secretary on June 18, 2020. This reprogramming is needed to cover funds the costs of the Maple View Flats Project fixed costs shortfall and administrative support costs that cannot be absorbed due to declining revenues in the Housing Production Trust Fund.

RECEIVED: 14-day review begins June 19, 2020

Reprog. 23-108: Request to reprogram $1,406,797.22 of Fiscal Year 2020 capital funds within the Department of Parks and Recreation was filed in the Office of the Secretary on June 23, 2020. This reprogramming is needed for DPR to complete critical stabilization and modernization projects at two DPR recreation centers.

RECEIVED: 14-day review begins June 24, 2020

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
6/26/2020

Notice is hereby given that:
License Number: ABRA-112294 **License Class/Type: C Tavern**
Applicant: ADBHS, LLC
Trade Name: Electric Cool-Aid
ANC: 6E02

Has applied for the renewal of an alcoholic beverage license at the premises:
512 RHODE ISLAND AVE NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
8/31/2020

A HEARING WILL BE
9/14/2020

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

ENDORSEMENT(S): Entertainment Summer Garden

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	11 am - 10:30 pm	11 am - 10:30 pm	11 am - 10:30 pm
Monday:	11 am - 10:30 pm	11 am - 10:30 pm	11 am - 10:30 pm
Tuesday:	11 am - 10:30 pm	11 am - 10:30 pm	11 am - 10:30 pm
Wednesday:	11 am - 10:30 pm	11 am - 10:30pm	11 am - 10:30 pm
Thursday:	11 am - 10:30 pm	11 am - 10:30 pm	11 am - 10:30 pm
Friday:	11 am - 12 am	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am	11 am - 12 am

	Hours of Summer Garden	Hours of Sales Summer Garden
Sunday:	11 am - 10:30 pm	11 am - 10:30 pm
Monday:	11 am - 10:30 pm	11 am - 10:30 pm
Tuesday:	11 am - 10:30 pm	11 am - 10:30 pm
Wednesday:	11 am - 10:30 pm	11 am - 10:30 pm
Thursday:	11 am - 10:30 pm	11 am - 10:30 pm
Friday:	11 am - 12 am	11 am - 12 am
Saturday:	11 am - 12 am	11 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2020
Protest Petition Deadline:	August 31, 2020
Roll Call Hearing Date:	September 14, 2020
Protest Hearing Date:	November 18, 2020

License No.:	ABRA-116888
Licensee:	Justins' House of Bourbon, LLC
Trade Name:	Justins' House of Bourbon
License Class:	Retailer's Class "A" Internet
Address:	2419 Evarts Street, N.E., Unit A
Contact:	Ali Pose: (202) 316-4646

WARD 5 ANC 5C SMD 5C02

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on September 14, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **November 18, 2020 at 1:30 p.m.**

NATURE OF OPERATION

New Class "A" Internet Retailer selling beer, wine, and spirits online only for off-premises consumption. This location will not be open to the public.

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

Sunday and Saturday CLOSED, Monday through Friday 8am – 5pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date:	June 26, 2020
Protest Petition Deadline:	August 31, 2020
Roll Call Hearing Date:	September 14, 2020
License No.:	ABRA-116881
Licensee:	MAHK Meetings, LLC
Trade Name:	TBD
License Class:	Retailer's Class "C" Tavern
Address:	1807 Florida Avenue, N.W.
Contact:	Sidon Yohannes: (202) 686-7600

WARD 1 ANC 1C SMD 1C01

Notice is hereby given that this licensee has requested to transfer the license to a new location with Substantial Changes under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on September 14 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF OPERATION/SUBSTANTIAL CHANGES

Licensee requests to transfer license from 1723 Columbia Road N.W, to a new location at 1807 Florida Avenue, N.W. Total Occupancy Load of 50 with seating for 30 patrons. Applicant is also requesting the following Substantial Changes: To add a Summer Garden with 30 seats and to change the hours of operation and alcoholic beverage sales and consumption indoors and outdoors, and change live entertainment hours for inside premise and summer garden.

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

Sunday 12pm – 2am, Monday through Thursday 4pm – 2am, Friday and Saturday 4pm – 3am

CURRENT HOURS OF OPERATION/ALCOHOLIC BEVERAGES SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Friday 4pm – 1am, Saturday 6pm – 2am

CURRENT HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

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

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGES SALES, SERVICE AND CONSUMPTION/LIVE ENTERTAINMENT FOR INSIDE PREMISES

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

PROPOSED HOURS OF OPERATION/ALCOHOLIC BEVERAGES SALES, SERVICE AND CONSUMPTION/LIVE ENTERTAINMENT FOR SUMMER GARDEN

Sunday through Friday 8am – 1am, Saturday 8am – 2am

PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR SIDEWALK CAFE

Sunday through Saturday 8am – 11pm

HISTORIC PRESERVATION REVIEW BOARD

NOTICE OF PUBLIC HEARINGS

The District of Columbia Historic Preservation Review Board will hold a public hearing to consider an application to amend the following historic district designation to include additional properties landmark in the D.C. Inventory of Historic Sites. The Board will also consider the nomination of the additional areas to the National Register of Historic Places:

Case No. 20-03: Kingman Park Historic District amendment (boundary expansion)
The 300 and 400 blocks of 19th Street NE, east side (i.e., odd numbers); 501-505 and 725 19th Street NE; the 300 block of 20th Street NE, west side (i.e., even numbers); the 400 block of 20th Street NE; the 1900 and 2000 blocks of C Street NE, north side (i.e., even numbers); the 1900 block of D Street NE; the 2000 block of D Street NE, north side (i.e., even numbers); 1900 and 2000 blocks of E Street NE; 1915 through 2031 Benning Road, south side (i.e., odd numbers); and two lots in Square 4550 lacking street addresses, also presently known as:
Square 4514, Lots 31, 808, 810, 812 and 816; Square 4515, Lots 97, 98, 101, 102, 803, 805, 809, 817, 819, 823, 825, 828 through 831, 834 and 835; Square 4526, Lots 52 through 68; Square 4527, Lots 20 through 33; Square 4549, all lots; Square 4550, Lots 77 through 99 and 800 through 805, and condos 2001 through 2008 and 2021 through 2032; Square 4558, Lots 18 through 32; and Square 4559, all lots.
Affected Advisory Neighborhood Commission: 7D

The hearing will take place at **9:00 a.m. on Thursday, July 30, 2020**, at 441 Fourth Street, NW (One Judiciary Square), in Room 220 South. It will be conducted in accordance with the Review Board's Rules of Procedure (10C DCMR 2). A copy of the rules can be obtained from the Historic Preservation Office at 1100 4th Street SW, Suite E650, Washington, DC 20024, or by phone at (202) 442-8800, and they are included in the preservation regulations which can be found on the Historic Preservation Office website.

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

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

If the Historic Preservation Review Board designates a property, it will be included in the D.C. Inventory of Historic Sites, and will be protected by the D.C. Historic Landmark and Historic District Protection Act of 1978. The Review Board will simultaneously consider the nomination of the property to the National Register of Historic Places. The National Register is the Federal government's official list of prehistoric and historic properties worthy of preservation. Listing in the National Register provides recognition and assists in preserving our nation's heritage. Listing provides recognition of the historic importance of properties and assures review of Federal

undertakings that might affect the character of such properties. If a property is listed in the Register, certain Federal rehabilitation tax credits for rehabilitation and other provisions may apply. Public visitation rights are not required of owners. The results of listing in the National Register are as follows:

Consideration in Planning for Federal, Federally Licensed, and Federally Assisted Projects: Section 106 of the National Historic Preservation Act of 1966 requires that Federal agencies allow the Advisory Council on Historic Preservation an opportunity to comment on all projects affecting historic properties listed in the National Register. For further information, please refer to 36 CFR 800.

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

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

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

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

BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, JULY 1, 2020
Virtual Hearing via WebEx

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

TIME: 9:30 A.M.

WARD ONE

20255
ANC 1A

Application of Mid City Builders, LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapters 9, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, and under the Voluntary Inclusionary Zoning modifications of Subtitle E § 5206.2 from minimum lot width requirements of Subtitle E § 201.4, to subdivide the lot into two record lots with one flat on each lot in the RF-1 Zone at premises 3534 13th Street, N.W. (Square 2834, Lot 167).

WARD ONE

20262
ANC 1A

Application of 741 Morton LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle U § 320.2, and under Subtitle E § 5201, from the side yard requirements of Subtitle E § 207.3, to construct a third-story addition and a three-story rear and side addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house in the RF-1 Zone at premises 741 Morton Street N.W. (Square 2894, Lot 870).

WARD SIX

20232
ANC 6C

Appeal of ANC 6C, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on November 13, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Certificate of Occupancy CO2000481, permitting a non-residential FAR exceeding the maximum in the NC-10 Zone at premises 337 H Street N.E.(Square 777, Lot 52).

PLEASE NOTE:

This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of

Zoning website and in the case record for each application or appeal by the Friday before the hearing date.

The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11, including the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

Individuals and organizations interested in any application may testify at the public hearing via WebEx or by phone and are strongly encouraged to sign up to testify 24 hours prior to the start of the hearing on OZ's website at https://dcoz.dc.gov/ or by calling Robert Reid at 202-727-5471. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board may impose time limits on the testimony of all individuals and organizations.

Individuals and organization may also submit written comments to the Board by uploading submissions via IZIS or by email to bzasubmissions@dc.gov. Submissions are strongly encouraged to be sent at least 24 hours prior to the start of the hearing.

Do you need assistance to participate?

Americans with Disabilities Act (ADA)

If you require an auxiliary aide or service in order to participate in the public hearing under Title II of the ADA, please contact Zelalem Hill at (202) 727-0312 or Zelalem.Hill@dc.gov. In order to ensure any requested accommodations can be secured by the scheduled hearing, please contact Ms. Hill as soon as possible in advance of that date.

Language Access

Amharic
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?
የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

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

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

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

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

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

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

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

TIME AND PLACE: **Thursday, September 10, 2020, @ 4:00 p.m.**
WebEx or Telephone – Instructions will be provided on the OZ website by Noon of the Hearing Date[1]

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-06 (1333 M Street, LLC – First-Stage and Consolidated PUD and Related Map Amendment @ Square 1025-E, Lot 802; Square 1048-S, Lots 1, 801, & 802; and RES 129 & 299 [1333 M Street, S.E.])

THIS CASE IS OF INTEREST TO ANC 6B

Felice Development Group, the designated representative of land owner, 1333 M Street, LLC (collectively, the "Applicant"), filed an application (the "Application") on March 13, 2020, pursuant to Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations], to which all references are made unless otherwise specified) requesting that the Zoning Commission for the District of Columbia (the "Commission") approve a first-stage and a consolidated planned unit development ("PUD") with a related Zoning Map amendment from the PDR-4 to the MU-9 zone to allow a mixed-use development on Square 1025-E, Lot 802, Square 1048-S, Lots 1, 801, and 802, RES 129, and RES 299, with an address of 1333 M Street, S.E. (the "Property").

The Property is a triangular-shaped parcel totaling 127,499 square feet of land area (approximately 2.92 acres), located on the south side of M Street and bordered by the unimproved right-of-way for Virginia Avenue and the right-of-way for Water Street. The Property is located in Ward 6 and is within the boundaries of Advisory Neighborhood Commission ("ANC") 6B.

The Comprehensive Plan's ("CP") General Policy Map ("GPM") designates the Property as a Land Use Change Area, for which changes in the land use are expected and encouraged. The CP's Future Land Use Map ("FLUM") designates the Property for Mixed-Use - Institutional and Medium Density Commercial. The Anacostia Waterfront Framework Plan calls for a mixed-use project with extensive publicly accessible open space that connects Virginia Avenue to the waterfront on the Property.

The current PDR-4 zone is intended to permit high-density commercial and PDR activities employing a large workforce and requiring some heavy machinery under controls that minimize any adverse impacts on adjacent, more restrictive zones and minimize non-industrial uses. The PDR-4 zone has a maximum height of 90 feet and a maximum 6.0 FAR, of which no more than 1.0 FAR may be devoted to restricted uses, with a PUD allowed to have a maximum height of 90 feet and a maximum 7.2 FAR. The PDR-4 zone does not allow residential uses.

The proposed MU-9 zone is intended to permit high-density mixed-use development, including office, retail, and housing, with a focus on employment; and be located in or near the Central Employment Area, on arterial streets, in uptown and regional centers, and at rapid transit stops. The MU-9 zone has a maximum height of 90 feet (100 feet for developments subject to Inclusionary Zoning ("IZ")) and a maximum 6.5 FAR (7.8 FAR for IZ developments), of which no more than 6.5 FAR may be devoted to non-residential

[1] Anyone who wants to participate in this case but cannot do so via WebEx or telephone may submit written comments to the record. (See p. 3, *How to participate as a witness – written statements*.)

uses, with a PUD allowed to have a maximum height of 130 feet and a maximum 9.36 FAR for IZ developments.

The Application proposes a mixed-use project consisting of approximately 45,500 square feet of retail/commercial space and 900 residential units over two buildings, with Building 1 having a height of 130 feet and Building 2 having a 92-foot height and a 6.17 FAR for the overall PUD. The Application seeks:

- Consolidated PUD approval for infrastructure and landscape improvements, for an underground parking garage under Building 1, and for Building 1's east tower, which will have approximately 496 dwelling units and approximately 32,217 square feet of non-residential/retail uses; and
- First-Stage PUD approval for Building 1's west tower and Building 2, with the West Tower having approximately 307 apartments and 9,971 square feet of retail space; and Building 2 having 97 apartments and 1,904 square feet of retail space.

The Applicant proposes to dedicate 11% of the residential units as IZ units, 3% more than the 8% minimum required by IZ (the Applicant increased its initial proffer of 10% in response to the Office of Planning's ["OP"] suggestion).

The Application asked for relief from parking, loading, rear yard, and court requirements as PUDs development incentives.

OP submitted a May 1, 2020 report to the Commission, concluding that the Application, on balance, would not be inconsistent with the CP, because although the Application's proposed density is at the upper end of the CP's Medium-Density Commercial category, and the proposed height exceeds the typical height for that category, the CP's written elements, particularly the Housing Element's focus on mixed-use developments including housing. OP noted that the Application would also conform with the Anacostia Waterfront Framework Plan. OP therefore recommended that the Commission setdown the Application for a public hearing, with the recommendation that Applicant consider increasing the affordable housing component above the proposed 10%, which exceeds the minimum 8% IZ requirement.

At its May 11, 2020, public meeting, the Commission voted to set down the Application for public hearing.

The Applicant filed its prehearing statement on June 8, 2020.

The public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, which includes the text provided in the Notice of Emergency and Propose Rulemaking by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

How to participate as a witness – oral presentation.

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case are **strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at https://dcoz.dc.gov/ or by calling Donna Hanousek at (202) 727-0789 in order to ensure the success of the new virtual public hearing procedures.

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. Therefore, it is **highly recommended**

that all written comments and/or testimony be submitted to the record at least 24 hours prior to the start of the hearing. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

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

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

How to participate as a party.

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

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

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

"Great weight" to written report of ANC.

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

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

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

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

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

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

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

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

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

ለመሳተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

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

TIME AND PLACE: **Thursday, September 24, 2020, @ 4:00 p.m.**
WebEx or Telephone – Instructions will be provided on the OZ website by Noon of the Hearing Date[1]

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-09 (Wagner, LLC – Consolidated PUD and Related Map Amendment @ Square 5740, Lot 337 [2419 25th Street, S.E])

THIS CASE IS OF INTEREST TO ANC 8B

Wagner, LLC (the "Applicant") filed an application (the "Application") on April 17, 2020, pursuant to 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) requesting that the Zoning Commission for the District of Columbia (the "Commission") approve a consolidated planned unit development ("PUD") with a related Zoning Map amendment from the R-3 to the RA-2 zone to construct a multiple-dwelling building on Lot 337 in Square 5740 with an address of 2419 25th Street, S.E. (the "Property").

The Property is a currently vacant lot comprising 19,601 square feet (0.45 acres) at the corner of Wagner and 25 Streets, S.E., in Ward 8. The Property was previously part of the Transitional Care Center Capitol City which it abuts on its south and west, with detached single-dwelling houses and three-story multiple-dwelling buildings further west and to the north, while Stanton Elementary School is to the east across 25 Street, S.E.

The Comprehensive Plan's ("CP") General Policy Map ("GPM") designates the Property as a Neighborhood Conservation Area, for which only modest changes are expected and mostly scattered site infill consistent with existing land uses and community character. The CP's Future Land Use Map ("FLUM") designates the Property for Institutional, with the surrounding area designated for Moderate-Density Residential uses, which the CP defines to include a mix of single-family homes, 2-4 unit buildings, low-rise apartment buildings, and sometimes multi-story apartment houses, with the consistent zones including the Property's current R-3 zone and sometimes the proposed RA-2 zone (formerly the R-5-B zone as listed in the CP).

The current R-3 zone is intended to permit attached rowhouses on small lots along with some detached and semi-detached dwellings. The R-3 zone has a maximum height of 40 feet and three stories, with a minimum lot width of 20/30/40 feet and a minimum lot area of 2,000/3,000/4,000 square feet for row/semi-detached/all other buildings.

[1] Anyone who wishes to participate in this case but cannot do so via WebEx or telephone may submit written comments to the record. (See p. 3, *How to participate as a witness – written statements.*)

The proposed RA-2 zone is intended to permit flexible design within the development standards for predominantly moderate-density residential areas. The RA-2 zone has a maximum height of 50 feet (60 feet with a PUD) and a maximum 1.8 FAR (2.16 FAR for developments subject to Inclusionary Zoning ("IZ"), and 2.59 for PUDs with IZ).

The Application proposes to develop the Property with a 67-unit multiple-dwelling building with all units reserved for senior citizens with incomes not exceeding 60% of the median family income. The building has a proposed maximum height of 55 feet and a maximum FAR of 2.59. The Application asked for relief from the one-acre minimum required for a PUD, as well as from certain loading and driveway access requirements as PUDs development incentives. The Application proposed various public benefits, including affordable and senior housing that exceeds the matter of right requirements.

The Office of Planning ("OP") filed a May 21, 2020, report concluding that the Application would not be inconsistent with the Comprehensive Plan because the Application:

- Will fill in a vacant lot with residential development consistent with the existing surrounding neighborhood consistent with the GPM's Neighborhood Conservation Area designation;
- Will comply with its FLUM designation based on the CP's direction that a property with a FLUM Institutional designation which changes uses should be evaluated as comparable in density to the nearby CP designations – for the Property, the surrounding Moderate-Density Residential; and
- Furthers various CP elements as well as the Mayor's Housing Initiative.

OP therefore recommended that the Commission set down the Application for a public hearing.

At its June 8, 2020 public meeting, the Commission voted to set down the Application for a public hearing.

The Applicant provided its prehearing statement on June 10, 2020.

The complete record in the case, including the OP report and transcript of the public meeting, 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.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, which includes the text provided in the Notice of Emergency and Proposed Rulemaking adopted by the Zoning Commission on May 11, 2020, in Z.C. Case No. 20-11.

How to participate as a witness – oral presentation

Interested persons or representatives of organizations may be heard at the virtual public hearing. All individuals, organizations, or associations wishing to testify in this case are **strongly encouraged to sign up to testify at least 24 hours prior to the start of the hearing** on OZ's website at https://dcoz.dc.gov/ or by calling Donna Hanousek at (202) 727-0789 in order to ensure the success of the new virtual public hearing procedures.

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. Therefore, it is **highly recommended that all written comments and/or testimony be submitted to the record at least 24 hours prior to the start of the hearing**. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

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

How to participate as a witness – written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record. The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

How to participate as a party.

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

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

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

"Great weight" to written report of ANC

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

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

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

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

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

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

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

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

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

ለመሳተፍ ዕርዳታ ያስፈልግዎታል? የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም) ካስፈለገዎት እባክዎን ከስብሰባው አምስት ቀናት በፊት ዚ ሂልን በስልክ ቁጥር (202) 727-0312 ወይም በኤሜል Zelalem.Hill@dc.gov ይገናኙ። እነኝህ አገልግሎቶች የሚሰጡት በነጻ ነው።

OFFICE OF THE CITY ADMINISTRATOR

NOTICE OF FINAL RULEMAKING

The City Administrator, pursuant to the authority set forth in Sections 422(2) and (3) and 449 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 790; D.C. Official Code §§ 1-204.22(2) and (3) and 1-204.49 (2016 Repl.)), and Mayor's Order 2015-036, dated January 9, 2015, hereby gives notice of the adoption of the following amendments to Chapter 8 (District of Columbia Employees Travel and Related Expenses) of Title 1 (Mayor and Executive Agencies), and add a new Chapter 40 (Travel Expenses) to Subtitle B (Government Personnel) of Title 6 (Personnel) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking will establish comprehensive regulations for the authorization, payment, and reimbursement of travel expenses incurred (or requested to be incurred) by employees of the District government.

A Notice of Proposed Rulemaking was published in the *D.C. Register* at 66 DCR 16386 (December 20, 2019). No comments were received. Section 4000.3 was added to set forth the effective date of the chapter and to establish a date by which the Department of Human Resources must take certain actions to implement, or further the implementation, of the requirements of this chapter. No other changes were made to the text of the proposed rules as published in the Notice of Proposed Rulemaking.

This rulemaking was adopted as final by the City Administrator on June 9, 2020, and will become effective as follows: (1) the repeal of Chapter 8 of Title 1 DCMR shall become effective on October 1, 2020 and (2) the addition of Chapter 40 of Title 6-B DCMR shall become effective immediately, but shall not apply until the date set forth in Subsection 4000.3 of that chapter.

Title 1 DCMR, MAYOR AND EXECUTIVE AGENCIES, is proposed to be amended as follows:

Chapter 8, DISTRICT OF COLUMBIA EMPLOYEES TRAVEL AND RELATED EXPENSES, is repealed.

Title 6-B DCMR, GOVERNMENT PERSONNEL, is amended by adding a new Chapter 40 to read as follows:

CHAPTER 40 TRAVEL EXPENSES

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4002 TRAVEL OFFICERS
4003 TRAVEL EXPENSES AND REIMBURSEMENT, IN GENERAL
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4034 LOCAL TRAVEL: REIMBURSEMENT OF LOCAL TRAVEL EXPENSES
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4099 DEFINITIONS

4000 PURPOSE AND APPLICABILITY

4000.1 This chapter establishes procedures for requesting, approving, and reimbursing travel expenses incurred by employees for authorized District government purposes.

4000.2 The provisions in this chapter apply to all employees of the District government under the Mayor's personnel authority.

4000.3 This chapter shall apply beginning on October 1, 2020. The Department of Human Resources shall issue all forms referenced in this chapter, issue guidance to District agencies regarding the implementation of this chapter, and provide training

opportunities to District government employees on the requirements of this chapter by September 1, 2020.

4000.4 Except as provided in §§ 4031 through 4035 (regarding local travel), this chapter applies to travel beyond fifty (50) miles from the District of Columbia, as measured from the John A. Wilson Building, located at 1350 Pennsylvania Avenue, N.W.

4000.5 When an issue relating to the authorization or reimbursement of a travel expense is not covered by this chapter, agencies and employees should be guided by the Federal Travel Regulation, 41 CFR Chapters 300-304, in deciding whether the expense will be authorized or reimbursed.

4001 GENERAL POLICY AND STANDARDS

4001.1 Travel expenses are necessary, in general, to effectively operate the District government.

4001.2 For specific employee travel expenses to be reimbursable by the District government, the expenses must be for:

(a) Travel deemed necessary for District government business, including travel for meetings and conferences;

(b) Travel deemed necessary for human capital development beneficial to the District government, including travel for employee training and seminars; and

(c) Emergency travel that interrupts travel approved for a purpose described in paragraphs (a) or (b) of this subsection.

4001.3 When incurring travel expenses, District employees shall be guided by principles of accountability, transparency, efficiency, and economy.

4001.4 In being guided by the principles of efficiency and economy, the following general standards shall apply:

(a) An employee traveling for District government purposes shall exercise the same care in incurring travel expenses that a prudent person of modest means would exercise if traveling on personal business. Expenses that would not be incurred by a prudent person of modest means shall not be authorized or reimbursed.

(b) Excessive costs (such as the use of unnecessary routes, extended stays, late fees, higher-level accommodations, and other expenses that are unnecessary or unjustified in the performance of official business) shall not be authorized and shall not be reimbursed.

(c) An agency shall limit the number of travelers (for example, participants at a conference) to the minimum necessary to accomplish the purpose of the travel.

4001.5 An employee must receive written authorization from his or her agency head, or the agency head's designee, before incurring any travel expense, unless circumstances beyond the control of the agency or employee make pre-authorization impractical.

4001.6 An employee shall be responsible for payment of all expenses over the reimbursement limits established in this chapter, all expenses not authorized by his or her agency, and all expenses that are otherwise not consistent with the provisions of this chapter or District or federal law.

4002 TRAVEL OFFICERS

4002.1 Agency heads shall designate an employee to serve as the agency's travel officer. In the absence of such a designation, the agency head shall be the travel officer.

4002.2 Travel officers are responsible for verifying that employee travel and training expenses are reasonable, necessary, consistent with the provisions of this chapter, and in compliance with the policies outlined in § 4001. This includes:

(a) Reviewing the travel requests and supporting documents for accuracy and completeness; and

(b) Ensuring compliance with applicable rules and regulations.

4002.3 All travel requests and expenses must be approved by the travel officer.

4002.4 The travel officer shall be responsible for:

(a) Making determinations under the provisions of this chapter (in consultation, where appropriate, with the agency's general counsel);

(b) Receiving, reviewing, certifying, and processing requests for travel authorizations;

(c) Receiving, reviewing, certifying, and processing requests for advances;

(d) Receiving, reviewing, certifying, and processing requests for reimbursements of travel expenses;

(e) Carrying out other functions specified in this chapter or as assigned by the agency director; and

(f) Taking such actions as are necessary to ensure that the travel officer's agency is in compliance with this chapter.

4003 TRAVEL EXPENSES AND REIMBURSEMENT, IN GENERAL

4003.1 For the purposes of this chapter, travel expenses include:

(a) Transportation expenses;

(b) Lodging expenses;

(c) Meal and incidental expenses; and

(d) Miscellaneous expenses.

4003.2 Travel expenses must be reasonable and necessary in order to be paid for or reimbursed by the District government. As used throughout this chapter, an expense is reasonable when it is the least expensive option, taking into consideration government accountability, efficiency, and economy, as well as employee safety.

4003.3 Subject to the availability of appropriated funds, the District government shall reimburse government travel expenses when approved in accordance with this chapter.

4003.4 No agency may approve or reimburse travel expenses that could reasonably be perceived to violate the public trust.

4003.5 If, for personal convenience, an employee travels by an indirect route or interrupts travel by a direct route, the employee shall be responsible for costs that exceed the approved cost of travel by a direct route on an uninterrupted basis.

4003.6 If, for personal convenience, an employee travels to the destination earlier than the date and time authorized for official travel or departs the travel destination later than the date and time authorized for official travel (such as by extending the employee's stay at the travel destination for the purposes of a personal vacation), the employee shall be responsible for costs that exceed the approved cost of travel for the dates and times authorized for official travel.

4004 TRAVEL APPROVALS

4004.1 All District government travel must be approved in writing. Approval of training does not itself constitute approval of travel associated with the training.

4004.2 Travel approval requests shall be submitted, reviewed, and approved using a form approved by the personnel authority. The personnel authority may approve a travel request in another manner where there is a good reason that the approved form cannot be used.

4004.3 Each travel approval request shall include the following information:

(a) The employee's name, title, and employee identification number;

(b) The employee's agency name;

(c) The purpose of the travel;

(d) The travel origin and destination;

(e) The dates of departure and return; and

(f) An estimate of each travel-related expense.

4004.4 In addition to the information provided pursuant to § 4004.3, each travel approval request shall be accompanied by:

(a) Documentation detailing the cost of the transportation (*i.e.*, a printout of the ticket of intended purchase or of a price comparison website showing the cost of the ticket);

(b) Documentation showing that the cost of transportation is the lowest rate available (*i.e.*, a printout from a price comparison website);

(c) Documentation detailing the cost of any lodging (*i.e.*, a printout of the lodging price or of a price comparison website showing the cost of lodging);

(d) Documentation showing that the cost of lodging is the lowest rate available (*i.e.*, a printout from a price comparison website);

(e) Documentation detailing the per diem lodging rate for the destination, if applicable (*i.e.*, a printout from the General Services Administration (GSA) website); and

(f) Documentation detailing the per diem meal and incidental expense rate for the travel destination (*i.e.*, a printout from the GSA website).

4004.5 If a travel authorization request is for a conference, training, or other event, the request shall include, in addition to the information required by §§ 4004.3 and 4004.4, the following:

(a) A copy of the brochure, flyer, letter of invitation, or announcement for the event;

(b) The agenda for the event, if applicable; and

(c) The registration pricing information (including early bird deadlines).

4004.6 If transportation costs exceed basic coach-class service (or its equivalent); lodging costs exceed the lowest cost available; or costs otherwise deviate from the provisions of this chapter, a written justification shall accompany the travel authorization request.

4004.7 Travel approvals shall be processed as indicated in § 4017.

4005 TRANSPORTATION EXPENSES

4005.1 The District shall pay for or reimburse transportation expenses incurred for approved employee travel to the extent authorized by the employee's agency and consistent with this chapter.

4005.2 Allowable transportation expenses include:

(a) Transportation from the employee's authorized point of origination (see § 4026) to an airport, train station, bus depot, or other authorized point of departure (such as a car rental location);

(b) Airfare, train fare, or other necessary transportation expenses (such as expenses of a rental car) from the travel departure city to the travel destination city;

(c) Transportation from the travel destination airport, train station, or bus depot to the employee's travel lodging;

(d) Transportation while at the travel destination (for example, a shuttle bus or taxi ride from the employee's lodging to a meeting location);

(e) Return transportation from the employee's lodging to the destination airport, train station, or bus depot;

(f) Return airfare, train fare, or other necessary transportation expenses from the destination city to the return city (generally the travel departure city); and

(g) Transportation from the return city airport, train station, or bus depot or other authorized point of return (such a car rental location) to the employee's home, office, or other authorized point of return (see § 4026).

4005.3 If an employee does not travel by the approved method or class of transportation, any additional expenses incurred which exceed the cost of the authorized method or class of transportation shall be borne by the employee.

4006 GROUND TRANSPORTATION

4006.1

(a) Ground transportation subject to reimbursement includes heavy rail (such as Amtrak, MARC, and Virginia Railway Express) and intercity bus service (see § 4007), as well as public transit systems (including subway, bus, and light rail), taxis, ride-hailing services (such as electronically hailed personal vehicles), shared-ride services (such as shared van service to or from an airport, or bikeshare), shuttles, and other similar means of transportation.

(b) For the purposes of this section, ground transportation does not include transportation by government or rental vehicles, which is covered by § 4008, or transportation by personal vehicles, which is covered by § 4009.

4006.2 An agency may authorize the reimbursement of the costs of ground transportation for the following travel:

(a) From the employee's authorized point of origination to a common carrier (for example, Metrorail from the employee's office to National Airport);

(b) From an airport, train station, or bus depot to the employee's place of lodging or place of official business (for example, from the destination airport to the employee's destination hotel);

(c) To, from, and between the employee's place of lodging and official business;

(d) Between places of official business while traveling;

(e) To obtain meals at nearby locations when the nature and location of the official business or lodging necessitate such travel and the necessity is explained on the approved expense reimbursement form;

(f) From the employee's place of lodging or place of official business to the airport, train station, or bus depot (for example, from the convention center at the destination location to the destination airport); and

(g) From the airport, train station, or bus depot to the employee's authorized point of return (for example, Metrorail from National Airport to the employee's office).

4006.3 An employee shall use courtesy transportation services, such as those furnished by places of lodging, to the maximum extent possible and as a first source of transportation between a place of lodging and common carrier terminals, places of official business, and meal locations.

4006.4 Whenever courtesy transportation services are not readily available, employees shall use the mode of ground transportation that is the least expensive mode of transportation, taking into consideration employee safety, cost, and efficiency.

4006.5 Tips more than twenty percent (20%) for a taxi, shuttle, ride hailing service, or similar means of transportation shall not be reimbursed. Tips exceeding two dollars ($2) per courtesy shuttle shall not be reimbursed.

4007 HEAVY RAIL AND INTERCITY BUS

4007.1 If heavy rail or intercity bus service is approved by an agency as a mode of employee travel, an agency shall pay for, and an employee shall only be reimbursed for, the cost of the lowest-price coach class heavy rail (for example, Amtrak) or intercity bus service that reasonably meets the travel needs of the employee, unless another class of service is authorized under § 4007.3.

4007.2 To determine and obtain the lowest-price coach class fare that reasonably meets the travel needs of the employee, the employee shall:

(a) Compare prices online at the heavy rail or bus carrier website; and

(b) Arrange for the purchase of transportation as far as possible in advance in order to ensure that the lowest prices are available.

4007.3 An agency may approve a class of service other than basic, coach-class service if:

(a) No basic, coach-class service is reasonably available and the travel cannot be rescheduled in a manner that is advantageous to the government;

(b) Use of other than basic, coach-class service is necessary to accommodate a medical disability or other special need;

(c) Regularly scheduled heavy rail or bus service between the origin and destination points only provide classes of service that are not basic, coach-class service; or

(d) The use of other than basic, coach-class service results in an overall cost savings to the government, for example by avoiding additional travel expenses, overtime, or lost productive time while awaiting or using basic, coach-class service.

Mere preference or convenience is not an acceptable factor for an agency to consider.

4007.4 An employee may upgrade to other than basic, coach-class service, or to preferred seating or service in coach-class accommodations, at the employee's personal

expense. The employee shall be responsible for the payment of the cost of any upgrades.

4008 GOVERNMENT AND RENTAL VEHICLES

4008.1 A government or rental vehicle may be authorized as a means of transportation to the travel destination and as a means of transportation while at the destination.

4008.2 Whenever practical, a government vehicle shall be used for ground travel to and from travel destinations within one hundred (100) miles of the District of Columbia, as measured from the John A. Wilson Building.

4008.3 If a government or rental vehicle is authorized as a mode of travel, the vehicle may be used at the destination only for the following purposes:

(a) To travel between places of official business;

(b) To travel between a place of official business and a place of lodging; and

(c) To travel between either a place of official business or a place of lodging and a restaurant, drug store, place of medical care, place of worship, or similar place necessary for the sustenance, comfort, or health of the employee ("necessary place") to foster the continued efficient performance of government business, provided the employee shall minimize such use by traveling to the nearest necessary place and by combining trips to multiple necessary places.

4008.4 Except for collision damage waivers, personal accident insurance, or theft insurance for travel within the United States, the District shall reimburse authorized and reasonable expenses associated with the use of government and rental vehicles, including the costs of fuel, parking fees, and tolls.

(a) When a government vehicle is used, fuel shall be obtained in accordance with rules and procedures established by the Department of Public Works.

(b) When authorized, the actual cost of fuel, parking, and toll expenses shall be reimbursed.

4008.5 An employee shall rent, and the agency shall only reimburse the expenses of, the least expensive compact car available, unless a waiver for another class of vehicle is approved by the employee's agency. In general, a waiver should only be approved when:

(a) Use of a class of vehicle other than a compact car is necessary to accommodate a special need;

(b) The cost of a class of vehicle other than a compact car is less than or equal to the cost of the least expensive compact car;

(c) Additional room is required to accommodate multiple employees authorized to travel together in the same rental vehicle;

(d) An employee must carry a large amount of District government material, and a compact rental vehicle does not contain sufficient space for the material; or

(e) When necessary for safety reasons, such as during severe weather.

4008.6 An employee shall refuel a rental vehicle before returning the rental vehicle to the drop-off location. An employee shall not be reimbursed for purchasing a pre-paid refueling option for a rental car or for rental car vendor refueling charges; except, that if it is not practical to refuel completely prior to returning the rental vehicle because of safety issues or the location of the closest fueling station, the employee may be reimbursed for rental car vendor refueling charges.

4008.7 An employee shall be responsible for any additional cost resulting from unauthorized use of a government or rental vehicle and may be subject to administrative and criminal liability for misuse of government property.

4009 EMPLOYEE VEHICLES

4009.1 An employee may use his or her personal vehicle for official government business only when authorized by the employing agency.

4009.2 An agency shall approve the use of an employee's personal vehicle only when use of a common carrier, government vehicle, or rental vehicle is not reasonable under the circumstances. Use of personal vehicles shall be in accordance with the District's policy regarding the use of personal vehicles, including Mayor's Order 2009-210.

4009.3 Reimbursement for use of a personal vehicle shall be determined by multiplying the distance traveled, by the applicable mileage rate (see § 4009.5).

4009.4 The following standards shall apply to the calculation of mileage associated with the use of personal vehicles:

(a) Mileage shall be calculated based on the distance between the authorized point of origination and the authorized destination, the distances traveled while within the destination jurisdiction, and the distance between the authorized destination and the authorized point of return.

(b) The distances shall be determined as shown in an online mapping service or the actual miles driven as determined from odometer readings.

(c) When travel originates from a location other than the authorized point of origination, or terminates at a location other than the authorized point of return, the mileage claimed shall be limited to the distance between the destination and the authorized point of return.

4009.5 The mileage rate shall be the rate published in the most recent Federal Travel Regulation bulletin establishing such rate or the rate displayed on the General Service Administration's website (http://www.gsa.gov/mileage).

4009.6 When a personal vehicle is the authorized method of transportation, reimbursable expenses in addition to mileage shall include parking fees and bridge, road, ferry, and tunnel fees. Non-reimbursable expenses include charges for repairs, depreciation, replacements, grease, oil, antifreeze, towing, fuel, insurance, and state and federal taxes. Parking and tolls shall be reimbursed at the actual rate and shall be accompanied by a receipt, regardless of amount.

4009.7 An employee's use of a personal vehicle may also be approved for transportation between his or her authorized origination point and an airport, train station, or bus depot from which the employee will depart for and arrive to if another means of transportation is not reasonably available.

4009.8 If an employee uses a personal vehicle for transportation to or from an airport, train station, or bus depot, when another means of transportation was authorized, the employee may be reimbursed for the expenses associated with the use of his or her personal vehicle pursuant to the standards, and at the rates, described in this section, except that the agency may reimburse such expenses (including mileage and parking expenses) only up to an amount equal to the estimated cost of the authorized mode of transportation.

4010 RESPONSIBILITY FOR TICKETS

4010.1 An employee shall be responsible for paying tickets for any moving or non-moving infractions, such as speeding tickets and parking tickets.

4011 AIR TRAVEL

4011.1

(a) If air travel is approved by an agency as a mode of employee travel, an agency shall only pay for, and an employee shall only be reimbursed for, the cost of the lowest-price basic coach class airfare that reasonably meets the travel needs of the employee, unless another class of service is authorized under § 4011.3.

(b) In determining whether a ticket reasonably meets the travel needs of the employee, the agency may consider the reduced time of travel and added convenience of non-stop transportation; however, it will generally be

considered reasonable for an employee to travel with one (1) stop with a layover of two (2) hours or less. Mere preference or convenience is not an acceptable factor for an agency to take into account.

4011.2 To determine and obtain the lowest-price coach class fare that reasonably meets the travel needs of the employee, the employee shall:

(a) Use at least one (1) major airline pricing comparison website; and

(b) Arrange for the purchase of transportation as far as practical in advance in order to ensure that the lowest prices are available;

4011.3 An agency may approve other than basic, coach-class service if:

(a) No basic, coach-class service is reasonably available and the travel cannot be rescheduled in a manner that is advantageous to the government. "Reasonably available" means available on an airplane that is scheduled to arrive within twenty-four (24) hours of the schedule start time of the government business at the travel destination, or scheduled to depart within twenty-four (24) hours after the end of the government business at the travel destination;

(b) Use of other than basic, coach-class service is necessary to accommodate a disability or other special need;

(c) Regularly scheduled flights between the origin and destination points provide only other than basic, coach-class accommodations; or

(d) The use of other than basic, coach-class service results in an overall cost savings to the government (for example, by avoiding additional travel expenses, overtime, or lost productive time while awaiting basic, coach-class service).

4011.4 An employee may upgrade to other than basic, coach-class service, or to preferred seating or service in coach-class accommodations, at the employee's personal expense. The employee shall be responsible for the payment of the cost of any upgrades.

4011.5 An agency may use its purchase card only to purchase employee air travel at the rates authorized by this section. If the employee is purchasing a more expensive air travel ticket, the employee must purchase the ticket with his or her own funds, and thereafter request reimbursement of an amount equal to the price of the air travel ticket authorized by this section and approved by the agency.

4011.6 If the agency determines that a lower price for air travel would have been available if the employee had arranged for the purchase of his or her air travel at an earlier

point in time or used a comparative pricing website, the agency may refuse to approve payment or reimbursement in excess of the lower price, but only if the lower price was not available due solely to the employee's delay.

4012 LODGING EXPENSES

4012.1 The District government shall provide reimbursement for lodging expenses when an employee is traveling for government-related purposes for more than twelve (12) hours, if the lodging expenses are authorized by the agency and are consistent with the requirements of this chapter.

4012.2 Reimbursement for the costs of lodging shall be made on the basis of actual and authorized expenses. An employee shall not be reimbursed for the costs of lodging on a per diem basis.

4012.3 The number of reimbursable lodging nights shall be determined by the conference, meeting, or training schedule, or other legitimate travel purposes, and the employee's ability to depart or arrive home at a reasonable hour. The employee shall arrange his or her travel schedule so as to minimize the number of lodging nights needed.

4012.4 An employee shall be reimbursed for lodging incurred on weekends and other non-workdays if the employee's travel status requires his or her stay to include a weekend day or non-workday and the agency determines that the weekend or other non-workday travel status is the most cost-effective situation (that is, remaining in a travel status and paying expenses is more cost-effective than having the employee return to his or her residence) or is otherwise in the best interest of the government.

4012.5 Lodging taxes paid by an employee are reimbursable as a miscellaneous travel expense. The amount of lodging taxes that are reimbursable are limited to the taxes paid on reimbursable lodging costs. For example, if an agency authorizes an employee a maximum lodging rate of fifty dollars ($50) per night, and the employee elects to stay at a hotel that costs one hundred dollars ($100) per night, the employee may only claim and be reimbursed for the amount of taxes paid on fifty dollars ($50), which is the maximum authorized, reimbursable lodging amount.

4012.6 Employees shall request exemption from any hotel taxes, based upon their government identification and their travel authorization form. An employee shall not be reimbursed for lodging taxes paid if the jurisdiction in which the lodging is located provides a tax exemption for purchases by the District of Columbia government or its employees. Employees shall be responsible for filing the appropriate paperwork, if any, to obtain the tax exemption.

4013 LIMITATIONS ON LODGING EXPENSES

4013.1 The District will generally provide reimbursement only for the lowest available lodging rate at the travel destination.

(a) To determine and obtain the lowest available lodging rate, the employee shall:

(1) Use at least one (1) major hotel pricing comparison website to determine the lodging rates at the travel destination; and

(2) Arrange for the purchase of lodging as far as practical in advance in order to ensure that the lowest prices are available.

(b) To determine whether a lodging rate is the lowest available, the agency may take into account factors such as:

(1) Additional expenses that are likely to be incurred for transportation between the place of lodging that has the lowest available lodging rate and the airport, train station, or bus depot, places of business, and other authorized places; and

(2) Inclusions in the lodging rate, such as parking or meals, which will offset other reimbursable travel costs.

(c) In determining the lowest available lodging rate, the employee shall request the government lodging rate, if lower than the standard guest rate or conference rate.

(d) If the lowest available hotel lodging rate exceeds the per diem lodging rate established by the GSA or the Department of State (DoS) for the destination, the employee must receive approval from the agency, prior to travel, to book at the higher rate. A request for approval must be supported by rate quotes showing the cost of rooms exceeding the GSA or DoS per diem lodging rate.

(e) An employee may request that the employee's agency head, or the agency head's designee, waive the lowest available hotel lodging rate requirement. Such a request may be approved if:

(1) The time to travel back and forth from the location of lodging available at or below the per diem rate to the airport, train station, bus depot, places of business, and other authorized places is excessive relative to the added cost of staying at or near the place of business;

(2) Lodging is procured at a prearranged place such as a hotel where a meeting, conference, or training session is held ("on-site lodging"), the on-site lodging is no more than one hundred twenty-five percent (125%) of the lowest available lodging rate, and the presence of the

employee at the on-site lodging is important to the employee obtaining the full benefits of the meeting, conference, or training;

(3) The waiver is necessary to ensure that the lodging is of an acceptable quality; or

(4) The waiver is necessary to ensure the personal safety of the employee.

(f) Mere preference or convenience is not an acceptable factor for an agency to take into account when determining whether a lodging rate greater than the lowest available lodging rate may be approved or reimbursed.

(g) The lodging rate approved pursuant to a waiver must be the lowest available hotel lodging rate taking into consideration the circumstances under which the waiver is being approved.

(h) Waivers are at the discretion of the agency head, provided that in no case shall the approved rate exceed one hundred fifty percent (150%) of the GSA per diem rate without the approval of the City Administrator, upon the recommendation of the personnel authority.

4013.2 An employee shall be reimbursed the single occupancy rate actually paid for the lodging at the approved rate. If the employee shares a room with another person, the employee's reimbursement is limited to one-half (½) of the double occupancy rate if the person sharing the room is another government employee on official travel. If the person sharing the room is not a government employee on official travel, the employee's reimbursement shall be limited to the single occupancy rate.

4013.3 If the employee stays with a friend or relative, with or without charge, the employee may be paid a flat "token" amount or be reimbursed for additional costs the host incurs in accommodating the employee only if the employee is able to substantiate the costs and the employee's agency determines the costs to be reasonable. The employee shall not be reimbursed the cost of comparable conventional lodging in the area.

4013.4 An employee may upgrade his or her approved lodging at the employee's personal expense. The employee shall be responsible for the payment of the cost of any upgrades.

4013.5 An agency may use its purchase card only to purchase employee lodging at the rates authorized by this section. If the employee is purchasing more expensive lodging, the employee must purchase the lodging with his or her own funds and thereafter request reimbursement of an amount equal to the price of the lodging authorized by this section and approved by the agency.

4013.6 If the agency determines that a lower price for lodging would have been available if the employee had arranged for the purchase of his or her lodging at an earlier point in time or used a comparative pricing website, the agency may refuse to approve payment or reimbursement in excess of the lower price.

4014 MEALS AND INCIDENTAL EXPENSES

4014.1 The District shall provide reimbursement for authorized meal and incidental expenses when an employee is on approved travel for government-related purposes for more than twelve (12) hours.

4014.2

(a) Meal and incidental expenses may be reimbursed by either or both of the following methods:

(1) Per diem method (or reduced per diem method); and/or

(2) Actual expense method.

(b) An employee may be reimbursed both by the actual expense and per diem methods during a single trip, but only one method of reimbursement may be authorized for a given calendar day. The agency shall determine when the transition between the reimbursement methods occurs.

4014.3 An employee shall be reimbursed for meals and incidental expenses incurred on non-workdays, including weekends, if lodging for the employee at the travel location was authorized for such days.

4014.4 An agency should not authorize reimbursement of meals and incidental expenses by the actual expense method unless:

(a) Actual expenses are less than the per diem amount;

(b) Meals are procured at a prearranged place, such as a hotel where a meeting, conference, or training session is held, and it is not feasible for the employee to purchase meals at an alternate location, and the cost of the meals together with allowable incidental expenses exceeds the per diem amount; or

(c) Meal expenses within prescribed allowances cannot be reasonably obtained.

4014.5 The maximum amount that an employee may be reimbursed under the actual expense method is limited to one hundred fifty percent (150%) of the applicable maximum meal and incidental expense per diem rate, unless a higher amount is approved by the City Administrator, upon the recommendation of the employee's agency head and personnel authority.

4014.6 To receive reimbursement at actual expense, an employee must itemize all expenses and provide a receipt for each expense, including meals, snacks, and incidental expense, except when a receipt is not normally provided for the expense.

4014.7 When reimbursement for meals and incidental expenses is made by the actual expense method, the following provisions shall apply:

(a) Costs for each meal shall be reimbursable for:

(1) One (1) non-alcoholic beverage;

(2) One (1) appetizer;

(3) One (1) main course;

(4) The tax on the items listed in sub-paragraphs (1) through (3) of this paragraph; and

(5) A tip, subject to paragraph (c) of this subsection.

(b) The cost of alcoholic beverages, desserts, and other meal costs not listed in paragraph (a) of this subsection shall not be reimbursable.

(c) Tips shall be reimbursable for no more twenty percent (20%) of the total reimbursable meal costs, including tax.

4014.8 When reimbursement for meal and incidental expenses is made by the actual expense method, allowable incidental expenses are fees and tips given to porters, baggage carriers, and hotel staff.

4015 MEAL AND INCIDENTAL EXPENSES; PER DIEM RATES

4015.1 When meal and incidental expenses are authorized to be reimbursed on a per diem basis:

(a) For destinations within the United States, the per diem meals and incidental expense rates that an employee may be paid shall be the rate established by the GSA.

(b) For destinations outside the United States, the per diem meal and incidental expense rate that an employee may be paid shall be the rate established by the DoS.

4015.2 If an employee's meal and incidental expenses are reimbursed on a per diem basis, the amount of the per diem rate to which an employee shall be entitled shall be calculated as follows:

(a) When an employee is on government travel for more than twelve (12) hours, but less than twenty-four (24) hours, the meal and incidental expense allowance shall be seventy-five percent (75%) of the applicable daily meal and incidental expense rate.

(b) When travel is for twenty-four (24) hours or more, the daily meal and incidental expense allowance shall be as follows:

Day of Travel	**Meals and Incidental Expense Allowance**
Day of departure	Seventy-five percent (75%) of the applicable meal and incidental expense rate
Full days of travel	One hundred percent (100%) of the applicable meal and incidental expense rate
Last day of travel	Seventy-five percent (75%) of the applicable meal and incidental expense rate

4015.3

(a) If an employee's meal and incidental expenses are reimbursed on a per diem basis and a meal is furnished by the government or included in a registration fee or as part of another event or activity that the employee is attending, an amount shall be deducted from the per diem rate as follows:

(1) For a furnished dinner: fifty percent (50%);

(2) For a furnished lunch: twenty-four percent (24%); and

(3) For a furnished breakfast: sixteen percent (16%).

(b) An agency may, at its discretion, allow an employee to claim the full daily meal and incidental expense rate even if a meal is furnished by the government or included in a registration fee or as part of another event or activity that the employee is attending, if:

(1) (A) The employee is unable to consume the furnished meal because of a medical requirement, religious belief, or dietary restriction;

(B) The employee made a reasonable effort to make an alternative meal arrangement, but was unable to do so; and

(C) The employee purchased a substitute meal to satisfy his or medical requirement or religious belief; or

(2) The employee was unable to take part in the meal furnished by the government or included in a registration fee or as part of another event or activity that the employee is attending due to the conduct of official business.

4016 MISCELLANEOUS EXPENSES

4016.1 The District shall provide reimbursement for miscellaneous expenses related to approved government travel when an employee is on government travel for more than twelve (12) hours, subject to the limitations set forth in this section and chapter.

4016.2 The following expenses shall be reimbursable as miscellaneous expenses, to the extent necessary for the conduct of official business and approved by the employee's agency:

(a) Baggage expenses authorized by 41 CFR § 301-12.2, including fees pertaining to the first checked bag; fees relating to the second and subsequent bags may be reimbursed only when the agency determines those expenses are reasonable and necessary;

(b) The use of computers, internet, printers, fax machines, and scanners, to the extent not provided by the government to the employee;

(c) Telephone calls for business purposes, when an employee has not been issued a mobile phone, or when mobile service is not available in the area,; telephone calls shall be itemized showing who was called, the purpose, date, length, and cost of the call;

(d) Faxes, which shall be itemized showing to whom the fax was sent, a description of the faxed document, and the purpose, date, number of pages, and cost of each fax;

(e) Lodging taxes on the actual amount of the lodging cost or the maximum lodging amount authorized by the agency, whichever is less; provided, no lodging taxes shall be reimbursed if the employee's lodging would have been exempt from taxes if the employee had filed appropriate paperwork or taken appropriate actions to obtain the tax exemption; and

(f) Laundry and cleaning of clothing expenses when the employee is authorized for four (4) or more nights of lodging.

4016.3 The District shall not provide reimbursement for personal phone calls, entertainment, alcohol, or other personal expenses.

4016.4 Any additional items reimbursable under 41 CFR § 301-12.1 shall be reimbursable as miscellaneous expenses, to the extent approved by the employee's agency.

4017 AGENCY APPROVAL

4017.1 Travel approvals shall be processed as follows:

(a) The employee requesting travel authorization shall submit the approval form to his or her immediate supervisor;

(b) The supervisor shall review and certify whether the requested travel benefits the agency;

(c) The supervisor shall submit the approval form to the travel officer;

(d) The travel officer shall certify whether the request complies with this chapter, and that the request is complete and accurate;

(e) The travel officer shall secure the signature of the agency fiscal officer, certifying that funds are available to fund the request;

(f) The agency head, or designee, shall either approve or deny the travel approval request; and

(g) The travel officer shall notify the employee and the supervisor of the decision on the request.

4017.2 Each agency head, or the agency head's designee, shall be the authorizing official for travel by an employee of the agency, except:

(a) The City Administrator shall be the authorizing official for deputy mayors;

(b) Each deputy mayor shall be the authorizing official for his or her agencies' directors;

(c) The Mayor's Chief of Staff shall be the authorizing official for the directors of agencies that report to the Executive Office of the Mayor;

4017.3 Travel must be authorized before the travel begins, unless extenuating circumstances acceptable to the authorizing official make it infeasible for the travel authorization to be issued before the travel begins. The extenuating circumstances shall be described in the authorization.

4018 ADVANCE PAYMENT OF EXPENSES

4018.1 Whenever possible, an agency shall pay for travel expenses with the agency's purchase card or through a requisition.

4018.2 When the purchase of travel expenses cannot reasonably be made using the agency's purchase card or a requisition, an employee may be provided District government funds in advance of travel to pay for the estimated expenses.

(a) Advances shall be requested along with the corresponding request for travel approval.

(b) An employee may receive an advance of one hundred percent (100%) of the estimated travel expenses that cannot reasonably be secured with the agency's purchase card or through a requisition.

(c) Advances shall be disbursed to an employee no sooner than ten (10) calendar days before the date of travel, unless an earlier disbursement is necessary to secure lower travel rates.

(d) An agency shall not advance funds to any employee who has an outstanding advance or portion of an advance due to the government.

4019 REIMBURSEMENT OF EXPENSES

4019.1 An employee shall be reimbursed for approved and eligible travel expenses.

(a) Employees shall seek reimbursement for such expenses using a travel expense reimbursement form issued by the personnel authority.

(b) Completed forms, along with appropriate documentation, shall be submitted to the travel officer within ten (10) business days after returning from travel.

(c) The District shall provide an employee any authorized reimbursements within thirty (30) calendar days after receiving a properly completed reimbursement claim form.

4019.2 Reimbursement claim forms shall include:

(a) The approved travel approval form, including written waivers, variances, or other special authorizations;

(b) An itemized list of each expense (including the date, purpose, and amount of the expense) for which the employee requests reimbursement; except, that meal and incidental expenses authorized on a per diem reimbursement basis shall not be itemized;

(c) A receipt for each expense requested to be reimbursed, except for expenses for which receipts are not normally provided; and

(d) For expenses related to the use of a personal vehicle, documentation as to the date, origin, destination, addresses, and starting and ending odometer

readings for each trip, which shall be provided on a form issued by the personnel authority.

(e) Any additional information the employee's agency may specifically require; and

(f) A certification that the information provided on the form is true and correct to the best of the employee's knowledge and belief, subject to criminal penalties, including fraud under the District of Columbia Theft and White Collar Crimes Act of 1982, effective June 11, 2013 (D.C. Law 4-164; D.C. Official Code § 22-2405), and to disciplinary action under the District's personnel regulations.

4019.3 Receipts must include sufficient information to evidence each expense and to verify those expenses.

(a) For air, train, rental car, and similar transportation expenses, receipts must show:

(1) The employee's name;

(2) The name and phone number of the transportation company;

(3) For any flights, train travel, or similar carrier services, the route number, the class of service, the passenger record number, the date and time of the transportation and the starting and ending points of the transportation;

(4) For rental cars, the date, time, and location of the pickup and drop-off of the car, the type of car rented, and the rental confirmation number; and

(5) The total cost of the transportation, listing separately the pre-tax amount and the amount of any tax.

(b) For lodging, receipts must show:

(1) The employee's name;

(2) The name, address, and phone number of the lodging;

(3) The check-in and check-out dates for the lodging;

(4) The room type and daily rate for the lodging;

(5) A description of any additional benefits included in the daily lodging charge (such as meals, parking, or internet access), if any;

(6) The tax rate and amount, if reimbursement of taxes is requested;

(7) An itemized list of additional charges, such as charges for telephone or internet service, if the reimbursement of these charges is requested; and

(8) The total cost of the lodging expenses.

(c) For meals, receipts must show:

(1) The employee's name;

(2) The name and address of the restaurant;

(3) The date and time of the meal;

(4) An itemized list of each cost of the meal (that is, listing each beverage and meal item, and their costs, separately);

(5) The number of persons whose meals appear on the receipt, if more than one person is on the same receipt, with the specific costs for which reimbursement are sought clearly identified; provided, an employee shall obtain a separate receipt for his or her meal where feasible; and

(6) The total amount of the bill, listing separately the pre-tax amount, the amount of tax, and the amount of tip.

4019.4 Whenever a receipt is required by this section, and the required information is not provided on the receipt, the employee shall provide the missing information.

4019.5 The completed travel expense reimbursement form shall be signed by the employee, with a certification that the information provided in the form is true and correct to the best of the employee's knowledge and belief.

4019.6 If an employee presents false information on a reimbursement claim form, the employee shall be subject to prosecution for criminal violations, including fraud under D.C. Official Code § 22-3221, and to disciplinary action under the District's personnel regulations.

4019.7 The employee shall submit the completed travel expense reimbursement form to the travel officer.

4019.8 The travel officer shall review each submitted travel expense reimbursement form for completeness and accuracy and shall return to the employee any incomplete or inaccurate form.

4019.9 An employee shall be responsible for excess costs resulting from circuitous routes and delays caused by the employee and for expenses that are unauthorized or unnecessary or unjustified in the performance of official business.

4019.10 The travel officer must ensure:

(a) The claim is properly prepared in accordance with the applicable regulations and agency procedures;

(b) The types of expenses claimed are authorized and allowable expenses;

(c) The amounts claimed are accurate; and

(d) The required receipts, statements, justifications, and authorizations (or electronic images of such documents) are included.

4019.11 Following his or her review, the travel officer shall determine whether reimbursable travel expenses meet the requirements necessary for reimbursement under this chapter.

4019.12 Each travel expense reimbursement form signed by the travel officer shall be submitted to the agency head, or the agency head's designee. The agency head, or the agency head's designee, must review and sign the form to authorize the reimbursement of the travel expenses.

4020 DISPUTES AS TO REIMBURSABLE EXPENSES

4020.1 An agency may disallow payment of an expense included on a travel expense reimbursement form if:

(a) The employee does not provide proper itemization of an expense;

(b) The employee does not provide a receipt or other documentation required to support the expense;

(c) The expense is not authorized under this chapter; or

(d) Reimbursement is otherwise inconsistent with this chapter, agency policies adopted in accordance with this chapter, or District law.

4020.2 When a claimed expense is denied, the agency shall provide notice to the employee and reimburse the employee's claim for any remaining and allowable expenses. For

each claimed expense that is denied, the notice shall explain the reason for the denial.

4020.3 To request reconsideration of a denied expense, an employee shall:

(a) File a new travel expense reimbursement form for the disallowed item(s);

(b) Provide full itemization of the disallowed item(s);

(c) Provide receipts or other documentation for each disallowed item that requires a receipt or other documentation, except that the employee shall not be required to provide a receipt or other documentation if the receipt or other documentation was filed with a prior travel expense reimbursement form (in which case the employee shall indicate on the form that the receipt or other documentation was previously filed with the agency);

(d) Provide a copy of the notice of disallowance; and

(e) State the proper authority for the claim if challenging the agency's application of a law or regulation.

4020.4 An employee may appeal a denied reimbursement expense by filing a grievance pursuant to § 1628. When filing a grievance pursuant to this section:

(a) The travel officer shall serve as the first level grievance official consistent with §§ 1629 and 1630;

(b) If the employee disagrees with the decision of the travel officer, the grievance shall proceed to the third level for review by the agency head, or the agency head's designee, pursuant to § 1632; and

(c) If a dispute remains following the third level review, the grievance shall proceed to the final review level, pursuant to § 1633.

4021 RECONCILIATION OF EXPENSES AGAINST AN ADVANCE

4021.1 If an employee received a travel advance, the employee must file a travel expense reimbursement form even if the employee is not seeking reimbursement above the advance amount, in order to reconcile actual expenditures against the advance.

4021.2 If the amount advanced is less than the amount of the total actual and authorized expenses for which reimbursement is claimed, the employee shall be reimbursed the net difference.

4021.3 If the advance exceeds the total actual and authorized expenses for which reimbursement is claimed, the employee must refund the excess by cash or check,

or through payroll deduction. The refund or authorization to refund the excess through payroll deduction shall accompany the travel expense reimbursement form.

4021.4 If an employee provides a refund to the District using a check, and the check is dishonored by the issuing financial institution, the employee shall be liable to the District for any resulting fees authorized by Section 1044(b) of the Delinquent Debt Recovery Act of 2012, effective September 20, 2012 (D.C. Law 19-168; D.C. Official Code § 1-350.03).

4021.5 Except when there is good cause, an advance shall be revoked and the employee shall be required to reimburse the agency for the full advance, if the employee does not file a claim for reimbursement within ten (10) business days after travel is completed.

4021.6 If funds are advanced to an employee and the employee does not travel, fails to submit a properly completed travel expense reimbursement form by the required date and thereafter fails to reimburse the agency for the full advance, or fails to reimburse the District for any advance in excess of actual and authorized expenses as required by § 4021.5, the agency shall take steps to collect the debt, including an offset against the employee's salary, a retirement credit, or other amount owed to the employee or any other legal method of recovery.

4022 CANCELLATION AND CURTAILMENT OF TRAVEL

4022.1 If authorized travel is cancelled:

(a) The employee shall immediately notify the travel officer of this fact and submit a refund of any monies advanced in connection with the authorized travel. Advances that are not refunded within three (3) business days shall be recovered by the agency in the manner described in § 4021.6.

(b) The individual who made the travel reservations shall immediately cancel any reservations for transportation, lodging, training, seminars, meetings, and/or conferences previously made and seek full refunds of any expenses and advances already incurred or, if refunds are not available, take other reasonable steps to minimize the costs incurred.

4022.2 If authorized travel is cancelled based on an employee's personal convenience, the employee shall be responsible for any expenses incurred.

4022.3 If authorized travel is cancelled for official purposes, or for a reason beyond the employee's control that is acceptable to the employee's agency, the agency shall be responsible for any expenses incurred that are not refundable. If the employee paid for the travel expenses with his or her own funds, the agency may reimburse the employee for those expenses that are not refundable.

4023 AGENCY POLICIES AND PROCEDURES

4023.1 Each agency may implement agency-specific travel approval procedures to supplement this chapter, as long as the procedures are not inconsistent with these regulations. However, only the personnel authority may develop approved forms. No agency may impose requirements or restrictions that conflict with this chapter.

4023.2 Agency-specific travel rules shall not authorize the payment or reimbursement of any expenses not authorized by this chapter.

4024 PROGRAM MANAGEMENT

4024.1 The Department of Human Resources shall be responsible for implementing the rules and requirements of this chapter, including:

(a) Promulgating forms, instructions, and guidance documents and posting such forms, instructions, and guidance documents on the internet or intranet website of the Department of Human Resources;

(b) Assisting agencies in the implementation of the requirements of this chapter (for example, providing training to travel officers);

(c) Auditing agency-wide compliance with the requirements of this chapter; and

(d) Recommending to the City Administrator additional travel policies and amendments to the requirements of this chapter.

4024.2 The Director of the Department of Human Resources, with the concurrence of the City Administrator, may issue variances to these rules in accordance with Chapter 1 of this title.

4024.3 The Director of the Department of Human Resources is delegated the authority to promulgate, with the concurrence of the City Administrator, amendments to these rules.

4025 FREQUENT TRAVELER BENEFITS

4025.1 An employee may use frequent traveler benefits earned on official travel for the employee's personal use. However, an employee shall not select a travel provider based on whether it provides frequent traveler benefits.

4026 TRANSPORTATION: AUTHORIZED POINTS OF ORIGINATION AND RETURN

4026.1 The authorized points of origination and return for an employee's travel shall be the employee's place of work, unless the authorizing official approves another point

of origination or return based on a determination that travel from or to such other point is more advantageous to the District government.

4027 EMERGENCY TRAVEL

4027.1 Emergency travel is travel that interrupts authorized travel as a result of:

(a) An employee becoming incapacitated by illness or injury not due to his or her own misconduct;

(b) The death or serious illness of a member of an employee's family; or

(c) A catastrophic occurrence or impending disaster, such as fire or flood, which directly implicates the employee's real property.

4027.2 Employees shall be reimbursed for expenses associated with emergency travel to the extent approved by the agency and allowable under federal government travel regulations.

4028 TRAVEL EXPENSES FOR EMPLOYEES WITH SPECIAL NEEDS

4028.1 To be reimbursed, additional travel expenses for employees with special needs must be approved by the agency.

4028.2 Expenses that may be approved by an agency include:

(a) Services of an attendant to accommodate a special need, when necessary to make the trip possible;

(b) Transportation, lodging, and meals and incidental expenses incurred by an attendant;

(c) Other than basic coach-class accommodations to accommodate a special need;

(d) Specialized services provided by a common carrier to accommodate a special need;

(e) Specialized transportation to, from, and at the travel destination;

(f) Costs for handling baggage when those costs are a direct result of a special need;

(g) Renting and/or transporting a wheelchair; and

(h) Any other expense deemed necessary by the agency to accommodate an employee with a special need.

4029 RESPONSIBILITY FOR ARRANGING FOR TRAVEL AND PURCHASING TRANSPORTATION AND LODGING

4029.1 An employee shall be responsible for identifying his or her own transportation and for identifying reservations for his or her own lodging, unless the employee's agency has designated its travel officer or another employee to make such purchases and reservations. The agency shall be responsible for paying for, or reimbursing the costs of, the transportation and lodging.

4030 INTERNATIONAL TRAVEL

4030.1 In addition to the other requirements of this chapter, travel to a destination outside the United States shall be subject to approval by the City Administrator and the Mayor's Chief of Staff.

4030.2 Employees, other than employees of offices and agencies that report to the Executive Office of the Mayor, must first submit International Travel Request Forms, outlined in Mayor's Memorandum 2017-001, dated May 2, 2017, to the Office of the City Administrator for the City Administrator's review at least forty-five (45) business days before the proposed travel. If approval from the City Administrator is granted, the Office of the City Administrator shall transmit the forms to the Mayor's Office of General Counsel.

4030.3 International Travel Request Forms must be submitted to the Mayor's Office of General Counsel for the Mayor's Chief of Staff's approval at least thirty (30) business days before the proposed travel. No employee may commit District funds for nonrefundable expenses before receiving the approval of the Mayor's Chief of Staff.

4030.4 A proposed gift or donation of travel or travel expenses from a foreign government must be approved by the Mayor's Chief of Staff and shall be made directly to an agency, not to an individual employee. In addition, the policies and procedures set forth in Mayor's Memorandum 2015-001, dated August 21, 2015, and Mayor's Memorandum 2017-001, dated May 2, 2017, shall be followed.

4030.5 An employee may consult with the Office of the Secretary in advance of international travel for advice on customs particular to the country to be visited.

4030.6 If an employee receives a gift from a foreign government or organization during international travel, the employee must submit the gift to the Mayor's General Counsel within three (3) days after the employee returns from travel, with an attached notation of who presented the gift and the date it was presented. In addition, the policies and procedures set forth in Mayor's Memorandum 2015-001,

dated August 21, 2015, and Mayor's Memorandum 2017-001, dated May 2, 2017, shall be followed.

4030.7 If a District agency is paying for an employee's international travel, the employee shall adhere to the applicable international per diem rates established by DoS. Reimbursement of expenses shall be issued in accordance with § 4003.

4030.8 Pursuant to the Fly America Act, 49 USC § 40118, when air travel is financed by federal funds, employees must use a U.S. flag air carrier, except as provided in 41 CFR §§ 301-10.135, 301-10.136, and 301-10.137.

4030.9 An agency that proposes to use federal grant funds to engage in foreign travel (other than to Canada or Mexico) must receive prior approval from the grantor agency, as set forth in Office of Management and Budget Circular A-87, Attachment B, Section 43.e.

4031 LOCAL TRAVEL

4031.1 The District may provide reimbursement for government-related local travel. As used in this section, local travel means government-related travel within fifty (50) miles of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004.

4031.2 Each agency shall purchase one (1) or more Metro SmartTrip cards for use by employees who engage in local travel. Authorizations, disbursement records, and documentation for the cards shall be maintained according to accounting requirements established by the Chief Financial Officer (CFO).

4031.3 Meals shall not be reimbursed for local travel, including local travel to attend a training, seminar, meeting, or conference, except as provided in § 4031.4(b).

4031.4

(a) Lodging shall not be reimbursed for local travel.

(b) Notwithstanding paragraph (a) of this subsection, an agency head may request that the DCHR Director authorize the reimbursement of lodging expenses for local travel based on a disability or other medical condition of the traveling employee. In such a circumstance, an agency head may also request that the DCHR Director approve the reimbursement of the expenses of meals purchased by the employee at the travel destination if such meal expenses are associated with the extended stay at the destination. (For example, if overnight lodging is authorized for a two (2)-day conference, reimbursement of the costs of dinner on the first day and breakfast on the second day may be authorized.)

4032 LOCAL TRAVEL: APPROVAL OF LOCAL TRAVEL AND LOCAL TRAVEL EXPENSES

4032.1 Local travel expenses shall be approved by the agency's authorizing official or his or her designee.

4032.2 An agency's authorizing official may delegate to supervisory personnel in the agency the authority to approve their supervised employees' local travel if the local travel includes only subway, bus, taxi, or ride-hailing expenses or involves only the use of a government vehicle.

4032.3 Employee requests and agency approvals for local travel need not be in writing, if the agency head authorizes oral requests and approvals.

4032.4 An employee shall obtain approval in advance of the local travel and in advance of incurring any local travel expenses unless the authorizing official determines there is good cause for obtaining approval after the local travel.

4032.5 In order to receive written authorization to engage in local travel and incur local travel expenses, an employee shall prepare and submit to the authorizing official or the agency's travel officer a local travel authorization form.

4032.6 The employee shall request authorization for local travel at least ten (10) calendar days before any local travel expenses are expected to be incurred; except, if the employee only becomes aware of the need to incur local travel expenses within ten (10) calendar days before any local travel expenses are expected to be incurred, the employee shall submit the form as promptly as possible after the employee becomes aware of the need to incur local travel expenses.

4032.7 An authorizing official or his or her designee (or supervisory personnel with delegated authority under § 4032.2) may authorize local travel only if he or she determines that the travel and associated expenses are consistent with the principles set forth in § 4000.

4033 LOCAL TRAVEL: TRANSPORTATION

4033.1 An agency may pay for or reimburse the transportation expenses of local travel.

4033.2 In authorizing local travel transportation expenses, the agency shall require that the employee travel by bus or subway, unless:

(a) The travel origination or destination point is not reasonably accessible by bus or subway, in which case travel by automobile may be authorized;

(b) Travel time by bus or subway is significantly greater than transportation by automobile and the agency determines that transportation by automobile is advantageous to the District government;

(c) Travel by government vehicle is available and the expected cost of parking is equal to or less than the expected cost of travel by bus or subway; or

(d) The employee wishes to travel by personal vehicle, no government vehicle is available, and the use of a personal vehicle is allowable under the District's policy regarding the use of personal vehicles, including Mayor's Order 2009-210.

4033.3 If transportation by automobile is authorized under § 4033.2(a) or (b):

(a) The agency should authorize transportation by a government vehicle, unless a government vehicle is not available, in which case the agency may authorize transportation by taxi or ride-hailing service; provided, the agency may authorize transportation by a personal vehicle when a government vehicle is not available and the use of a personal vehicle is allowable under the District's policy regarding the use of personal vehicles, including Mayor's Order 2009-210; provided, the expenses reimbursed for the use of a personal vehicle (including parking) in such a circumstance shall not be greater than the expense that would have been reimbursable if the employee had travelled by taxi; and

(b) The employee must take reasonable steps to minimize the costs of parking. Government vehicles parked in metered spaces are not required to pay meter fees. Parking expenses associated with the use of personal vehicles are generally minimized by the use of on-street parking. Therefore, an employee generally must take reasonable steps to determine that on-street parking is not available before parking in a commercial parking facility. Moreover, in selecting a commercial parking facility, an employee must use reasonable efforts to minimize the costs of such parking.

4034 LOCAL TRAVEL: REIMBURSEMENT OF LOCAL TRAVEL EXPENSES

4034.1 In order to be reimbursed for local travel expenses, an employee shall submit a completed local travel expense reimbursement form to the agency travel officer no later than ten (10) business days after the travel expenses were incurred.

4034.2

(a) A request for reimbursement of a taxi, ride-hailing service, or parking expense shall be accompanied by a receipt.

(b) A receipt for a taxi or ride-hailing service shall include:

(1) The date and time of travel;

(2) The starting and ending points of travel;

(3) The dollar amount of the fare and tip, listed separately;

(4) The name of the taxi company; and

(5) A description or designation of the purpose of the travel.

(c) A receipt for parking shall include:

(1) The date of travel;

(2) The starting and ending times of parking;

(3) The dollar amount of parking expenses incurred;

(4) The name of the parking facility, if applicable;

(5) The address of the parking facility; and

(6) A description or designation of the purpose of the travel.

4034.3

(a) A request for reimbursement of personal vehicle mileage shall be accompanied by a document that lists the travel origination and destination point for each leg of travel and the mileage of each leg of travel. To support the calculation of the mileage, either the document shall be accompanied by a printout from an online mapping service showing the mileage for each leg of travel or the starting and ending odometer readings for each leg of travel shall be printed on the document.

(b) Reimbursement for use of a personal vehicle shall pay for mileage at the mileage rate set by the Federal government for its employees (see www.gsa.gov for current rates).

(c) Reimbursement for use of a personal vehicle shall include parking expenses that are consistent with § 4033.3(b).

4034.4 Authorized bus, subway, and taxi expenses shall be reimbursed at the actual rate of fare or fee.

4034.5 Tips for taxi or ride-hailing services shall also be reimbursed; provided, however, that tips in excess of twenty percent (20%) shall not be reimbursed.

4034.6 Authorized parking expenses shall be reimbursed at the actual amount of expenses; provided, if transportation by automobile is authorized under § 4033.2(c) or (d), reimbursement for parking expenses shall be limited to the actual parking expenses or the cost of travel by bus or subway (had the local travel occurred by bus or subway), whichever is less.

4035 LOCAL TRAVEL: GOVERNMENT-OWNED VEHICLE EXPENSES

4035.1 Authorized users of District government vehicles shall obtain necessary gas, oil, maintenance, and repairs from a District government facility and will only be reimbursed for out of pocket expenses (gas, oil, repairs, and other vehicle expenses) when it is impractical to obtain such service at the District's facilities.

4099 DEFINITIONS

4099.1 When used in this chapter, the following words and phrases shall have the meanings ascribed:

Agency – an office, department, board, commission or other entity within the District government, except any entity that possesses independent personnel authority which includes the authority to establish regulations for the authorization, payment, and reimbursement of travel expenses incurred (or requested to be incurred) by employees of that entity.

Incidental expenses – fees and tips given to porters, baggage carriers, bellhops, hotel maids and others**.** Incidental expenses do not include the cost of alcoholic beverages, tobacco, movie rentals, entertainment, or other expenses of a personal nature that are not related to the official business of the District.

Local travel – travel to a location that is less than fifty (50) miles from the John A. Wilson Building.

Lodging – a hotel, motel, inn, guest house, or other establishment that provides lodging to transient guests for overnight sleeping facilities.

Meal expenses – expenses for breakfast, lunch, dinner, and related tips and taxes. Alcoholic beverages and all entertainment expenses are specifically excluded from meal expenses.

Mileage rate – the reimbursable rate for the authorized use of an employee's personal vehicle for travel for official government business as determined by the General Services Administration (see www.gsa.gov for current rates).

Per diem allowance – a set daily payment provided to an employee, instead of

actual expenses, for reimbursement for meals and related incidental expenses. A per diem allowance is separate from lodging expenses, transportation expenses, and miscellaneous expenses.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF FINAL RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of final rulemaking action to adopt amendments to Chapter 10 (Initiative and Referendum) and Chapter 11 (Recall of Elected Officials) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments to Chapters 10 and 11 is to remove the prohibition against registered voters who are eligible to sign a particular initiative, referendum, or recall petition being signatories on petition sheets that they have circulated.

A Notice of Emergency and Proposed Rulemaking with respect to these amendments was published in the *D.C. Register* on May 15, 2020 at 67 DCR 005158. No comments on the proposed rules were received during the public comment period, and no substantive changes have been made to the regulations as proposed.

The rules were adopted as final at a regular Board meeting on Wednesday, June 17, 2020, and they will become effective upon publication of this notice in the *D.C. Register*.

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

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

1007 VALIDITY OF SIGNATURES

1007.1 A petition signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) [REPEALED];

(k) The signature was obtained outside of the presence of the circulator; or

(l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient.

Chapter 11, RECALL OF ELECTED OFFICIALS, is amended as follows:

Subsection 1107, VALIDITY OF SIGNATURES, is amended to read as follows:

1107 VALIDITY OF SIGNATURES

1107.1 A petition signature shall not be counted as valid in any of the following circumstances:

(a) The signer's voter registration was designated as inactive on the voter roll at the time the petition was signed;

(b) The signer, according to the Board's records, is not registered to vote at the address listed on the petition at the time the petition was signed and has failed to file a change of address form that is received by the Board on or before the date that the petition is filed;

(c) The signature is a duplicate of a valid signature;

(d) The signature is not dated;

(e) The petition does not include the address of the signer;

(f) The petition does not include the name of the signer where the signature is not sufficiently legible for identification;

(g) The circulator of the petition sheet was not a qualified petition circulator at the time the petition was signed;

(h) The circulator of the petition failed to complete all required information in the circulator's affidavit;

(i) The signature is not made by the person whose signature it purports to be, provided that registered voters who are unable to sign their names may make their marks in the space for signature. These marks shall not be counted as valid signatures unless the persons witnessing the marks shall attach to the petition affidavits that they explained the contents of the petitions to the signatories and witnessed their marks;

(j) [REPEALED];

(k) The signature was obtained outside of the presence of the circulator;

(l) The signature was obtained on a petition sheet that was submitted on behalf of a previously filed petition that was rejected or found to be numerically insufficient; or

(m) The signer is not a registered voter in the ward or Single-Member District of the elected official sought to be recalled.

DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINAL RULEMAKING

Demand Response Generating Sources

The Director of the Department of Energy and Environment (DOEE), pursuant to the authority set forth in Section 107(4) of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51, § 107; D.C. Official Code § 8-151.07 (2013 Repl. & 2019 Supp.)); Section 6 of the District of Columbia Air Pollution Control Act of 1984, effective March 15, 1985, as amended (D.C. Law 5-165; D.C. Official Code §§ 8-101.06 (2012 Repl. & 2019 Supp.)); Section 204 of the Air Quality Amendment Act of 2014, effective September 9, 2014 (D.C. Law 20-135, § 204; D.C. Official Code § 8-101.14 (2013 Repl. & 2019 Supp.)); Mayor's Order 2006-61, dated June 14, 2006; and Mayor's Order 2015-191, dated July 23, 2015; hereby gives notice of adoption of a new Chapter 12 (Demand Response Generating Sources) in Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking establishes requirements for operators of demand response generators that operate in the District of Columbia. The new Chapter 12 establishes rules to implement Title II of the Air Quality Amendment Act of 2014 to allow for limited participation in electric grid demand response programs by stationary generators.

This rulemaking was published in the *D.C. Register* for a thirty (30) day public notice and comment on June 28, 2019 at 66 DCR 7692. The Department received two (2) sets of comments during the public comment period, from the New Jersey Department of Environmental Protection ("NJ DEP") and Advanced Energy Management Alliance ("AEMA").

NJDEP submitted four (4) comments on this rulemaking. The first comment was that the regulation should be applicable to all stationary internal combustion engines, including engines which generate electricity but do not have an agreement or obligation to provide electricity to the grid. The Department did not make changes in connection with this comment because it goes beyond the scope of the Air Quality Amendment Act of 2014, which is the authority for this rulemaking. The second comment was that the regulation should require all existing generators to achieve compliance with applicable nitrogen oxides (NOx) emission limits by a specific date. The Department did not make changes in connection with this comment since the Air Quality Amendment Act of 2014 is already in effect and sources should be complying with it currently; having a compliance date in the future is not consistent with this. The next two comments concerned recommended minimum floor/emission limits for (1) existing generators and (2) new and modified generators. The Department did not make changes in connection with these comments since the Department proposed strict emissions standards consistent with the definitions outlined in the Air Quality Amendment Act of 2014 for Demand Response Electrical Generating Sources and a further floor is not required to meet the statutory language.

AEMA submitted comments on this rule making, and the way in which DOEE parsed the comment letter, DOEE found there to be eleven (11) distinct comments. The first comment was that The District should encourage participation in the PJM Interconnection Demand Response Program to

prevent black outs, improve public health, and protect the environment. The Department did not make changes in connection with this comment because it goes beyond the scope of the Air Quality Amendment Act of 2014, which is the primary authority for this rulemaking. The next two comments were that the Department should remove section § 1200.8 requirement to meet Tier 4 engine standards and § 1200.9 (C)(3)(b) regarding revenue. The Department did not make changes in connection with this comment because the Department finds that the proposed requirements properly weighed the District's current air quality levels in regards to other criteria for determining Best Available Control Technology ("BACT") in accordance with the best available and most applicable guidance from the U.S. Environmental Protection Agency ("EPA"). As part of this comment AEMA did note that spark ignition engines were not addressed, but considered the point moot since they requested that § 1200.8 be removed in the final rule, but since the Department is not removing that section the Department included standards for spark-ignition engines in the final rulemaking. The fifth through ninth comments concerned various pieces of evidences that AEMA stated demonstrated that engines participating in emergency demand response programs are vital resources and do not cause adverse impacts. The Department reviewed the four studies provided as attachments and found that first did not address air quality effects and that the remaining three studies supported the opposite conclusion concerning adverse effects. The tenth comment was that the Department should improve its permit application review process. This regulation is intended to clarify the regulatory process associated with obtaining permits so such improvements will occur following finalization of this regulation. The final comment concerned an assumption that currently permitted non-emergency generators could participate in demand response. The Department agrees with this interpretation, but clarified that interpretation in the final rulemaking.

For a detailed summary of the comments and responses, please see the Department's website at: https://doee.dc.gov/service/public-notices-hearings.

These rules were adopted as final on February 5, 2020 and will be effective upon publication of this notice in the *D.C. Register*.

Title 20 DCMR, ENVIRONMENT, is amended by adding a new Chapter 12, DEMAND RESPONSE GENERATING SOURCES, as follows:

CHAPTER 12 DEMAND RESPONSE GENERATING SOURCES

1200 DEMAND RESPONSE GENERATING SOURCES
1299 DEFINITIONS

1200 DEMAND RESPONSE GENERATING SOURCES

1200.1 An owner or operator of a demand response generating source shall obtain a permit from the Department pursuant to this section and § 200.1 of this title before any person shall cause, suffer, or allow the construction or modification of the demand response generating source.

1200.2 An owner or operator of a demand response generating source shall obtain a permit from the Department pursuant to this section and § 200.2 of this title before any

person shall cause, suffer, or allow the operation of the demand response generating source.

1200.3 A demand response generating source:

(a) Shall not be classified or permitted as an emergency generator; and

(b) Must be classified and permitted as a non-emergency generator, and must meet all relevant requirements of this section.

1200.4 Except as specified in § 1200.5 and §1200.6 once a demand response generating source is approved for participation in a demand response program pursuant to this section, the level of emission control of the demand response generating source is not subject to re-evaluation under § 1200.7 through § 1200.9 at the time of permit renewal.

1200.5 A permit application or permit renewal application to construct, modify, or operate a demand response generating source may be denied if the Department determines that such a denial is necessary or appropriate to protect air quality pursuant to a finding that issuance of the permit would not be consistent with the requirements of § 201 of this title.

1200.6 A permit application or permit renewal application to construct, modify, or operate a demand response generating source may be denied if the Department determines that such a denial is necessary or appropriate to encourage energy efficiency or conservation-based demand response in the District.

1200.7 No person shall construct or operate any internal combustion engine as a demand response generating source unless the source implements, at a minimum, a level of emission control determined by the Department to meet the definition of Best Available Control Technology (BACT) in § 199 of this title for a new unit of the proposed type and size at the time of submission of the permit application submitted pursuant to § 1200.1 or § 1200.2, whichever is earlier.

1200.8 At no time shall BACT for a demand response generating sources be determined to be less stringent than the standards specified for the same size engine of the current model year at the time of application to the Department for a permit to operate as a demand response generating source as follows:

(a) For all compression-ignition engines, regardless of model year, the standards for compression-ignition engines found in 40 CFR §§ 1039.101, 1039.105, 1039.107, and 1039.115, as amended; and

(b) For all spark-ignition engines, regardless of model year, the standards for non-emergency spark-ignition engines found in 40 CFR §§ 60.4231, 60.4243, and 60.4244, as amended.

1200.9 In preparing an application for a permit under this section, the applicant shall propose a control system representing BACT based on a case-by-case evaluation of available control technologies, to be documented in the application, performed by completing the following steps:

(a) Identify and evaluate a list of air pollution technologies and pollution prevention methodologies that may be applied to the source including, but not limited to, technologies and methodologies used for similar sources, innovative control technologies, modification of the process or process equipment, other pollution prevention measures, and combinations of the above measures;

(b) Arrange the measures on the list in descending order of air pollution control effectiveness; and

(c) Choose and propose the top-rated measure on the list not eliminated from consideration as a result of one (1) of the following demonstrations:

(1) Where a demonstration is made that this measure is technically infeasible, based on physical, chemical, or engineering principles, and/or technical difficulties that would prevent the successful application of the measure;

(2) Where a demonstration is made that this measure has adverse environmental effects (for example effects on water or land, HAP emissions, or increased environmental hazards) when compared with its air contaminant emission reduction benefits, which would make use of this measure unreasonable;

(3) Where a demonstration is made that this measure should be eliminated from consideration based on its calculated economic impacts as follows:

(A) The demonstration shall use the techniques in the latest edition of EPA's Control Cost Manual, where the total and incremental costs of the top measure are greater than the total and incremental costs of the proposed measure(s) and that the extra costs, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of the top measure unreasonable; and

(B) The costs of the measures evaluated shall be net costs and shall explicitly include in the calculation the economic benefits of operating the generator as a demand response generating source as compared to the alternative operation

(or non-operation) that would be proposed if the unit were not granted a permit under this section; or

(4) Where a demonstration is made that this measure should be eliminated from consideration based on its energy impacts such as establishment that it relies on fuels that are not reliably available; or that the energy consumed by the top measure is greater than that consumed by the proposed measure(s), and that the extra energy used, when compared with the air contaminant emission reduction benefits resulting from the top measure, would make use of that measure unreasonable.

1299 DEFINITIONS

1299.1 The meanings ascribed to the definitions and abbreviations appearing in § 199.1 and § 199.2 of this title shall apply to any terms in this chapter not defined below. Additionally, the following definitions shall apply to the terms as used in this chapter:

Demand response generating source – means a stationary generator subject to an agreement or obligation to provide power in response to power grid needs, economic signals from competitive wholesale electric markets, or special retail rates. The term "demand response generating source" shall not include a generator that derives its energy from an energy source that qualifies as a tier one renewable source under the Renewable Energy Portfolio Standard Act of 2004, effective April 12, 2005 (D.C. Law 15-340; D.C. Official Code §§ 34-1431 *et seq.*).

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF FINAL RULEMAKING

Z.C. CASE NO. 20-01[1]
(Text Amendment – 11-C DCMR)
(To Amend General Waterfront Regulations)

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 amendment of the following provisions of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [Zoning Regulations] to which all references are made unless otherwise specified):

- Subtitle C, General Rules
  § 1102 – to allow, by special exception, certain uses that are currently prohibited

Description of Amendment
The text amendment permits certain uses currently prohibited in the one hundred (100)-year floodplain to be allowed by special exception subject to specific criteria and review and report by the District Department of Energy and Environment (DOEE).

Procedures Leading to Adoption of the Amendment
Office of Planning ("OP")
OP filed a January 3, 2020, report that served as a petition proposing the text amendment to the Zoning Regulations, and requested that the Commission:

- Set down the petition for a public hearing;
- Shorten the notice period from 40 to 30 days;
- Authorize immediate publication of the public hearing notice; and
- Authorize flexibility to work with the Office of the Attorney General (OAG) on the final text.

OP filed a January 24, 2020, supplementary setdown report that modified the proposed text amendment in coordination with DOEE.

At the close of its January 27, 2020 public meeting, the Commission voted to set down the proposed text amendment for a public hearing; to shorten the notice period to 30 days; authorize the publication of a Notice of Proposed Rulemaking; and authorize flexibility for OP to work with OAG.

Proposed Action

[1] For Office of Zoning tracking purposes only, this Notice of Final Rulemaking shall also be known as Z.C. Order No. 12-08C.

VOTE (January 27, 2020): 5-0-0 (Anthony J. Hood, Peter A. Shapiro, Robert E. Miller, Peter G. May, Michael G. Turnbull to **APPROVE**)

Notice of Proposed Rulemaking
The Commission published the proposed amendment as a Notice of Proposed Rulemaking (NOPR) in the *D.C. Register* at 67 DCR 2614 (March 6, 2020).

No comments were received in the thirty (30)-day period required by § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206, as amended; D.C. Official Code § 2-505 (2016 Repl.)).

National Capital Planning Commission (NCPC)
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 May 4, 2020.

NCPC filed a report dated May 6, 2020, stating that NCPC had determined that the proposed amendment was not inconsistent with the federal elements of the Comprehensive Plan nor would they adversely impact any identified federal interests. (Exhibit 15.)

OP filed a March 6, 2020, report recommending approval of the proposed text amendment and presenting its analysis that the proposed text amendment was not inconsistent with the Comprehensive Plan.

"**Great Weight" to the Recommendations of OP**
The Commission is required to give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle 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 persuasive OP's recommendation that the Commission adopt the proposed text amendment and that it is not inconsistent with the Comprehensive Plan, and the Commission therefore 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).)

As no ANC filed a written report, there is nothing to which the Commission can give great weight.

At the close of its May 7, 2020, public hearing, the Commission voted to take final action and authorize the publication of a notice of final rulemaking.

Final Action
VOTE (May 7, 2020): **4-0-1** (Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter A. Shapiro to **APPROVE;** Peter G. May not present, not voting)

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

Amendments to Subtitle C, GENERAL RULES

Section 1102, GENERAL WATERFRONT REGULATIONS, of Chapter 11, WATERFRONT, of Subtitle C, GENERAL RULES, is amended by revising current § 1102.4, adding a new § 1102.5, and renumbering current §§ 1102.5 and 1102.6 as new §§ 1102.6 and 1102.7, to read as follows:

1102.1 A waterfront setback to any building …[2]

…

1102.4 The following uses shall be permitted as a special exception within a one hundred (100)-year floodplain, if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9 and subject to the conditions in Subtitle C § 1102.5:

(a) Residential uses with only one (1) or two (2) dwelling units;

(b) Animal sales, care, and boarding;

(c) Community-based institutional facilities;

(d) Daytime care;

(e) Education;

(f) Emergency shelter;

(g) Hospital; and

(h) Lodging.

[2] 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.

1102.5 The following conditions shall apply to any application for a special exception use under Subtitle C § 1102.4:

(a) The application shall include an analysis that provides the following:

(1) A site plan showing the one hundred (100)-year floodplain boundaries and base flood elevations for the property that is certified by a registered professional engineer, architect, landscape architect, or other qualified person;

(2) A description of how the project has been designed to meet applicable flood resistant design and construction standards that is certified by a registered professional engineer, architect, landscape architect, or other qualified person;

(3) An evacuation plan that describes the manner in which the property would be safely evacuated before or during the course of a one hundred (100)-year flood event; and

(4) A description of how the proposed use would not result in any adverse impacts to the health or safety for the project's occupants or users due to the proposed use's location in the floodplain; and

(b) The Office of Zoning shall refer the application to the following agencies for their review and recommendation if filed to the case record within the forty (40)-day period established by Subtitle A § 211:

(1) District Department of Energy and Environment (DOEE);

(2) District of Columbia Fire and Emergency Medical Service Department (FEMS);

(3) Metropolitan Police Department (MPD); and

(4) The District of Columbia Homeland Security and Emergency Management Agency (HSEMA).

1102.6 Parking space requirements for the waterfront areas are …

1102.7 The following structures and projections may encroach …

The complete record in the case, including the OP 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.

In accordance with the provisions of Subtitle Z § 604.9, this Notice of Final Rulemaking shall become final and effective upon publication in the *D.C. Register*; that is, on June 26, 2020.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

Z.C. CASE NO. 19-21
(Text Amendment – Subtitles D, E, U, & X of Title 11 DCMR)
(Roof Top or Upper Floor Elements Regulations)

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 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).

The proposed amendment expands the application of certain regulations, clarify standards, and eliminate duplicative provisions that apply to the protection of roof top solar energy systems in certain zones, as follows:

- Subtitle D: Residential House (R) Zones
  - § 208 – to introduce a new solar energy system protection standard for semi-detached and row buildings in the R zones to mirror the standard currently applied in the RF zones, as modified by this text amendment (Subtitle E § 206); and
  - § 5207 – to introduce a new special exception standard for relief from § 208.

- Subtitle E: Residential Flat (RF) Zones
  - § 201 – relocated for clarity to Subtitle U § 301.5 with other limited matter of right expansions of apartment houses;
  - § 206 – to clarify the solar energy system protection standard – in particular the applicability of the standard to new construction and to modify how interference is measured;
  - § 5203 – to remove duplicative standards and reorganize for clarity; and
  - § 5207 – to introduce a new special exception provision for relief from § 206.

- Subtitle U: Use Permissions
  - § 301 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity;
  - § 320.2 – to remove duplicative provisions (in favor of Subtitle E §§ 201.4, 205.4, 206, 303, 403, 503, 603, & 5203) and reorganize for clarity; and
  - § 320.2(m) – relocated for clarity to § 301.4.

- Subtitle X: General Procedures
  - § 1001.3 – to correct cross references.

Setdown
On October 11, 2019, the Office of Planning (OP) filed a setdown report that served as a petition to the Commission proposing text amendments to the following provisions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified):

At its regular public meeting held on October 21, 2019, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing, with flexibility to work with OAG.

On December 3, 2019, OP submitted a request to modify the proposed amendment to exclude properties subject to review by the Historic Preservation Review Board or the U.S. Commission on Fine Arts from regulation by the text amendment.

At its regular public meeting held on December 9, 2019, the Commission accepted OP's proposed addition.

Public Hearing
OP filed a February 3, 2020, hearing report, as required by Subtitle Z § 400.6, that recommended approval of the proposed text amendment attached to the hearing report which included revisions based on:

- OP's review of the issues raised by ANC 6C in Z.C. Case No. 19-14 that applied to this proposed text amendment; and
- OP's consultation with DCRA, DOEE, and OAG.

In addition to proposing several corrections and minor edits, ANC 6C filed a February 11, 2020, report expressing support for the proposed text amendment with the following concerns:

- Objecting to the standards of relief from the five percent (5%) maximum interference with existing operative solar systems on abutting property based on the standard special exception criteria, and instead proposing that such relief only be available as a variance (Subtitle E § 5207);
- Objecting to the proposed removal of the prohibition on additions blocking or impeding an existing operative chimney or vent on an abutting property although acknowledging that this prohibition copies the one that included in the Construction Codes (Subtitle E §§ 206 & 5203); and
- Proposing alternate language for exemptions from the requirement for special exception relief to significantly alter or replace an existing protected roof top element (Subtitle E § 206.2).

At its February 13, 2010, public hearing, the Commission heard testimony from OP in support of the proposed text amendment and from the public and ANC 6C. The public comments raised the following concerns:

- The proposed deletion of the ten (10)-foot limitation on rear wall extensions (Subtitle U §§ 301.2 and 320.2);
- The proposed exemption for properties subject to historic preservation review from the limitations on altering roof top architectural elements;

- The consolidation of provisions governing roof top architectural elements into the specific subtitles authorized special exception relief from all roof top architectural element provisions; and
- The proposed deletion of the prohibition on additions impeding chimneys or vents.

ANC 6C testified in support of the proposed text amendment, noting that the current regulations already authorize special exception relief from all roof top architectural elements, that the proposed amendments to Subtitle E § 5203 in particular were needed to address current ambiguities, but that the proposed relief standards for solar shading limitations did not address the impact of the shading, that the duplicative provisions prohibiting the impeding of chimneys and vents should not be deleted, and that the language governing replacement in kind of architectural elements be refined. The ANC 6C representative also noted, in his individual capacity, that the provisions in Subtitle U § 301.2 and 320.2 governing the expansion of existing apartment houses are inconsistent with regards to the requirement of nine hundred (900) square feet per dwelling unit.

OP Supplemental Reports

OP filed a March 19, 2020 supplemental report that responded to the comments raised at the public hearing and in submissions to the record and clarified the intent and purpose of the proposed text amendment. The OP supplemental report emphasized that the provisions in Subtitle U governing the alteration of the 10-foot limitation on rear wall extensions in conversions and roof top architectural elements are proposed to be deleted because they are duplicative of the same provisions in Subtitle E which remain in effect. The OP supplemental report responded to ANC 6C's concerns as follows:

- Relief from the solar shading limitations - proposing revisions to Subtitle D § 208.2 and E § 206.4 requiring that an applicant for special exception relief demonstrate "good cause" and that the shading impact had been mitigated to the extent possible; and
- Proposed removal of current prohibitions on impeding chimneys or vents – continuing to support this proposed change with detailed citation of the relevant provisions of the Construction Codes with which the zoning provision duplicates and sometimes contradicts; and accepted several of the corrections.

At its April 27, 2020 virtual public meeting, the Commission expressed concern that the "good cause" and "mitigation to the extent possible" standard for relief from the solar shading limitation proposed in OP's supplemental report was too vague and asked OP to refine further in consultation with OAG.

OP filed a May 4, 2020 second supplemental report that responded to the Commission's concerns with the "good cause" standard for relief from the solar shading limitations and proposed revisions to Subtitle D § 208.2 and E § 206.4.[1]

"Great Weight" to the Recommendations of OP

[1] Pursuant to OP's requested flexibility to work with OAG on the final language, this language has been moved to Subtitle D § 5207.1 and Subtitle E § 5207.2 without any substantive change for organizational consistency and clarity because specific special exception criteria are located in Chapter 52 of each subtitle.

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 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) (2016 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).)

The Commission welcomed ANC 6C's support for the proposed text amendment and found persuasive ANC 6C's concern that the standards for relief from the solar shading limitations address the shading impact - and believes that OP's proposed revisions address this concern. However, the Commission was not persuaded by ANC 6C's concerns that the prohibition on impeding chimneys and vents, which the ANC agreed were duplicative, based on the OP supplemental report's detailed citations to the various Construction Code provisions that overlap and potentially conflict with the zoning provisions. The Commission was also not persuaded by ANC 6C's concern that the provision governing replacement in kind of architectural roof top elements needed to be further refined as the Commission believes that the proposed language clearly defines the parameters of this provision.

At the close of its May 11, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (May 11, 2020): **5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May 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.

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~~** text; new text is shown in **bold and underline** text).

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

A new § 208 is proposed to be added to Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

208 ROOF TOP OR UPPER FLOOR ELEMENTS

208.1 Any new semi-detached or row building, or an alteration or addition to an existing semi-detached or row building, including a roof structure or penthouse (the "proposed construction"), at the time of application, shall not be designed or constructed such that it will significantly interfere with the operation of a solar energy system on an abutting property, subject to the following:

(a) "Time of application" shall mean the earlier of either:

(1) The Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or

(2) The Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;

(b) "Solar energy system" shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:

(1) Legally permitted, installed, and operating; or

(2) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system;

(c) "Significantly interfere" shall mean that the proposed construction increases the shading incident on the solar energy system by more than five percent (5%) as determined by a comparative solar shading study acceptable to the Zoning Administrator; and

(d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one (1) of the following:

(1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;

(2) A comparative solar shading study which meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or

(3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

208.2 Relief from the requirements of Subtitle D § 208.1 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle D § 5207.

A new § 5207 is proposed to be added to Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, to read as follows:

5207 SPECIAL EXCEPTION CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle D § 208.1 as a special exception under Subtitle X, Chapter 9, and subject to the following conditions:

(a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application's proposed construction and potential solar access easements;

(b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties:

(1) As proposed by the application;

(2) As allowed as a matter of right; and

(3) Of possible design alternatives considered by the applicant; and

(c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.

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

Subsection 201.7 of § 201, DENSITY – LOT DIMENSIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be deleted in its entirety.

~~**201.7 An apartment house in an RF-1, RF-2, or RF-3 zone, whether existing before May 12, 1958, or converted pursuant to the 1958 Regulations, or pursuant to Subtitle U §§ 301.2 or 320.2, may not be renovated or expanded so as to increase the number of dwelling units unless there are nine hundred square feet (900 sq. ft.) of lot area for each dwelling unit, both existing and new.**~~

The title of § 206, ROOF TOP OR UPPER FLOOR ADDITIONS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended as follows:

206 ROOF TOP OR UPPER FLOOR ~~ADDITIONS~~ ELEMENTS

Section 206, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended as follows:

206.1 ~~**In an RF zone district, the following provisions shall apply:**~~

~~**(a) A**~~ **Except for properties subject to review by the Historic Preservation Review Board or their designee, or the U.S. Commission of Fine Arts, a** roof top architectural element original to ~~**the**~~ **a principal** building such as cornices, porch roofs, a turret, tower, or dormers, shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size~~.~~**; provided that:**

(a) For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line~~.~~**; and**

(b) For all other lots, the roof top architectural elements shall include identified roof top architectural elements on all sides of the structure~~;~~**.**

~~**(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition; and**~~

206.2 For the purposes of Subtitle E § 206.1, ordinary repairs to a roof top architectural element shall be permitted. Ordinary repairs may include the replacement of an original roof top architectural element when the Zoning Administrator has determined, based on photographs provided by the owner and other evidence acceptable to the Zoning Administrator, that:

(a) The original roof top architectural element is substantially eroded or damaged due to no overt actions of the owner or affiliates; and

(b) The replacement will be visually indistinguishable from the original in style, dimensions, profile, and appearance when viewed from a public right of way.

~~**206.1(c)**~~ **206.3** Any **new building, or alteration or** addition **to an existing building**, including a roof structure or penthouse **(proposed construction) at the time of application**, shall not significantly interfere with the operation of ~~**an existing**~~ **a** solar energy system ~~**of at least 2kW**~~ on an ~~**adjacent**~~ **abutting** property ~~**unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph, the following quoted phrases shall have the associated meanings,**~~ **subject to the following**:

(a) "Time of application" shall mean the earlier of either:

(1) The Department of Consumer and Regulatory Affairs officially accepts as complete the application for the building permit for the proposed construction; or

(2) The Office of Zoning officially accepts as complete an application for zoning relief for the proposed construction;

(b) "Solar energy system" shall mean a solar energy system of at least 2kW in size that, at the time of application, is either:

(1) Legally permitted, installed, and operating; or

(2) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system;

(c) ~~**(1)**~~ "Significantly interfere" shall mean ~~**an impact caused solely by the addition**~~ that **the proposed construction** ~~**decreases the energy produced by**~~ **increases the shading incident on** the ~~**adjacent**~~ solar energy system by more than five percent (5%) ~~**on an annual basis**~~, as ~~**demonstrated**~~

determined by a comparative solar shading study acceptable to the Zoning Administrator; and

~~**(2) "Existing solar energy system" shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:**~~

~~**(A) Legally permitted, installed, and operating; or**~~

~~**(B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system.**~~

(d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one (1) of the following:

(1) An affidavit by the applicant stating that there is no solar energy system on an abutting property;

(2) A comparative solar shading study that meets the minimum standard established by the Zoning Administrator for the purpose of determining the increased annual incident solar shading by percent; or

(3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

~~**206.2**~~ **206.4** ~~**In an RF zone district, relief**~~ **Relief** from the ~~**design**~~ requirements of Subtitle E §**§** 206.1 **and 206.2** may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, **and** subject to the conditions of Subtitle E § ~~**5203.3**~~ **5207**.

The title of § 5203, BUILDING HEIGHT, of Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended to read as follows:

5203 SPECIAL EXCEPTION CRITERIA BUILDING HEIGHT

Section 5203, SPECIAL EXCEPTION CRITERIA BUILDING HEIGHT, of Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be amended as follows:

5203.1 The Board of Zoning Adjustment may grant as a special exception **under Subtitle X, Chapter 9, and subject to the conditions of this subsection,** a maximum building height **of up to 40 feet (40 ft.)** for a principal residential building and any additions thereto ~~**of forty feet (40 ft.)**~~ **located on a non-alley lot** subject to the following conditions**:**

~~**(a) The building is not on an alley lot;**~~

~~**(b) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent on an adjacent property required by any municipal code;**~~

~~**(c) Any addition, including a roof structure or penthouse, shall not interfere with the operation of an existing or permitted solar energy system on an adjacent property, as evidenced through a shadow, shade, or other reputable study acceptable to the Zoning Administrator;**~~

~~**(d) A roof top architectural element original to the house such as a turret, tower, or dormers shall not be removed or significantly altered, including changing its shape or increasing its height, elevation, or size;**~~

~~(e)~~ **(a)** ~~**Any addition**~~ **The proposed construction** shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

(3) The ~~**conversion and any associated additions**~~ **proposed construction**, 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; ~~**and**~~

~~**(f)**~~ **(b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction's height to adjacent buildings and views from public ways; and**

~~5203.2 The Board of Zoning Adjustment may modify or waive not more than two (2) of the requirements specified in Subtitle E §§ 5203.1(a) through (f) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle E § 5203.1(c).~~

~~5203.3 A special exception to the requirements of Subtitle E § 206 shall be subject to the conditions of Subtitle E § 5203.1(b), (c), and (d). If relief is granted from compliance with Subtitle E § 206.1(b) or (c), the special exception shall not be conditioned upon compliance with that same requirement as stated in Subtitle E § 5203.1(b)(3) and (4).~~

~~5203.4~~ **(c)** The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

A new § 5207 is proposed to be added to Chapter 52, RELIEF FROM DEVELOPMENT STANDARDS, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, to read as follows:

5207 SPECIAL EXCEPTION CRITERIA ROOF TOP OR UPPER FLOOR ELEMENTS

5207.1 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.1 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The proposed construction shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

(3) The proposed construction, 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 street or alley frontage;

(b) In demonstrating compliance with paragraph (a), the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the proposed construction to adjacent buildings and views from public ways; and

(c) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

5207.2 The Board of Zoning Adjustment may grant relief from the requirements of Subtitle E § 206.3 as a special exception pursuant to Subtitle X, Chapter 9, and subject to the following conditions:

(a) The application demonstrates the applicant has made its best efforts to minimize and mitigate the potential shading impact to solar energy systems on abutting properties to the extent reasonably practical, including possible design alternatives to the application's proposed construction and potential solar access easements;

(b) The application shall include illustrations of the shading impact on solar energy systems on abutting properties:

(1) As proposed by the application;

(2) As allowed as a matter of right; and

(3) Of possible design alternatives considered by the applicant; and

(c) The Board may require special treatment and impose reasonable conditions as it deems necessary to mitigate shading impacts identified in the consideration of the application.

III. Proposed Amendments to Subtitle U, USE PERMISSIONS

Section 301, MATTER-OF-RIGHT USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by revising § 301.2 and adding new §§ 301.3, 301.4, and 301.5, to read as follows:

301.1 The following uses shall be permitted as a matter of right …[2]

301.2 **~~Conversion~~ The conversion** of an existing non-residential building or structure to an apartment house shall be permitted as a matter of right in an RF zone subject to the following conditions:

(a) The building or structure to be converted is in existence on the property at the time **~~of filing an application for a~~ the** building permit **application for**

[2] The use 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.

the conversion is accepted as complete by the Department of Consumer and Regulatory Affairs; **and**

~~**(b) The maximum height of any addition to the existing structure shall not exceed thirty-five feet (35 ft.);**~~

~~**(c)**~~ **(b)** There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per **each existing and new** dwelling unit~~**;**~~**.**

~~**(d) An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;**~~

~~**(e) A roof top architectural element original to the structure such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified roof top architectural elements on all sides of the structure;**~~

~~**(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;**~~

~~**(g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph the following quoted phrases shall have the associated meaning:**~~

~~**(1) "Significantly interfere" shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and**~~

~~**(2) "Existing solar energy system" shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an**~~

~~application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:~~

~~(A) Legally permitted, installed, and operating; or~~

~~(B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system; and~~

~~(h) An apartment house in an RF-1, RF-2, or RF-3 zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and Subtitle U § 320.3.~~

301.3 An apartment house in an RF zone converted from a non-residential building prior to June 26, 2015, shall be considered a conforming use and structure, but shall not be permitted to expand, either structurally or through increasing the number of units, except as provided by Subtitle U § 320.4.

301.4 An apartment house in an RF zone that was converted from a residential building either prior to June 26, 2015, or pursuant to Subtitle A §§ 301.9, 301.10, or 301.11, shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, except as provided by Subtitle U § 320.2.

301.5 An apartment house in an RF zone that has not been:

(a) Converted prior to September 6, 2016;

(b) Converted pursuant to Subtitle U §§ 301.2 or 320.2; or

(c) Expanded pursuant to Subtitle U §§ 301.4, 320.2, or 320.4;

may renovate or expand so as to increase the number of dwelling units provided that there shall be a minimum of nine hundred square feet (900 sq. ft.) of lot area for each existing and new dwelling unit.

Section 320, SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is proposed to be amended by revising Subsections 320.2 and 320.3 and by adding a new Subsection 320.4, to read as follows:

320.1 The uses in this section shall be permitted as a special exception …

320.2 ~~**Conversion**~~ **The conversion** of an existing residential building existing on the lot prior to May 12, 1958, to an apartment house**, or the renovation or expansion of an existing apartment house deemed a conforming use under Subtitle U § 301.4 that increases the number of units,** shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, **and** subject to the following conditions:

~~**(a) The maximum height of the residential building and any additions thereto shall not exceed thirty-five feet (35 ft.), except that the Board of Zoning Adjustment may grant a special exception from this limit to a maximum height of forty feet (40 ft.) provided the additional five feet (5 ft.) is consistent with Subtitle U §§ 320.2(f) through 320.2(i);**~~

(a) The building to be converted or expanded is in existence on the property at the time the Department of Consumer and Regulatory Affairs accepts as complete the building permit application for the conversion or expansion;

(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § 1003.6; **and**

~~**(c) There must be an existing residential building on the property at the time of filing an application for a building permit;**~~

~~**(d)**~~ **(c)** There shall be a minimum of nine hundred square feet (900 sq. ft.) of land area per **each existing and new** dwelling unit**.**~~**;**~~

~~**(e) An addition shall not extend farther than ten feet (10 ft.) past the farthest rear wall of any adjoining principal residential building on any adjacent property;**~~

~~**(f) Any addition, including a roof structure or penthouse, shall not block or impede the functioning of a chimney or other external vent compliant with any District of Columbia municipal code on an adjacent property. A chimney or other external vent must be existing and operative at the date of the building permit application for the addition;**~~

~~(g) Any addition, including a roof structure or penthouse, shall not significantly interfere with the operation of an existing solar energy system of at least 2kW on an adjacent property unless agreed to by the owner of the adjacent solar energy system. For the purposes of this paragraph the following quoted phrases shall have the associated meaning:~~

~~(1) "Significantly interfere" shall mean an impact caused solely by the addition that decreases the energy produced by the adjacent solar energy system by more than five percent (5%) on an annual basis, as demonstrated by a comparative solar shading study acceptable to the Zoning Administrator; and~~

~~(2) "Existing solar energy system" shall mean a solar energy system that is, at the time the application for the building permit for the adjacent addition is officially accepted as complete by the Department of Consumer and Regulatory Affairs or an application for zoning relief or approval for the adjacent addition is officially accepted as complete by the Office of Zoning, either:~~

~~(A) Legally permitted, installed, and operating: or~~

~~(B) Authorized by an issued permit; provided that the permitted solar energy system is operative within six (6) months after the issuance of the solar energy system permit not including grid interconnection delays caused solely by a utility company connecting to the solar energy system;~~

~~(h) A roof top architectural element original to the house such as cornices, porch roofs, a turret, tower, or dormers shall not be removed or significantly altered, including shifting its location, changing its shape or increasing its height, elevation, or size. For interior lots, not including through lots, the roof top architectural elements shall not include identified roof top architectural elements facing the structure's rear lot line. For all other lots, the roof top architectural elements shall include identified roof top architectural elements on all sides of the structure;~~

~~(i) Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:~~

~~(1) The light and air available to neighboring properties shall not be unduly affected;~~

~~(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and~~

~~(3) The conversion and any associated additions, 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;~~

~~(j) In demonstrating compliance with Subtitle U § 320.2(i) the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways;~~

~~(k) The Board of Zoning Adjustment may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block;~~

~~(l) The Board of Zoning Adjustment may modify or waive not more than three (3) of the requirements specified in Subtitle U §§ 320.2(e) through § 320.2(h) provided, that any modification or waiver granted pursuant to this section shall not be in conflict with Subtitle U § 320.2(i); and~~

~~(m) An apartment house in an RF-1, RF-2, or RF-3 zone, converted from a residential building prior to June 26, 2015, or converted pursuant to Subtitle A §§ 301.9, 301.10, or 301.11 shall be considered a conforming use and structure, but shall not be permitted to expand either structurally or through increasing the number of units, unless approved by the Board of Zoning Adjustment pursuant to Subtitle X, Chapter 9, and this section.~~

320.3 ~~Conversion~~ **The conversion** of a non-residential building or other structure to an apartment house and not ~~meeting one (1) or more of the requirements of~~ **compliant with** Subtitle U § 301.2**(b)**, shall be permitted as a special exception in an RF zone if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9**, and** subject to the following provisions:

~~(a) No special exception relief shall be available from the requirements of Subtitle U § 301.2(a);~~

~~(b)~~ **(a)** Any addition shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, in particular:

(1) The light and air available to neighboring properties shall not be unduly affected;

(2) The privacy of use and enjoyment of neighboring properties shall not be unduly compromised; and

(3) The conversion and any associated additions, 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;

~~(c)~~ **(b)** In demonstrating compliance with Subtitle U § 320.3~~(b)~~**(a)**, the applicant shall use graphical representations such as plans, photographs, or elevation and section drawings sufficient to represent the relationship of the conversion and any associated addition to adjacent buildings and views from public ways; and

~~(d)~~ **(c)** The Board may require special treatment in the way of design, screening, exterior or interior lighting, building materials, or other features for the protection of adjacent or nearby properties, or to maintain the general character of a block.

320.4 An existing apartment house deemed a conforming use under Subtitle U § 301.3 shall be permitted to renovate or expand so as to increase the number of dwelling units as a special exception if approved by the Board of Zoning Adjustment under Subtitle X, Chapter 9, and subject the provisions of Subtitle U §§ 320.3(a), (b), and (c).

IV. 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 by revising paragraph (f), to read as follows:

1001.3 Examples of area variances are requests to deviate from:

(a) Requirements that affect the size …

(b) Minimum parking or loading requirements …

(c) Limitations on the extent to which the gross floor area ...

(d) Limitations on the alteration or conversion of certain structures on alley lots …

(e) The prohibition against certain enlargements …

(f) Preconditions to the establishment of a ~~**matter of right**~~ **special exception** use including, but not limited to, the minimum land area requirement of Subtitle U § ~~**301.2(c)**~~ **320.2(c)** applicable to the conversion of a building to an apartment house as permitted by Subtitle U § ~~**301.2**~~ **320.2;** provided, that the ~~**waiver**~~ **variance** would not cause the proposed use to meet the definition of a more intense use.

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.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl. & 2019 Supp.), and delegated in Mayor's Order 2001-96, dated June 28, 2001, hereby gives notice of the adoption of emergency rules to amend Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking amends 23 DCMR § 718.2 by decreasing the Metropolitan Police Detail Office Reimbursable Percentage (RDO Percentage) from sixty-five percent (65%) to zero percent (0%).

By way of background, the RDO Program assists licensed establishments by defraying the costs of retaining off-duty MPD officers to patrol the surrounding area of an establishment or an outdoor special event or pub crawl event for the purposes of ensuring the peace, order, and quiet of the community, including the remediation of traffic congestion and promoting public safety. The Board regularly revises the reimbursable detail coverage percentage on an as-needed basis, such as this, during the COVID-19 Pandemic.

On March 20, 2020, in response to the spread of COVID-19, the Mayor issued Mayor's Order 2020-050, Extensions of Public Health Emergency Coronavirus: (COVID-19) and Mayor's Order 2020-051, Prohibition on Mass Gatherings During Public Health Emergency – Coronavirus (COVID-19). These Orders serve to extend with some changes the two previous Mayor's Orders issued March 11, 2020, (Mayor's Orders 2020-045 and 2020-046) through April 24, 2020. On March 24, 2020, the Mayor issued Order 2020-053, temporarily closing all non-essential businesses in the District, and further prohibiting large gatherings. On April 15, 2020, the Mayor extended the public emergency and public health emergency in the District through May 15, 2020. (Mayor's Order 2020-0063).

The pandemic has had a significant adverse impact on ABC-licensed establishments and the nightlife economy. As a result of the Mayor's Orders, on-premises licensees have been required to limit their operations to carry-out and delivery services only. Additionally, the Board has suspended all on-premises sales in the District on an emergency basis. As a result of these actions, there has been no need for ABC-licensed establishments to request RDO services from MPD. Given the decline in RDO services, the Board is reducing the RDO percentage from sixty-five percent (65%) to zero percent (0%).

The Board finds the adoption of these emergency rules to not only be essential to promoting the public health, welfare, and safety of the community, but also to address the immediate financial concern during this time.

These emergency rules were adopted by the Board on May 6, 2020, by a vote of six (6) to zero (0), to take effect immediately. The emergency rules will remain in effect for up to one hundred twenty (120) days from adoption, expiring September 3, 2020, unless earlier superseded.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended by replacing Subsections 718.2 to read as follows, and renumbering the following subsections:

718.2 ABRA will reimburse MPD zero percent (0%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD zero percent (0%) of the total costs of invoices submitted by MPD to cover the costs incurred for pub crawl events and for outdoor special events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours eligible for an outdoor special event operating under a One Day Substantial Change License or a Temporary License or a pub crawl event operating under a pub crawl license shall be twenty-four (24) hours a day.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF FOURTH EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(c) (2012 Repl. & 2019 Supp.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, amends Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 810 (Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency) on an emergency basis.

On March 20, 2020, in response to the spread of COVID-19, the Mayor issued Mayor's Order 2020-050, Extensions of Public Health Emergency Coronavirus: (COVID-19) and Mayor's Order 2020-051, Prohibition on Mass Gatherings During Public Health Emergency – Coronavirus (COVID-19). These Orders serve to extend with some changes the two previous Mayor's Orders issued March 11, 2020, (Mayor's Orders 2020-045 and 2020-046) through April 24, 2020. On March 24, 2020, the Mayor issued Mayor's Order 2020-053, temporarily closing all non-essential businesses in the District, and further prohibiting large gatherings. On April 15, 2020, the Mayor extended the public emergency and public health emergency in the District through May 15, 2020. (Mayor's Order 2020-0063). On May 13, 2020, the Mayor extended the public emergency and public health emergency in the District through June 8, 2020. (Mayor's Order 2020-066).

Recognizing that other types of ABC licensed establishments sought to offer alcoholic beverages for carry-out and delivery, the Board took further emergency action to allow hotels, multipurpose facilities, and private clubs to obtain temporary restaurant endorsements so that they also could offer alcoholic beverages for carry-out and delivery. On March 20, 2020 the Board adopted the *Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Emergency Rulemaking* by a vote of six (6) to zero (0). *See* 67 DCR 4589 (March 27, 2020). The Board adopted a second emergency rulemaking entitled the *Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Second Emergency Rulemaking* on March 25, 2020, by a vote of seven (7) to zero (0), which superseded the emergency rulemaking that the Board had previously adopted. *See* 67 DCR 4130 (April 10, 2020).

On April 22, 2020, by a vote of seven (7) to zero (0), the Board took further emergency action in response to the Council of the District of Columbia's expansion of carry-out and delivery authorization to nightclubs. Specifically, the *Suspension of On-premises Alcohol Sales and Consumption due to Public Emergency Notice of Third Emergency Rulemaking* permitted nightclub licensees to obtain a temporary restaurant endorsement so that they can offer alcoholic beverages for carry-out and delivery with at least one prepared food item. *See* 67 DCR 5600 (May 29, 2020 – Part 1).

Since the adoption of the third emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-067, dated May 27, 2020, which announced that the District has entered Phase 1 of Washington D.C.'s reopening. Among other things, Mayor's Order 2020-067 partially lifts the restriction prohibiting on-site dining by allowing restaurants, taverns, nightclubs, mixed-use facilities and other licensed food establishments to offer table service to seated patrons on outdoor public or private space. The Board interprets the phrase "mixed-use" facilities to include hotels, multipurpose facilities, private clubs and other class CX and DX licensees, and licensed manufacturers that serve food and satisfy the requirements set forth below. The Mayor's Order retains the prohibition on indoor dining during Phase 1.

In light of Mayor's Order 2020-067, the Board finds that emergency action is warranted to continue the existing suspension of on-premises alcoholic beverage sales, service and consumption indoors but to allow the sale, service and consumption of alcoholic beverages as part of table service to seated patrons on existing outdoor public or private space. Specifically, the Board finds that emergency action is necessary to modify the current suspension of on-premises alcoholic beverage sales and service in the District to allow on-premises retailer licenses and manufacturer licenses, class A or B, holding an on-site sales and consumption permit, to sell, serve, and allow the consumption of alcoholic beverages on approved outdoor public and private space. This emergency action will continue to protect the public health by prohibiting the sale, service, and consumption of alcoholic beverages indoors.

Thus, on May 28, 2020, the Board adopted the *Suspension of On-premises Alcohol Sales and Consumption Due to Public Emergency Notice of Fourth Emergency Rulemaking*, by a vote of six (6) to zero (0). This emergency rulemaking supersedes the previously adopted emergency rulemaking and shall remain in effect for the duration of the Extensions of Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days from the Board's adoption; expiring on or before September 25, 2020, unless superseded. The emergency rulemaking shall take effect on Friday, May 29, 2020.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND VIOLATIONS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new Section 810, SUSPENSION OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DUE TO PUBLIC EMERGENCY, to read as follows:

810 SUSPENSION OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DUE TO PUBLIC EMERGENCY

810.1 The sale and service of alcoholic beverages for on-premises consumption indoors shall be prohibited in the District of Columbia for the length of either or both the Mayor's Public Emergency and Public Health Emergency. Specifically, the sale and service of alcoholic beverages for on-premises consumption indoors shall be prohibited by the following license classes:

(a) The holders of a retailer's license class C or D, including licensed caterers;

(b) Class A or B manufacturers holding an on-site sales and consumption permit;

(c) Festival and temporary license holders; and

(d) Any other license or permit category set forth under Title 25 of the D.C. Official Code.

810.2 Notwithstanding § 810.1, an on-premises retailer license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including a multipurpose facility or private club, and a manufacturer license, class A or B, holding an on-site sales and consumption permit may sell, serve and allow the consumption of beer, wine, or spirits on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio; provided that the licensee shall:

(a) Place tables on the sidewalk café or summer garden serving separate parties at least six (6) feet apart from one another;

(b) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

(c) Prohibit events and activities that would require patrons to cluster or be in close contact with one another, including dancing, playing darts, video games, or other outdoor games;

(d) Prohibit patrons from bringing their own alcoholic beverages;

(e) Prohibit self-service buffets;

(f) Have a menu in use containing a minimum of three (3) prepared food items available for purchase by patrons;

(g) Require the purchase of one or more prepared food items per table;

(h) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District Department of Health;

(i) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 8:00 a.m. and midnight, Sunday through Saturday, unless further restricted by settlement agreement or Board Order;

(j) Not have more than six (6) individuals seated at a table or a joined table;

(k) Require patrons to wait outside at least six (6) feet apart until they are ready to be seated;

(l) Not provide live music or entertainment, except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

(m) Not serve alcoholic beverages or food to standing patrons;

(n) Prohibit standing or seating at an outdoor bar provided tables or counter seats that do not line up may be used for patron seating provided that there is a minimum of six feet (6 ft.) between parties;

(o) Prohibit the placement of alcohol advertising, excluding non-contact menus, on outdoor public space;

(p) Provide and require that wait staff wear masks;

(q) Request that patrons wear masks when waiting in line outside of the establishment or while traveling to use the restroom or until they are seated and eating or drinking;

(r) Implement a reservation system by phone or on-line and consider keeping customer logs to facilitate contact tracing by DC Health;

(s) Implement sanitization and disinfection protocols including the provision of single use condiment packages; and

(t) Have its own clearly delineated outdoor space and shall not share tables and chairs with another business.

810.3 A manufacturer's license, class A or B, with an on-site sales and consumption permit or a retailer's license class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the use of a menu containing a minimum of three (3) prepared food items available to patrons requirement set forth in § 810.2(f), provided patrons are seated when ordering and ordered food is delivered by the licensee to the seated patron.

810.4 A licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs that register with the Board may sell beer, wine or spirits in closed containers for individuals to carry-out to their home or deliver beer, wine or spirits in closed containers to the homes of District residents; provided that each such carry-out or delivery order is accompanied by one or more prepared food items.

810.5 Board approval shall not be required for registration; however, a restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs shall receive written authorization from ABRA prior to beginning carry-out or delivery of beer, wine or spirits.

810.6 The prohibition of on-premises sales, service and consumption of alcoholic beverages indoors shall not apply to the holder of a hotel license for purposes of:

(a) Delivering alcoholic beverages for consumption in the private rooms of registered adult guests; or

(b) Making available in the room of a registered adult guest, miniatures as defined in D.C. Official Code § 25-101(32B).

810.7 A registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs may sell beer, wine or spirits for carry-out and delivery only between the hours of 7:00 a.m. and midnight, Monday through Sunday.

810.8 Except as provided in § 810.2, a registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs shall not permit the consumption of beer, wine or spirits on the licensed premises.

810.9 Any person delivering beer, wine or spirits to the homes of District residents shall be 18 years of age or older and shall take reasonable steps to ascertain that the person receiving the delivered beer, wine or spirits is twenty-one (21) years of age or older.

810.10 The Board, in its discretion, may immediately suspend or revoke without prior notice or advertisement, the ABC license of an establishment licensed under Title 25 of the District of Columbia Official Code that is in violation of this section. Nothing in this subsection shall prohibit the Board or ABRA from issuing a written or verbal warning for a violation of this section.

810.11 The Board shall conspicuously post two (2) summary suspension or revocation notices at or near the main street entrance of the outside of the establishment.

810.12 A licensee may request a hearing within three (3) business days after service of a Notice of Suspension or Revocation for a violation of this section. The Board shall hold a hearing within two (2) business days of receipt of a timely request and shall issue a decision within three (3) business days after the hearing.

810.13 A licensee aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF SECOND EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Behavioral Health ("the Department"), pursuant to the authority set forth in Sections 5113, 5115, 5117 and 5118 of the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code §§ 7-1141.02, 7-1141.04, 7-1141.06 and 7-1141.07 (2018 Repl.)), hereby gives notice of the adoption of emergency and proposed rulemaking amending Chapter 64 (Reimbursement Rates for Services Provided by the Department of Behavioral Health Chapter 63 Certified Substance Use Disorder Providers) to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

This emergency and proposed rulemaking adopts the Medicaid rates published by the Department of Health Care Finance in the District of Columbia Medicaid fee schedule for services provided to Medicaid and non-Medicaid clients by Substance Use Disorder (SUD) providers certified by the Department under Chapter 63 of this title. This rulemaking also adopts the Medicaid reimbursement rates for pregnancy, HIV, hepatitis, tuberculosis, presumptive drug testing and definitive drug testing provided by SUD providers for non-Medicaid clients. Finally, this rulemaking establishes additional reimbursement requirements for Chapter 63 services including rules for same-day billing and quantity and dosing limits.

A Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on March 27, 2020 at 67 DCR 003592. The Department did not receive any comments to the emergency and proposed rulemaking. The Department included a new § 6401.4 to establish reimbursement rates for definitive drug testing provided to non-Medicaid clients; included a new § 6401.5 from language incorporated in § 6401.3; and amended § 6403.6 through § 6403.8 to clarify the frequency by which the Department will reimburse providers for certain services.

This rule was adopted and became effective on June 11, 2020. The emergency and proposed rules will remain in effect for one hundred twenty (120) days after the date of adoption, until October 9, 2020, unless superseded by publication of another rulemaking notice in the *D.C. Register*.

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

Chapter 64, REIMBURSEMENT RATES FOR SERVICES PROVIDED BY THE DEPARTMENT OF BEHAVIORAL HEALTH CHAPTER 63 CERTIFIED SUBSTANCE USE DISORDER PROVIDERS, of Title 22-A DCMR, MENTAL HEALTH, is amended to read as follows:

6401 REIMBURSEMENT RATE

6401.1 The Department of Health Care Finance has published rates for Medicaid-funded services under Title 22-A District of Columbia Municipal Regulations (DCMR), Chapter 63. Those rates are contained in the District of Columbia Medicaid fee schedule available online at www.dc-medicaid.com. The Department of Behavioral

Health ("the Department") shall reimburse providers for Chapter 63 services provided to non-Medicaid beneficiaries at the same rates as contained in the District of Columbia Medicaid fee schedule.

6401.2 Reimbursement for the local-only substance use services provided under Title 22-A DCMR Chapter 63, which include: (a) Multi-systemic Therapy for Transition Age Youth; (b) Environmental Stability; (c) Medically Monitored Inpatient Withdrawal Management (MMIWM) for local clients; and (d) Residential Room and Board, are set forth in the table below. The Department shall publish notice of all future updates to these codes and rates through a Public Notice in the *D.C. Register* and provide for meaningful comment before implementation. The Notice shall describe the type of change, the reason for the change, the effective date of the change, and the new local only reimbursement rate.

SERVICE	CODE	RATE per UNIT ($)	UNIT
Multi-Systemic Therapy for Transition Age Youth (TAY) (ACRA) (Ages 21-24)	**H2033HF**	**63.11**	**15 min.**
Short-term medically monitored inpatient withdrawal management (MMIWM), local	**H0010**	**598.12**	**Per diem**
Residential Treatment, Room & Board	**H0043**	**101.14**	**Per diem**
Residential Treatment, Room & Board, Woman w/1 child	**H0043UN**	**210.00**	**Per diem**
Residential Treatment, Room & Board, Woman w/2 children	**H0043UP**	**215.00**	**Per diem**
Residential Treatment, Room & Board, Woman w/3 children	**H0043UQ**	**220.00**	**Per diem**

SERVICE	CODE	RATE per UNIT ($)	UNIT
Residential Treatment, Room & Board, Women w/4 or more children	**H0043UR**	**225.00**	**Per diem**
Environmental Stability, Supported Housing, Individual	**H0044HF**	**849.00**	**Per month**
Environmental Stability, Supported Housing, Woman w/children	**H0044HFUN**	**1000.00**	**Per month**

6401.3 Reimbursement for the following tests provided to non-Medicaid clients shall be the rate contained in the District of Columbia Medicaid fee schedule available online at www.dc-medicaid.com:

(a) HIV-1 and HIV-2 Single Result Testing (86703);

(b) Urine Pregnancy Test (81025);

(c) Tuberculosis Test, Intradermal (86580);

(d) Hepatitis C Test (86803);

(e) Presumptive Drug Test, Optical Observation (80305);

(f) Presumptive Drug Test, Assisted Direct Optical Observation (80306); and

(g) Presumptive Test by Instrument Chemistry Analyzers (80307).

6401.4 Reimbursement for the following tests provided to non-Medicaid clients shall be the rate contained in the District of Columbia Medicaid fee schedule available online at www.dc-medicaid.com:

(a) Definitive Drug Testing 1-7 Drug Classes (G0480); and

(b) Definitive Drug Testing 8-14 Drug Classes (G0481).

6401.5 All future updates to the service codes and rates will be included in the District of Columbia Medicaid fee schedule pursuant to the procedures established in Title 29 DCMR, Section 988, by providing notice and an opportunity for comment.

6402 REIMBURSEMENT RATE FOR CLIENTS WHO ARE DEAF OR HARD-OF-HEARING

6402.1 Reimbursement for local-only substance use services for (a) Multi-systemic Therapy for Transition Age Youth; (b) Environmental Stability; (c) MMIWM for local clients; and (d) Residential Room and Board provided to clients who are deaf or hard-of-hearing are set forth in the table below. The Department shall publish all future updates to these codes and rates through a Public Notice in the *D.C. Register*, which provides an opportunity for meaningful comment. The Notice shall describe the type of change, the reason for the change, the effective date of the change, and the new local only reimbursement rate.

SERVICE	CODE	RATE per UNIT ($)	UNIT
Multi-systemic Therapy for Transition Age Youth (TAY) (ACRA) (ages 21 – 24)	**H2033HFHK**	**77.52**	**15 min.**
Short-term MMIWM, local	**H0010HK**	**816.75**	**Per diem**
Residential Treatment, Room & Board	**H0043HK**	**98.42**	**Per diem**
Residential Treatment, Room & Board, Woman w/1 child	**H0043UNHK**	**283.50**	**Per diem**
Residential Treatment, Room & Board, Woman w/2 children	**H0043UPHK**	**290.25**	**Per diem**
Residential Treatment, Room & Board, Woman w/3 children	**H0043UQHK**	**297.00**	**Per diem**

SERVICE	CODE	RATE per UNIT ($)	UNIT
Residential Treatment, Room & Board - Women w/4 or more children	**H0043URHK**	**303.75**	**Per diem**
Environmental Stability, Supported Housing, Individual	**H0044HFHK**	**849.00**	**Per month**
Environmental Stability, Supported Housing, Woman w/children	**H0044HFUNHK**	**1000.00**	**Per month**

6403 ADDITIONAL REIMBURSEMENT REQUIREMENTS

6403.1 The following provisions apply to the reimbursement of substance user disorder (SUD) providers billing the Department or the Department of Health Care Finance pursuant to this chapter, except where otherwise noted.

6403.2 Reimbursement for Short-term MMIWM services shall not exceed five (5) days unless a longer stay is authorized by the Department.

6403.3 H0010 or H0010HK shall be billed for locally-funded clients in MMIWM. Residential treatment room and board (H0043 and H0043HK) is not a separate service for these clients and shall not be billed in addition to MMIWM.

6403.4 H0010U1 or H0010U1HK shall be billed for Medicaid clients in MMIWM. Residential treatment room and board (H0043 and H0043HK) shall be billed separately for these clients in order to be reimbursed.

6403.5 Reimbursement will not be provided for the following services for clients in MMIWM:

(a) Medication Management;

(b) Clinical Care Coordination;

(c) Medication Assisted Treatment;

(d) Drug Screening; and

(e) Crisis Intervention.

6403.6 The Department shall reimburse an SUD provider for a maximum of one (1) Initial Diagnostic Assessment per client within a thirty (30)-day period.

6403.7 The Department shall reimburse an SUD provider for a maximum of one (1) Comprehensive Diagnostic Assessment per client per level of care (LOC).

6403.8 The Department shall reimburse an SUD provider for a maximum of two (2) Ongoing Diagnostic Assessments per client per sixty (60) days.

6403.9 Comprehensive Diagnostic Assessment and Ongoing Diagnostic Assessment shall not be billed on the same day.

6403.10 Clinical Care Coordination shall not be billed in conjunction with staff's clinical supervision or at the same time as any Diagnostic Assessment service.

6403.11 The following reimbursement limits shall apply, per LOC, to Crisis Intervention:

(a) Level 1: Eighty (80) units;

(b) Level Opioid Treatment Program ("OTP"): One hundred and forty-four (144) units;

(c) Level 2: One hundred and twenty (120) units; and

(d) Level 3: One hundred and sixty (160) units.

6403.12 The following reimbursement limits shall apply, per LOC, to SUD Counseling/Therapy. The Department may approve additional units with justification.

(a) Level 1: Thirty-two (32) units per week;

(b) Level 2: Eighty (80) units per week; and

(c) Level 3: One hundred (100) units per week.

6403.13 No more than ninety-six (96) units of Medication Management shall be billed per LOC. Medication Management shall not be billed for observing the self-administration of medication.

6403.14 The following provisions apply to reimbursement for all medications dispensed in OTPs:

(a) Medication shall be billed on a per-dose basis; and

(b) A single fifteen (15)-minute administration session may be billed when an individual is receiving take-home doses.

6403.15 The following provisions further apply to reimbursement of methadone administered in OTPs:

(a) A client can be dispensed a maximum of one dose per day;

(b) An initial and second authorization can be authorized for a maximum of ninety (90) days each; subsequent authorizations cannot exceed one hundred and eighty (180) days each; and

(c) Prior authorization from the Department is required for reimbursement of more than two- hundred and fifty (250) units of medication in one calendar year. The maximum quantity of medication and administration services over a twelve (12)-month period is three hundred and sixty-five (365) units.

All persons desiring to comment on the subject matter of this emergency and proposed rule should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Trina Dutta, Director, Strategic Management and Policy Division, Department of Behavioral Health, 64 New York Ave, N.E., Second Floor, Washington, D.C. 20002, (202) 671-4075, trina.dutta@dc.gov, or DBHpubliccomments@dc.gov.

DISTRICT OF COLUMBIA BOARD OF ELECTIONS

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The District of Columbia Board of Elections, pursuant to the authority set forth in the District of Columbia Election Code of 1955, approved August 12, 1955, as amended (69 Stat. 699; D.C. Official Code § 1-1001.05(a)(14) (2016 Repl.)), hereby gives notice of emergency and proposed rulemaking action to adopt amendments to Chapter 7 (Election Procedures) of Title 3 (Elections and Ethics) of the District of Columbia Municipal Regulations (DCMR).

The purpose of the amendments to Chapter 7 is to establish the deadline for the receipt of absentee ballots.

Emergency action is necessary in order to place the Board's regulations into conformity with a recently-enacted provision in the District's election statute which provides that, for elections held in calendar year 2020, the Board shall accept absentee ballots postmarked or otherwise proven to have been sent on or before the day of the election, and received by the Board no later than the 10th day after the election. Accordingly, the Board adopted these rules on an emergency basis at its regular monthly meeting on Wednesday, June 17, 2020. The emergency rules shall remain in effect until Thursday, October 15, 2020 (one hundred and twenty (120) days from the adoption date), unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

Chapter 7, ELECTION PROCEDURES, of Title 3 DCMR, ELECTIONS AND ETHICS, is amended as follows:

Subsection 720.14 of Section 720, ABSENTEE VOTING, is amended to read as follows:

720.14 Electronically transmitted voted ballots sent by qualified uniformed services or overseas voters must be received no later than 8:00 p.m. on the day of the election. Mailed voted ballots must be postmarked or otherwise demonstrated to have been sent on or before the day of the election, and must be received no later than the tenth (10^{th}) day after the election.

All persons desiring to comment on the subject matter of this rulemaking should file written comments by no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with the Office of the General Counsel, Board of Elections, 1015 Half Street S.E., Suite 750, Washington D.C. 20003. Please direct any questions or concerns to the Office of the General Counsel at 202-727-2194 or ogc@dcboe.org. Copies of the proposed rules may be obtained at cost from the above address, Monday through Friday, between the hours of 9:00 a.m. and 4:00 p.m.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-075
June 19, 2020

SUBJECT: Phase Two of Washington, DC Reopening

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.); pursuant to the Coronavirus Support Congressional Review Emergency Amendment Act of 2020 (the "Act"), effective May 19, 2020, D.C. Act 23-328, 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.); 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.); and in accordance with Mayor's Order 2020-045, dated March 11, 2020, Mayor's Order 2020-046, dated March 11, 2020, Mayor's Order 2020-050, dated March 20, 2020, Mayor's Order 2020-063, dated April 15, 2020, Mayor's Order 2020-066, dated May 13, 2020, and Mayor's Order 2020-067, dated May 27, 2020 it is hereby **ORDERED** that:

I. BACKGROUND

1. This Order incorporates the findings of prior Mayor's Orders relating to COVID-19.

2. As of June 19, 2020, 9,952 District residents have tested positive for COVID-19 and tragically 530 District residents have lost their lives already due to COVID-19. Further, COVID-19 continues to spread in the Maryland and Virginia areas near Washington, DC.

3. This Order establishes the criteria that must be met for Phase Two of the District's reopening to begin and sets forth the restrictions that will be lifted during Phase Two, and under what terms new openings and activities may occur.

4. This Order builds on the limited reopening allowed by Mayor's Order 2020-067, and lifts certain provisions of Mayor's Order 2020-053, restricting business activity in the District and directing the closure of nonessential businesses. It further builds upon the diligent and thoughtful work of the ReOpen DC Advisory Group and

guidance from the Johns Hopkins Bloomberg School of Public Health, anchored in four (4) DC values: health, opportunity, prosperity, and equity.

5. The start of Phase Two is based on the Department of Health's (DOH) evaluation of certain gated criteria. These are consistent with criteria recommended by the United States Centers for Disease Control and Prevention and DOH's determination that the District has met applicable metrics that enable us to reduce certain restrictions on businesses, government operations, services, and activities. In general, the move from Phase One to Phase Two means that we have moved from substantial, controlled transmission where significant mitigation steps were warranted, to minimal to moderate community transmission, where moderate mitigation steps are warranted. The criteria and metrics include the following:

   a. Community Spread: Including a sustained fourteen (14)-day decrease in community spread and low transmission rate of $R_t < 1$ for five (5) days;

   b. Testing Capacity: Broadly and readily available free testing for District residents and persons who work in the District who feel they need to be tested, and a positivity rate of less than fifteen percent (15%) for seven (7) days;

   c. Health Care System Capacity: Including a sufficient healthcare capacity with hospital occupancy under eighty percent (80%) for over fourteen (14) days, without resort to surge capacity; and

   d. Public Health System Capacity: Including a sufficient contact tracing system for COVID-19 cases with over ninety percent (90%) of persons newly diagnosed with COVID-19 contacted within one (1) day of DC Health's notification of their case and attempts to contact ninety percent (90%) of close contacts within two (2) days of notification.

6. During Phase Two, if the District no longer meets the criteria for Phase Two, the Executive may order more stringent measures to contain the spread of COVID-19 and address the changing circumstances of the public health emergency.

7. This Order declares that the District enters Phase Two of reopening on Monday, June 22, 2020 and establishes the applicable standards and allows certain businesses to reopen and activities to resume on June 22, 2020 under specified conditions.

II. PHASE TWO GENERAL PROVISIONS AND PROHIBITION ON MASS GATHERINGS

1. When leaving their residence or visiting the District, all individuals must continue to maintain a distance of at least six (6) feet from persons not in their household, except if such distance is impossible to maintain (such as when obtaining medical

services, a haircut, or salon services). Wearing a mask or face covering is one tool to protect an individual's own health and the health of others, but it does not replace social distancing.

2. The prohibition on large gatherings of more than ten (10) individuals, in force since March 24, 2020 (Mayor's Order 2020-053), is repealed and replaced by a prohibition on mass gatherings of over fifty (50) persons, with any exceptions set forth below.

3. DOH guidance and any applicable orders of any regulatory agencies for a specific activity must be followed. Such guidance and directives may be found on coronavirus.dc.gov/phasetwo.

III. PHASE TWO NONESSENTIAL RETAIL BUSINESSES

1. **General**: In addition to the minimum basic operations, and outdoor pickup and delivery options authorized previously, nonessential retail businesses may open to customers for indoor shopping, provided that the establishment:

   a. Limits the number of persons in the establishment at fifty percent (50%) of occupancy as specified on the Certificate of Occupancy and establishes processes, such as demarcations where people may stand in line at check-out, so as to allow for social distancing between persons, in accordance with specific guidelines issued by DOH; and

   b. Follows any protocols issued by DOH, including protocols on the handling of items that were touched but not purchased.

2. **Personal Services:** In addition to the barbershops and hair salons that already may operate with the conditions set forth in section III.2 of Mayor's Order 2020-067, tanning, tattoo, waxing, threading, electrolysis, cryotherapy, facial and other skin services, and nail salons may open under the same conditions as barbershops and hair salons.

IV. PHASE TWO NONESSENTIAL, NON-RETAIL BUSINESSES

Businesses shall continue to have employees telework to the greatest extent consistent with their business operations.

V. PHASE TWO BUSINESSES AND ACTIVITIES THAT REMAIN CLOSED

1. Hookah bars, cigar bars, and any other business operating pursuant to an exemption from the anti-smoking laws of the District of Columbia shall remain closed.

2. Hot tubs, saunas, and steam rooms at gyms, in freestanding facilities, or in apartments, condominiums, and cooperatives shall remain closed.

3. Bars, nightclubs and mixed-use facilities shall remain closed, except to the extent that they are serving food consistent with prior Mayor's Orders and are operating pursuant to endorsements from the Alcoholic Beverage Regulation Administration (ABRA).

4. All high contact sports shall remain prohibited; and organized club team sport activities remain closed in District parks and fields.

5. Spray parks shall remain closed.

VI. PHASE TWO LEARNING INSTITUTIONS

1. Childcare centers may resume operations with the same staff/child ratios as applicable prior to the COVID-19 pandemic, with enhanced social distancing and hygiene practices as may be prescribed by the Office of the State Superintendent of Education or DOH.

2. Museums and the National Zoo may reopen, provided, that they shall not:

   a. Offer guided tours where persons are unlikely to be able to achieve a distance of more than six (6) feet per person outside one's own household; and

   b. Permit more than fifty (50) persons at any one time in their auditorium, self-contained exhibit hall, or other room or facility within the museum or zoo. In such venues, they must further provide for social distancing between groups of people.

3. At their restaurants, cafes and other dining facilities, museums and the Zoo must adhere to the rules established for restaurants and licensed food establishments, and the rules applicable to restaurants must be adhered to if they host seated receptions or galas. Standing receptions are not allowed.

4. Libraries may reopen for indoor service, with capacity limits of fifty percent (50%) of the facility's capacity as listed in each building's Certificate of Occupancy, and subject to any time limits as may be set by the District of Columbia Public Library.

5. Colleges and universities may reopen in accordance with plans and processes accepted by the Office of Planning, following its consultation with the university or college and with the Deputy Mayor for Education and the Department of Health. Such plans include prevention, containment, and mitigation measures; and communication and data collection plans, as set forth in the Guidance for Colleges and Universities.

6. Camps and aftercare activities may reopen provided that no more than ten (10) campers/participants are in a single indoor space at any one time; with protocols that allow for handwashing and social distancing between the students; and with cohorting of children who are indoors to no more than ten (10) per cohort with no mixing of cohorts; and procedures for notifying staff, parents, and legal guardians of potential exposures and confirmed positive COVID-19 cases and taking appropriate measures.

VII. PHASE TWO LICENSED FOOD ESTABLISHMENTS

In addition to providing takeout, delivery, "grab and go," and outdoor dining:

1. Restaurants and other licensed food establishments, including taverns, nightclubs, and mixed-use facilities that serve food, may continue to operate with seated outdoor eating and drinking.

2. Restaurants and other licensed food establishments may open for indoor dining with the following minimum safeguards:

   a. All indoor dining/drinking customers must be seated, place orders, and be served at tables;

   b. No more than six (6) individuals may be seated indoors at a table or a joined table, and indoor and outdoor fixed tables that accommodate larger groups than are permitted may demarcate six (6) feet between groups and allow seating at those large tables;

   c. Bar seating is prohibited if any bartender is working at that bar;

   d. All tables must be placed so that patrons are at least six (6) feet apart;

   e. All restaurants and licensed food establishments must implement sanitization and disinfection protocols;

   f. Darts, pool, billiards, ping-pong, pinball, playgrounds, and other activities that are not carried out seated at tables are prohibited; and

   g. No queuing indoors shall be allowed, and outdoors, patrons must be separated by at least six (6) feet.

3. Restaurants and other licensed food establishments may serve customers up to fifty percent (50%) of their maximum capacity, as listed in their Certificate of Occupancy, and restaurant staff and persons sitting outdoors are not counted in this capacity limit.

4. Restaurants and other licensed food establishments are encouraged to use a reservation system, preferably online or by telephone, to avoid crowding and queuing nearby.

5. Restaurants and other licensed food establishments are encouraged to keep customer logs to facilitate contact tracing if necessary.

VIII. PHASE TWO UNCHANGED OPERATIONS

1. Farmers Markets operating under a waiver granted pursuant to Paragraph IV of Mayor's Order 2020-058 or Mayor's Order 2020-067 are not affected by this Order, and new applications to operate farmers markets must be submitted to dcfoodpolicy@dc.gov, and approved by the District government.

2. Healthcare providers may continue to operate and offer procedures consistent with guidance from DOH to prevent undue burdening of hospital capacity or COVID-19 related resources. Healthcare providers are urged to continue alternative care models such as telemedicine where appropriate.

3. Mask, queuing, and capacity rules previously established for essential businesses such as grocery stores and pharmacies are unchanged.

IX. PHASE TWO THEATRES, CINEMAS, ENTERTAINMENT VENUES

Individuals or organizations may apply for a waiver to the Homeland Security and Emergency Management Agency (HSEMA) to hold an arts, entertainment, or cultural event. That application must include a plan for social distancing, protocols to reduce the spread of COVID-19, and a system to facilitate contact tracing. Absent a waiver, these venues, including theatres, cinemas, and other entertainment remain closed.

X. PHASE TWO PLACES OF WORSHIP

1. Places of worship are encouraged to continue providing virtual services.

2. Places of worship may operate with expanded capacity limits. In no event shall attendance at any service exceed fifty percent (50%) of the capacity of the facility or space where the service is occurring as set forth in its Certificate of Occupancy, or one hundred (100) persons, whichever is fewer. Groups of persons attending together shall not exceed ten (10) persons. Each group must be seated at least six (6) feet from each other group.

3. Places of worship that choose to operate on this limited basis must clean the facility between services and are encouraged to take reservations and assign seats to conform to this requirement and so as to facilitate contact tracing.

4. Singing, choirs, all physical touching of others, and the passing or sharing of items pose particular dangers and are discouraged so as to prevent the spread of COVID-19.

XI. PHASE TWO RECREATION AND EXERCISE

1. Playgrounds may open. Caregivers are advised to wash children's hands and faces frequently.

2. Persons may engage in low to moderate contact sports on a casual basis. Field permits shall not be issued. To the extent practicable, players should engage in social distancing, such as by spreading out on the bench to avoid prolonged contact between persons.

3. Fitness establishments such as gyms, health clubs, yoga, dance and workout studios, including those in hotels, apartments, condominiums, and cooperatives, may open with capacity limits of five (5) persons per one thousand (1,000) square feet, provided:

   a. They operate in accord with guidance issued by DOH; including the implementation of strong safeguards regarding the frequent cleaning of equipment by staff between patron uses, not just patrons;

   b. They limit the usage of equipment so that patrons do not use adjacent equipment at the same time;

   c. Group classes limit their attendance such that there is at least ten (10) feet between each person, stationary apparatus, or other piece of equipment in all directions; and

   d. Pools may open in these facilities under the same requirements as section XI.5.

4. Other recreational facilities such as recreation centers, bowling alleys, climbing gyms, squash or racquet clubs, skating rinks, and skateboard parks may open with no more than fifty (50) persons per room or at fifty percent (50%) of capacity as set forth in the Certificate of Occupancy, whichever is fewer.

5. a. After July 15, 2020, the Department of Parks and Recreation (DPR) may open outdoor swimming pools for structured swim activities, including swimming lessons and lap swimming, provided that: (i) persons may not linger on the decks other than: (a) during a mandatory rest period, or (b) when the person on the deck has care over someone who is in the pool or in a lesson; and (ii) at all times, persons on the decks must maintain six (6) feet of distance between persons not in their household, and DPR may establish such other rules as it deems necessary.

b. Apartments, condominiums, and cooperatives may open their swimming and wading pools only for residents, provided that management establishes and enforces a written infection control plan that includes:

i. That residents do not engage in horseplay or physical contact with persons outside their household;

ii. That social distancing measures are maintained on the decks and in the changing rooms and restrooms;

iii. That each resident using the pool signs in, with the date, time of visit, apartment number and cell phone number, to facilitate contact tracing should that become necessary; and

iv. The plan for publicizing and enforcing the plan.

c. Apartments, condominiums, and cooperatives that open a pool in Phase Two may open subject to the emergency provisions of section XI.5.b of this Order, and if they further:

i. Consent to prescheduled and unannounced inspections of the pool area by DOH or DCRA and facilitates entries to the apartment building, rooftop or grounds so that an inspection may be performed;

ii. Provide their plan for ensuring compliance with the terms of section XI.5.b of this Order upon request of District officials;

iii. Prominently post at the pool area the name and contact information of the person responsible for ensuring the safety provisions of this section; and

iv. Consent to abide by any emergency pool closure order or terms for reopening or continued operation of the pool that DOH imposes to protect against the spread of COVID-19 disease.

d. Hotel pools shall remain closed.

XII. PHASE TWO REAL ESTATE, CONSTRUCTION, AND DEVELOPMENT

1. Open houses may be held and developers may resume hosting ground-breakings, grand openings, and other events, provided that:

a. There is no crowding within the building or at the site, such that all persons or groups can maintain social distance;

b. There shall not be more than fifty (50) persons at a property indoors at any one time; and

c. Agents or hosts must make best efforts to capture names, time of arrival, and contact information of attendees, to assist in possible contact tracing.

2. Construction supervisors shall continue to implement site-specific plans to prevent and address COVID-19, including through the provision and mandated use of personal protective equipment, frequent hand washing, and providing that to the extent practicable, work should be conducted from a distance of at least six (6) feet between employees.

XIII. PHASE TWO CONGREGATE HEALTH FACILITIES

Residents and facilities licensed as Assisted Living Residences (ALRs), Skilled Nursing Facilities (SNFs), Intermediate care facilities for individuals with intellectual disabilities, Community Residence Facilities (CRFs), or other licensed community-based residences for people who are elderly or with physical or intellectual disabilities must implement the following protocols for the safety of employees and individuals residing at the facilities:

1. All individuals residing at a facility specified in this section are ordered to stay at their place of residence except as specified in this section.

   a. Individuals residing at a facility specified in this section may leave their residence facility only to engage in Essential Activities including obtaining medical care that cannot be provided through telehealth or on-site, and obtaining food and essential household goods; to perform or access Essential Government Functions; to work at Essential Business; to engage in Essential Travel; or engage in Allowable Recreational Activities;

   b. Leaving the residence for the purpose of engaging in an action listed in this section 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 DOH guidance; and

   c. Under any of the limited circumstances in which an individual is allowed to leave their residence under this section, the individual shall wear a face covering pursuant to DOH guidance, shall abide by the applicable orders of any regulatory agency for a specified activity and must maintain a distance of at least six (6) feet from persons not in their living unit, except if such distance is impossible to maintain (such as when obtaining medical services).

2. Receiving visitors inside the facility shall be restricted. Guidance on allowable procedures for receiving visitors inside the facility is provided by DOH.

3. Guidance on allowable procedures for receiving visitors outside the facility is provided by DOH.

4. Limited group activities in congregate settings may occur on the facility's grounds per DOH guidelines specific to that setting.

5. Communal dining inside facilities shall remain restricted, per section V.1.i of Mayor's Order 2020-063, issued April 15, 2020. Guidance on allowable communal dining procedures is provided by DOH.

6. Each facility shall develop and implement a written plan for managing new admissions or readmissions of residents with unknown COVID-19 status. Guidance on managing new admissions or readmissions of residents with unknown COVID-19 status is provided by DOH.

7. Facilities shall maintain a dedicated space for cohorting and managing care for residents with COVID-19, and residents who are developing symptoms. Guidance on cohorting and managing care for residents with COVID-19, and residents who are developing symptoms, is provided by DOH.

8. Guidance on testing and screening recommendations for staff and residents is provided by DOH.

XIV. AUTHORITY FOR COVID-19 TESTING

1. During the public health emergency and notwithstanding any other provision of law, dentists are authorized to administer swab tests for COVID-19 as well as to observe self-tests for COVID-19 and to collect self-test swabs.

2. During the public health emergency and notwithstanding any other provision of law, audiologists, audiologist assistants, speech language pathologists, and speech language pathology assistants are authorized to observe self-tests for COVID-19 and to collect self-test swabs.

XV. DEFINITIONS

1. For the purposes of Phase Two, a "mass gathering" is any event or convening, subject to the exceptions and clarifications set forth below, that brings together or is likely to bring together fifty (50) or more persons at the same time in a single room or other single confined or enclosed space, such as, by way of example and without limitation, an auditorium, theatre, stadium (indoor or outdoor), arena or event center, meeting hall, conference center, large cafeteria, or any other confined indoor or confined outdoor space.

a. A "mass gathering" includes any event in a confined outdoor space, which means an outdoor space that:

i. Is enclosed by a fence, physical barrier, or other structure; and

ii. Where people are present and they are within arm's length of one another for extended periods.

b. A "mass gathering" does not include the following:

i. Gatherings of people in multiple, separate enclosed spaces in a single building, so long as fifty (50) people are not present in any single space as the same time;

ii. The use of enclosed spaces where fifty (50) or more people may be present at different times during the day, so long as fifty (50) or more people are not present in the space at the same time;

iii. Gatherings on property within the District of Columbia owned by the federal government;

iv. Spaces where fifty (50) or more persons may be in transit or waiting for transit such as bus, ferry, or subway stations (or shopping areas associated with the buildings housing those stations);

v. Office spaces, hotels, gymnasiums, recreation centers, or residential buildings. Hotels and residential buildings may remain open as residences for individuals, but gatherings of more than fifty (50) people within the hotel or residential buildings are prohibited;

vi. Retail or food establishments where large numbers of people are present but it is unusual for persons to be within arm's length of one another for an extended period; and

vii. Hospitals, nursing homes, assisted living facilities, and other healthcare facilities.

2. "Social Distancing" means:

a. Maintaining at least six (6) feet from other individuals not in your household;

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.

XVI. SUPERSESSION

This Order supersedes any Mayor's Order issued during the COVID-19 public health emergency to the extent of any inconsistency.

XVII. ENFORCEMENT

1. Any individual or entity that knowingly violates this Order may be subject to civil and administrative penalties authorized by law, including sanctions or penalties for violating D.C. Official Code § 7-2307, including civil fines or summary suspension or revocation of licenses.

2. Individuals should call 311 to report any suspected violations of this or other Mayor's Orders related to the COVID-19 public health emergency.

3. Official guidance posted on coronavirus.dc.gov may inform those seeking laws and recommendations.

XVIII. EFFECTIVE DATE AND DURATION

This Order shall be effective at 12:01 a.m. on Monday, June 22, 2020 and shall remain in effect for the duration of the public health emergency or until it is repealed, modified, or superseded.

MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

ACADEMY OF HOPE PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

General Contractor

Academy of Hope Adult Public Charter School, in compliance with Section 2204 (c) of the District of Columbia School Reform Act of 1995 ("Act"), hereby solicits expressions of interest for General Contractor Services. The scope of work includes renovating approximate 5,000 square feet of an existing 1930-1949s building in which the School operates its adult education program. A video walk-though for potential bidders will be provided upon request. For directions and additional information, including architectural, structural, and MEP drawings, and statements of work, please email Ana Montano at amontano@stoiberandassociates.com and Jeff Stoiber at jstoiber@stoiberandassociates.com. Academy of Hope reserves the right to terminate this RFP and any subsequent contact at any time. Deadline for submissions, proposals, and supporting documents is at **5:00 p.m., on Wednesday, July 1st**. Please email proposals to amontano@stoiberandassociates.com.

CHILDREN'S GUILD DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Janitorial Services

The CG DC PCS seeks qualified vendors/contractors to submit proposals the for Janitorial Services. Please contract Thomas Rivard-Willis at procurement@childrensguild.org for additional information.

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF SUBSTANTIAL UNDUE ECONOMIC HARDSHIP DETERMINATION

RE:

Address:	**Square:**	**Lot:**
406 Kennedy Street, NW	3259	3259

Dear Sir/Madam:

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Hardship for the above property for real property tax year for **FY 2019**, for the following reasons:

> *You provided sufficient evidence to support your extraordinary circumstances and hardship. Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, "A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*
> *(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship."*

Annually you are required by law to register vacant property or seek an exemption for the current tax year. DCRA will immediately notify the Office of Tax and Revenue (OTR) to reclassify the subject property as (Class1/Class2). You may email OTR at adjustments@dc.gov to request a corrected bill within 5 to 7 buisness days. DCRA reserves the right to revoke this exemption if the building is not maintained in accordance with the Vacant Building Maintenance standards, or if disqualifying information is obtained.

If you have questions regarding this decision please call, Theresa Hollins, Program Support Specialist (202) 805-8344.

Sincerely,

Donald Sullivan,
Program Manager
Vacant Building Enforcement

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OFSUBSTANTIAL UNDUE ECONOMIC HARDSHIP DETERMINATION

RE:

Address:	**Square:**	**Lot:**
601 Burns Street, SE	5391E	0013

Dear Sir/Madam:

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Hardship for the above property for real property tax year for **FY 2020**, for the following reasons:

> *You provided sufficient evidence to support your extraordinary circumstances and hardship. Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, "A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*
> *(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship."*

Annually you are required by law to register vacant property or seek an exemption for the current tax year. DCRA will immediately notify the Office of Tax and Revenue (OTR) to reclassify the subject property as (Class1/Class2). You may email OTR at adjustments@dc.gov to request a corrected bill within 5 to 7 buisness days. DCRA reserves the right to revoke this exemption if the building is not maintained in accordance with the Vacant Building Maintenance standards, or if disqualifying information is obtained.

If you have questions regarding this decision please call, Theresa Hollins, Program Support Specialist (202) 805-8344.

Sincerely,

Donald Sullivan,
Program Manager
Vacant Building Enforcement

DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS

NOTICE OF SUBSTANTIAL UNDUE ECONOMIC HARDSHIP DETERMINATION

RE:

Address:	**Square:**	**Lot:**
3615 S Street, NW	1306	0024

Dear Sir/Madam:

The Department of Consumer and Regulatory Affairs (DCRA), has reviewed and **granted** your request for Hardship for the above property for real property tax year for **FY 2019**, for the following reasons:

> *You provided sufficient evidence to support your extraordinary circumstances and hardship. Pursuant to D.C. Code §42-3131§.06 (b), Paragraph 5, "A vacant building shall be exempted by the Mayor in extraordinary circumstances and upon a showing of substantial undue economic hardship.*
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> *(B) The exemption may be granted for a period of up to 24 months, subject to renewal on the basis of continuing extraordinary circumstances and substantial undue economic hardship."*

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If you have questions regarding this decision please call, Theresa Hollins, Program Support Specialist (202) 805-8344.

Sincerely,

Donald Sullivan,
Program Manager
Vacant Building Enforcement

DC SCHOLARS PUBLIC CHARTER SCHOOL

NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT

Facilities Management Services

DC Scholars Public Charter School (DCSPCS) intends to enter into a sole source contract with Jones Lang Lasalle for contracted facilities management services in school year 2020-21, effective August 1, 2020. Jones Lang Lasalle will provide integrated facilities management services, including janitorial, maintenance and repairs, and on-site operations. DCSPCS anticipates that the consulting agreement will exceed $300,000.00 during its fiscal year 2021 (July 1, 2020 – June 30, 2021).

The decision to sole source is due to the fact that Jones Lang Lasalle has provided Facilities Management services for DCSPCS since school year 2018-19 under the management of 5601 LLC/Building Pathways. The school is entering a contract with Jones Lang Lasalle since the partnership with the 5601 LLC/Building Pathways will end in July 2020, and it is advantageous to have continuity of services for SY20-21.

The Sole Source Contract will be awarded at the close of business on July 7, 2020. If you have questions or concerns regarding this notice, contact **Emily Stone** at **estone@dcscholars.org** no later than **5:00 pm on July 7, 2020.**

E.L. HAYNES PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Fence Netting Installation

E.L. Haynes Public Charter School ("ELH") is seeking proposals from qualified vendors furnish and install 400 LF of 20-foot-high netting at the existing fence (netting posts independent to fence) on the west side of our soccer field.

Proposals are due via email to Kristin Yochum no later than 5:00 PM on Monday, July 7, 2020. We will notify the final vendor of selection and schedule work to be completed. The RFP with bidding requirements can be obtained by contacting:

Kristin Yochum
E.L. Haynes Public Charter School
Phone: 202.667-4446 ext 3504
Email: kyochum@elhaynes.org

FRIENDSHIP PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Friendship Public Charter School is seeking bids from prospective vendors to provide;

- Compensation and HR consulting services for a multi-campus charter school network
- Graphic Design, printing and copy services

The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, Friday, July 10, 2020. No proposals will be accepted after the deadline. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

DEPARTMENT OF HEALTH CARE FINANCE

MEDICAL CARE ADVISORY COMMITTEE

ACCEPTING MEMBERSHIP APPLICATIONS FOR FISCAL YEAR 2021

The Department of Health Care Finance (DHCF) is accepting applications to fill six vacancies on its Medical Care Advisory Committee (MCAC). Five appointments will be for a three-year term and one appointment will be for a one-year term.

For purposes of this application period, DHCF is seeking to fill three (3) provider seats and two (2) beneficiary/advocate seats for three-year terms. DHCF is also seeking to fill one (1) provider seat for a one-year term.

For more information about MCAC and to complete an application, please visit the MCAC website at: https://dhcf.dc.gov/page/dc-medical-care-advisory-committee.

All applications must be submitted to Mr. Bill Hanna, Special Projects Officer, via e-mail at william.hanna@dc.gov, by Wednesday, August 12, 2020.

For more information, please contact:

Bill Hanna at william.hanna@dc.gov or 202-442-5819

D.C. DEPARTMENT OF HUMAN RESOURCES
NOTICE OF EXCEPTED SERVICE APPOINTMENTS AND CHANGES

From February 11, 2020 to March 27, 2020

Pursuant to D.C. Official Code § 1-609.03(c), the Executive must publish the names of individuals appointed to Excepted Service positions within 45 days of appointment. The following individuals, along with the agency, title and grade, were appointed to Excepted Service or the nature of their appointment has changed.

Agency Name	Type Appt	Last Name	First Name	Position Title	Grade
Office of the Mayor	Excepted Service - Reg Appt	Noakes	Anna	Outreach and Services Specialist	5
Council of the District	Excepted Service - Reg Appt	Bond	Karlytheia	Special Assistant	02
Council of the District	Excepted Service - Reg Appt	Minor	Angela	Office Manager	04
Council of the District	Excepted Service - Temp Appt	Harris	Catherine	Intern	01
Council of the District	Excepted Service - Temp Appt	Petty	Kevin	Intern	01
Council of the District	Excepted Service - Temp Appt	Alexander	Stephanie	Intern	01
Council of the District	Excepted Service - Temp Appt	Ghose	Preshona	Research Analyst	03
Ofc of the Auditor	Excepted Service - Reg Appt	Dozier	Clifford	Chief of Staff	09
Ofc of the City Administrator	Excepted Service - Reg Appt	Torres	Tatiana	Director of External Engagement	09
Board of Ethics and Government	Excepted Service - Reg Appt	Raj	Rashee	General Counsel	09

Ofc of the Secretary	Excepted Service - Reg Appt	Candelaria	Alma	Deputy Secretary of the District	08
Planning & Econ Dev	Excepted Service - Reg Appt	Thomas	Daryl	Project Manager	07
Planning & Econ Dev	Excepted Service - Reg Appt	Dukes	Erica	Associate Director for Real Estate	09
Deputy Mayor for Education	Excepted Service - Reg Appt	Fox	LaKeeshia	Director of Legislative & Government	08

D.C. DEPARTMENT OF HUMAN RESOURCES
NOTICE OF EXCEPTED SERVICE APPOINTMENTS AND CHANGES

From March 28, 2020 to May 12, 2020

Pursuant to D.C. Official Code § 1-609.03(c), the Executive must publish the names of individuals appointed to Excepted Service positions within 45 days of appointment. The following individuals, along with the agency, title and grade, were appointed to Excepted Service or the nature of their appointment has changed.

Agency Name	Type Appt	Last Name	First Name	Position Title	Grade
Office Of the Mayor	Excepted Service - Reg Appt	Daniels	Osha	Outreach & Service Specialist	05
Office Of the Mayor	Excepted Service - Reg Appt	Donaldson	Tony	Outreach & Service Specialist	05
Office Of the Mayor	Excepted Service - Reg Appt	Smith	Lyndriell	Case Manager	05
Office Of the Mayor	Excepted Service - Reg Appt	Martin	Emily	Public Information Officer	05
Council of the District	Excepted Service - Reg Appt	Kovalcik	Reana	Communicatio ns Director	04
Council of the District	Excepted Service - Reg Appt	Price	Emily	Senior Legislative Asst.	07
Ofc of the Senior Advisor	Excepted Service - Reg Appt	Demirci	Buket	Special Assistant	05
DC Sentencing Commission	Excepted Service - Reg Appt	Pham	Georgia	Gen Counsel	08
DC State Board of Education	Excepted Service - Reg Appt	Fleischer	Darren	Policy Analyst	05

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF HUMAN SERVICES
ECONOMIC SECURITY ADMINISTRATION
NOTICE OF FUNDING AVAILABILITY

FY21 DC SNAP Employment and Training Program Grant

The Department of Human Services, Economic Security Administration (DHS/ESA) seeks eligible entities to propose a plan to provide employment and training services to low-income District residents through the Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T) program. The SNAP E&T program is funded and administered federally through the U.S. Department of Agriculture – Food and Nutrition Service (USDA-FNS). The program assists SNAP recipients in achieving their career goals by providing participants with a broad range of services focused on their interests and needs.

This is a cost-reimbursable grant funding opportunity that only covers a portion of total program costs. Each applicant must propose a program budget to serve SNAP E&T participants that includes other nonfederal funds covering 60% of their proposed budget, with SNAP E&T grant funds awarded covering the remaining 40% (with the exception of participant reimbursement costs, which are funded at 50% of total costs by SNAP E&T grant funds).

The total amount of funding available through this RFA is not predetermined, and is instead contingent upon the amount of eligible program costs proposed to and approved by USDA-FNS for reimbursement in the District's fiscal year (FY) 2021 SNAP E&T State Plan (total costs submitted are informed by the results of this RFA process). DHS/ESA expects to make multiple awards in amounts to be determined by approved budgets submitted by selected applicants in response to this RFA. Award totals must be approved by both DHS/ESA and USDA-FNS and are subject to availability of federal funds, documentation that required nonfederal funds necessary to leverage federal funds are in place, and documentation that all costs proposed are allowable and reasonable.

The project period is one year, covering FY 2021 from October 1,2020- September 30,2021. There is the option of up to three additional years for a total of four years, pending the availability of funds and DHS/ESA's determination that the grantee's performance has been of a high quality.

Beginning 6/26/2020, the full text of the Request for Applications (RFA) will be available on the DHS website. A person may obtain a copy of this RFA by any of the following means:

Download from the DHS website at https://dhs.dc.gov/page/snap-employment-and-training-program-%E2%80%93-fy-2021-request-applications.

Email a request to SNAPET.RFA21@dc.gov with "Request copy of SNAP E&T RFA" in the subject line.

The deadline for application submissions is 7/28/2020 at 4:00pm. All applications must be submitted by e-mail to SNAPET.RFA21@dc.gov.

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

☒-Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations

☒-Faith-based organizations

☒-Universities/educational institutions

☒-Private Enterprises

For additional information regarding this RFA, send an e-mail to: SNAPET.RFA21@dc.gov.

THE NOT FOR PROFIT HOSPITAL CORPORATION
BOARD OF DIRECTORS
NOTICE OF PUBLIC MEETING
LARUBY Z. MAY, BOARD CHAIR

The monthly Governing Board meeting of the Board of Directors of the Not-For-Profit Hospital Corporation, an independent instrumentality of the District of Columbia Government, will convene at 12:00pm on Wednesday, June 24, 2020. Due to the Coronavirus pandemic, the meeting will be held via Webex.

Meeting link:
Meeting number: 129 677 9787 Password: 9kgUWwWvQ93
https://unitedmedicalcenter.webex.com/unitedmedicalcenter/j.php?MTID=md09f075e69bb9b72c1222cba9cdac6f3

Notice of a location, time change, or intent to have a closed meeting will be published in the D.C. Register, posted in the Hospital, and/or posted on the Not-For-Profit Hospital Corporation's website (www.united-medicalcenter.com).

DRAFT AGENDA

I. DETERMINATION OF A QUORUM
II. APPROVAL OF AGENDA
III. READING OF APPROVAL OF MINUTES
    May 27, 2020
IV. CONSENT AGENDA
    A. Dr. Raymond Tu, Chief Medical Officer
    B. Dr. Marilyn McPherson-Corder, Medical of Staff
    C. Dr. Jacqueline Payne-Borden, Chief Nursing Officer
V. EXECUTIVE MAMAGEMENT REPORT
    A. Colene Daniel, Chief Executive Officer
VI. HUMAN RESOURCES REPORT
    A. Trenell Bradley, Human Resources Director
VII. CORPORATE SECRETARY REPORT
    A. Toya Carmichael, VP Public Relations/Corporate Secretary
VIII. NFPH COMMITTEE REPORTS
IX. PUBLIC COMMENTS
X. OTHER BUSINESS
    A. Old Business
    B. New Business
XI. ANNOUNCEMENTS
XII.ADJOURN

NOTICE OF INTENT TO CLOSE. The NFPHC Board hereby gives notice that it may close meeting and move to executive session to discuss collective bargaining agreements, personnel, and discipline matters. D.C. Official Code §§2-575(b)(1)(2)(4A)(5),(9),(10),(11),(14).

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, June 29, 2020

Monday, July 20, 2020

Monday, August 17, 2020

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.

Government of the District of Columbia
Public Employee Relations Board

In the Matter of:	
American Federation of Government Employees, Local 1000	
Complainant	PERB Case No. 13-U-07
v.	Opinion No. 1742 **Motion for Reconsideration**
District of Columbia Department of Employment Services	
Respondent	

DECISION AND ORDER

I. Statement of the Case

Before the Board is a Motion for Reconsideration (Motion) filed by the American Federation of Government Employees, Local 1000 (AFGE), in response to the Board's Decision and Order in Opinion 1730, PERB Case No. 13-U-07 (October 17, 2019). The Motion requests that the Board reconsider its Order regarding the appropriate remedy. DOES did not file an opposition to the Motion.

II. Background

In Opinion 1730, the Board found that the Department of Employment Services (DOES) violated D.C. Official Code § 1-617.04(a)(1) and (5) by failing to engage in substantive bargaining over its 2012 Dress Code. The Board found that the typical remedy for failing to bargain is an order for the parties to engage in substantive bargaining; however, in this case, the Board found that an order to bargain would not be appropriate because DOES implemented a new dress code (2018 Dress Code) after the filing of the instant case.[1] The Board found that the remedy to bargain regarding the 2012 Dress Code was rendered moot, because DOES implemented a subsequent

[1] *AFGE, Local 1000 v. DOES*, Slip Op. No. 1730 at 7, PERB Case No. 13-U-07 (October 7, 2019).

dress code (2018 Dress Code).[2] AFGE did not file an unfair labor practice complaint regarding the 2018 Dress Code or amend its Complaint to include allegations regarding the 2018 Dress Code.

III. Discussion

A motion for reconsideration cannot be based upon a mere disagreement with the Board's initial decision.[3] The Board has repeatedly held that a moving party must provide authority which compels reversal of the Board's decision.[4] Absent such authority, the Board will not overturn its decision.[5]

In its Motion, AFGE argues that it never withdrew its demand to bargain over the implementation of a dress code by DOES and that DOES was well aware of AFGE's demand to bargain over the decision to implement a dress code.[6] AFGE further argues that it should not be penalized for "failing to make a futile repeated demand to bargain in the face of the Agency's clear and unretractable position that it was refusing to bargain."[7] Therefore, AFGE requests that the Board reconsider its conclusions regarding the appropriate remedy in Opinion 1730.

The Board found in Opinion 1730 that DOES violated D.C. Official Code 1-617.04(a)(1) and (5) by failing to engage in substantive bargaining over the 2012 Dress Code.[8] The Board further stated that the remedy to bargain over the 2012 Dress Code was rendered moot, as it had been superseded by the 2018 Dress Code. The Board has previously held that bargaining should be limited to those issues that are not deemed moot by the passage of time.[9] The 2018 Dress Code was not an allegation in the Complaint that was before the Board in Opinion 1730. Therefore, the Board did not incorporate the 2018 Dress Code into its remedy Order.

AFGE asserts that the "remedy of restoring the status quo and ordering bargaining is in no way moot."[10] The Board has held that *status quo ante* relief may be appropriate for a respondent's failure to bargain in good faith.[11] Before the Hearing Examiner, the parties presented arguments and evidence on the 2018 Dress Code, and stipulated that there was no substantive or impacts and effects bargaining regarding the 2018 Dress Code.[12] The Hearing Examiner found that the 2012 and 2018 Dress Codes were substantially similar.[13] Based on these facts, the Board finds that DOES's failure to bargain over the 2018 Dress Code is a continuation of its failure to bargain over

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[2] *Id.*
[3] *Washington Teachers' Union, Local #6 Am. Fed'n of Teachers v. Dist. of Columbia Pub. Schs.,* 65 D.C. Reg. 6927, Slip Op. No. 1657 at 1, PERB Case No. 14-U-02 (2018).
[4] *Id*.
[5] *Id*.
[6] Motion for Reconsideration at 3.
[7] Motion for Reconsideration at 4.
[8] Slip Op. No. 1730 at 7.
[9] *AFGE, Local 383 v. D.C. Dep't of Mental Health*, 52 D.C. Reg. 2527, Slip Op. No. 753 at 8, PERB Case No. 02-U-16 (2005).
[10] Motion for Reconsideration at 4.
[11] *AFGE Local 383 v. DYRS*, 61 D.C. Reg. 1544, Slip Op. No. 1449 at 11, PERB Case No. 13-U-06 (2014), *see also AFGE Local R3-06 v. WASA*, 47 D.C. Reg. 7551, Slip Op. No. 635 at 14-15, PERB Case No. 99-U-04 (2000).
[12] Report at 14.
[13] Report at 18.

the 2012 Dress Code, as they are the substantially the same dress code in this situation. In its prior decision, the Board did not give proper weight to the Hearing Examiner's factual determination concerning the similarity of the 2012 and 2018 dress codes. There was substantial evidence supporting the Hearing Examiner's decision and the Board now adopts that decision.

The Board also notes that DOES did not oppose AFGE's motion for reconsideration and, consequently, does not dispute that bargaining has not been rendered moot. The Board finds that the parties should return to *status quo ante* in regards to the dress code, until such time as the parties have engaged in substantive bargaining over this issue.

IV. Conclusion

The Board grants AFGE's Motion for Reconsideration.

IT IS HEREBY ORDERED THAT:

1. The American Federation of Government Employees, Local 1000's Motion for Reconsideration is granted.

2. DOES, its agents, and representatives shall cease and desist from violating D.C. Official Code § 1-617.04(a)(1) and (5) by failing and refusing to bargain in good faith with AFGE, Local 1000 regarding the dress code policy.

3. The parties will return to a position of *status quo ante* on the 2018 Dress Code.

4. Pursuant to Board Rule 559, this Decision and Order is final upon issuance.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD

By unanimous vote of the Board Chairperson Douglas Warshof, Members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler.

March 19, 2020

Washington, D.C.

CERTIFICATE OF SERVICE

This is to certify that the attached Decision and Order in PERB Case No. 13-U-07, Op. No. 1742 was sent by File and ServeXpress or email to the following parties on this the 21st day of April, 2020.

Brenda C. Zwack
Murphy Anderson PLLC
1401 K Street, NW
Suite 300
Washington, D.C.

Michael Levy
Office of Labor Relations and
Collective Bargaining
441 4th Street, NW
Suite 820 North
Washington, D.C. 20001

/s/ Merlin M. George
Public Employee Relations Board

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) Residential Service Plug-In Vehicle Charging Schedule "R-PIV" (On-Peak and Off-Peak Generation Service Charges) 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 11, 2020, Pepco filed with the Commission a proposed update to its existing Schedule "R-PIV" On-Peak and Off-Peak Generation Service Charges.[2] On April 3, 2020, the Commission issued a NOPT for a 30-day comment period.[3] Comments and reply comments were received in response to the NOPT.[4] In its reply comments, Pepco

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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.

[3] *67 D.C. Register 003891-003892* (April 3, 2020).

[4] *Formal Case No. 1130 and Formal Case No. 1155,* Department of Energy and Environment's Comments on the Notice of Proposed Tariff Regarding the Potomac Electric Power Company's Residential Service Plug-In Vehicle Charging Schedule "R-PIV," filed April 17, 2020; Potomac Electric Power Company's Motion for Leave to Respond and Limited Response to DOEE's Comments to Notice of Proposed Tariff, filed April 27, 2020; Department of Energy and Environment's Motion for Leave to File Reply Comments to the Potomac Electric Power Company's Response Comments Regarding Vehicle Charging Schedule "R-PIV," filed May 28, 2020; and Potomac Electric Power Company's Motion to Reply and Reply Comments to the May 28 Comments of the District Department of Energy and Environment, filed June 8, 2020.

proposed additional revisions to Schedule "R-PIV" filed on March 11, 2020, by updating the summer and winter rates.[5] Pepco proposes to change the following tariff pages:

ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
(Former) Original Page No. R-19
(New) First Revised Page No. R-19

3. Pepco cites two reasons for the update. First, Pepco filed updated residential Standard Offer Service ("SOS") rates for the 2020-2021 summer and winter seasons with the Commission on March 26, 2020, after it had filed its Schedule "R-PIV" tariff. The revised summer and winter rates that it is now proposing have been updated to cover the 2020-2021 summer and winter seasons and are based on the applicable Schedule "R" SOS rates. Second, Pepco has further refined the model used to develop Schedule "R-PIV" rates to better ensure that Schedule "R-PIV" generation service charges are revenue neutral as compared to Schedule "R" SOS generation service charges, provided that customer energy usage patterns are consistent with those included in the model. As part of its filing, Pepco provides updated Schedule "R-PIV" rates and tariff pages and requests that the rates become effective August 1, 2020.[6]

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* addressed 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 and sent electronically on the Commission's website at https://edocket.dcpsc.org/public/public_comments. Reply comments are due within seven (7) days after the expiration of the 30-day comment period. Electronic copies of the NOPT may be obtained by visiting the Commission's website at www.dcpsc.org. Persons with questions concerning this rulemaking 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.

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5 *Formal Case No. 1130 and Formal Case No. 1155,* Potomac Electric Power Company's Update to Proposed Whole House Time-Of-Use Rates ("Pepco's June 8, 2020 Update"), filed June 8, 2020.

6 *Formal Case No. 1130 and Formal Case No. 1155,* Pepco's June 8, 2020 Update at 3-4.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

GAS TARIFF 00-2, IN THE MATTER OF WASHINGTON GAS LIGHT COMPANY'S RIGHTS-OF-WAY SURCHARGE GENERAL REGULATIONS TARIFF, P.S.C.-D.C. No. 3,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to D.C. Code § 34-802 and in accordance with D.C. Code § 2-505,[1] of its intent to act upon the proposed Rights-of-Way (ROW) Surcharge Update of Washington Gas Light Company (WGL or Company)[2] in not less than thirty (30) days after the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. The ROW Surcharge contains two components, the ROW Current Factor and the ROW Reconciliation Factor. On May 21, 2020, pursuant to D.C. Code § 10-1141.06,[3] WGL filed a Surcharge Update to revise the ROW Reconciliation Factor.[4] In the Surcharge Update, WGL sets forth the process to be used to recover from its customers the D.C. ROW fees paid by WGL to the District of Columbia government in accordance with the following tariff page:

GENERAL SERVICES TARIFF, P.S.C.-D.C. No. 3
Section 22
3rd Revised Page 56

3. WGL's Surcharge Update indicates the ROW Current Factor is 0.0327 with the ROW Reconciliation Factor of 0.0025 for the period of June 2020 through May 2021, which yields a Net Factor of 0.0352.[5] In addition, WGL expresses its intent to collect the ROW fee surcharge beginning with the June 2020 billing cycle.[6] The Company has a statutory right to implement its filed surcharges. However, if the Commission discovers

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

2 *Gas Tariff 00-2, In the Matter of Washington Gas Light Company's Rights-of-Way Surcharge General Regulations Tariff, P.S.C.-D.C. No. 3* (*GT00-2*), Rights-of-Way Fee Surcharge Filing of Washington Gas Light Company (Surcharge Update), filed May 21, 2020.

3 D.C. Code § 10-1141.06 (2001 Ed.) states that "[e]ach public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement."

4 *GT00-2*, Surcharge Update at 1.

5 *GT00-2*, Surcharge Update at 1.

6 *GT00-2*, Surcharge Update at 1.

any inaccuracies in the calculation of the proposed surcharge, WGL could be subject to reconciliation of the surcharges.

4. Any person interested in commenting on the subject matter of this proposed tariff may submit written comments not later than thirty (30) days after publication of this notice in the *D.C. Register*, addressed 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, and submitted electronically on the Commission's website at https://edocket.dcpsc.org/public/public_comments. Copies of the proposed tariff 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 Surcharge Update.

ROCKETSHIP DC PUBLIC CHARTER SCHOOLS

REQUEST FOR PROPOSALS

Food Services

Rocketship Education DC Public Charter School is advertising the opportunity to bid on the delivery of breakfast, lunch, snack and/or CACFP supper meals to children enrolled at the school for the 2020-2021 school year with a possible extension of (4) one year renewals. All meals must meet at a minimum, but are not restricted to, the USDA National School Breakfast, Lunch, Afterschool Snack and At Risk Supper meal pattern requirements. Additional specifications outlined in the Request for Proposal (RFP) such as; student data, days of service, meal quality, etc. may be obtained beginning on **June 26, 2020** from **Kelly Giampaoli at (408) 507-6052 or kgiampaoli@rsed.org**.

Proposals will be accepted at **kgiampaoli@rsed.org** until **July 16, 2020** no later than **6:00 PM EST.**

All bids not addressing all areas as outlined in the RFP will not be considered.

WASHINGTON LATIN PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Issued: 06/26/2020

The Washington Latin Public Charter School solicits expressions of interest in the form of proposals with references from qualified vendors for the following services to support our possible expansion to a second campus

- Real Estate Attorney
- Zoning Attorney
- General Contractor
- Architect
- Project Manager
- Laptop Procurement for distance learning program

For the complete RFP, please contact Ms. Eman Abdur-Rahman at eabdurrahman@latinpcs.org with the type of service in the subject line. Deadline for submissions is **COB July 10, 2020**. No phone calls please.

YOUTHBUILD DC PUBLIC CHARTER SCHOOL

REQUEST FOR PROPOSALS

Special Education Coordination and IT Services

YouthBuild DC Public Charter is soliciting quotes for:

1. Special Education Coordination Services to drive special education compliance, lead student support team meetings, and ensure the service delivery and academic progress for approximately 30 learners in the special education program. To request a copy of the RFP, email Komal Bansal at Komal.Bansal@youthbuildpcs.org. Proposals are due by 5:00 PM, Monday, July 6, 2020.
2. Vendors that can provide comprehensive IT services which includes ongoing technology support, network support and technology inventory management. To request a copy of the RFP, email Komal Bansal at Komal.Bansal@youthbuildpcs.org. Proposals are due by 5:00 PM, Monday, July 6, 2020.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20135 of 3428 O Street LLC, as amended[1], pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the Corner Store requirements of Subtitle U § 254.6(g), to operate a corner store on the first floor and basement of an existing mixed-use building in the R-20 zone at premises 3428 O Street, N.W. (Square 1228, Lot 76).

HEARING DATES: October 30, 2019; December 4, 2019; December 11, 2019; January 15, 2020
DECISION DATE: January 15, 2020

DECISION AND ORDER

3428 O Street LLC (the "**Owner**"), the owner of Lot 76 in Square 1228 with an address of 3428 O Street, N.W. (the "**Property**") and Call Your Mother ("**CYM**," and collectively with the Property Owner, the "**Applicant**") filed an application (the "**Application**") with the Board of Zoning Adjustment (the "**Board**") on August 7, 2019, as subsequently revised on December 5, 2019, requesting the following relief under the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, to which all references are made unless otherwise specified):

- Area variance from the Corner Store location requirements of Subtitle U § 254.6(g);

to operate a corner store on the first floor and basement of the existing mixed-use building on the Property. For the reasons explained below, the Board voted to **APPROVE** the Application.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. Pursuant to Subtitle Y §§ 400.4 and 402.1, the Office of Zoning ("**OZ**") sent notice of the Application and the October 30, 2019 public hearing by a September 4, 2019, letter to:
   - the Applicant;
   - Advisory Neighborhood Commission ("**ANC**") 2E, the ANC in which the subject property is located and therefore the "affected ANC" per Subtitle Y § 101.8;
   - the Single Member District/ANC 2E03;
   - the Office of Advisory Neighborhood Commissions;
   - Office of Planning ("**OP**");
   - the District Department of Transportation ("**DDOT**");

[1] The Applicant revised the relief to the requested area variance by submission dated December 5, 2019. (Finding of Fact ["**FF**"] 20.)

- the Councilmember for Ward 2;
- the Chairman of the Council;
- the At-Large Councilmembers; and
- the owners of all property within 200 feet of the Property.

2. OZ published notice of the original October 30, 2019, public hearing in the *D.C. Register* on November 1, 2019 (66 DCR 14399), as well as through the calendar on OZ's website.[2]

PARTIES

3. The Applicant and ANC 2E were automatically parties in this proceeding per Subtitle Y § 403.5.

4. Melinda Roth (the "**Party Opponent**"), the owner of the property located at 3418 O Street, N.W., approximately 75 feet from the Property, filed a request for party status in opposition to the Application. (Exhibit ["**Ex**."] 36.)

5. The Board initially denied the Party Opponent's party status request at its October 30, 2019, public hearing because the Board concluded that she had not clearly articulated how she would be more distinctively or uniquely affected by the proposed use than other members of the surrounding neighborhood. (Public Hearing Transcript of October 30, 2019 ["**Oct. 30 Tr.**"] at 7-11.)

6. Based on testimony and submissions provided prior to the December 11, 2019, continued public hearing the Board on its own motion awarded her party status prior to considering the Applicant's revised area variance relief. (Public Hearing Transcript of December 11, 2019 ["**Dec. 11 Tr.**"] at 46-50.)

THE PROPERTY

7. The Property is a corner lot located on the southeast corner of 35th and O Streets, N.W. and contains approximately 617 square feet of land area.

8. The Property is improved with an existing two-story, mixed use building (the "**Building**") with retail uses on the first floor and basement and one residential unit on the second floor. The retail space was previously used as a flower shop and antique/gift shop and was vacant before CYM and the Owner signed a lease for the space. The Building has contained commercial uses since its construction in the 19th Century. (Ex. 123.)

[2] Notice of the October 30, 2019, public hearing was published late in the *D.C. Register*. However, the Board finds that OZ otherwise provided proper notice of the public hearing. Particularly, the Board notes the volume of written responses and oral testimony received from the public, and therefore concludes that the late publication did not prejudice any interested individuals.

9. A use variance granted pursuant to BZA Order No. 11248 (1973) authorizes retail uses on the Property. (Ex. 13.)

10. The Property is surrounded by predominantly residential uses. To the north, south, and east of the Property are one-family dwellings and there are several multi-family buildings in the surrounding area. On the southwest corner of 35th and O Streets, is another corner commercial use, currently used as a coffee shop. The Property is approximately two blocks east of Georgetown University's campus, almost a quarter mile north of M Street N.W., and approximately a third of a mile west of Wisconsin Avenue. (Ex. 8.)

11. The Owner has leased the commercial space on the first floor and basement of the Property to CYM for use as a bagel shop. (Ex. 8, 123.)

12. The Property is zoned R-20.

13. The Residential House (R) zones are residential zones, designed to provide for stable, low- to moderate-density residential areas suitable for family life and supporting uses. (Subtitle D § 100.1.)

14. Subtitle D § 100.2 states that the R-zones are intended, in part, to:
    a) *provide for the orderly development and use of land and structures in areas predominantly characterized by low- to moderate-density residential development;*
    b) *recognize and reinforce the importance of neighborhood character, walkable neighborhoods, housing affordability, aging in place, preservation of housing stock, improvements to the overall environment, and low- and moderate-density housing to the overall housing mix and health of the city;*
    c) *allow for limited compatible accessory and non-residential uses; and*
    d) *allow for the matter-of-right development of existing lots of record.*

15. Subtitle D § 1200.3 states that the R-20 zone:
    "*…is intended to retain and reinforce the unique mix of housing types including detached, semi-detached, and row buildings and permit row buildings on small lots, and includes areas where a row buildings are mingled with detached buildings and semi-detached buildings.*"

16. The area surrounding the Property is also zoned R-20, except for five lots in Square 1223 zoned MU-3A, approximately 550 feet to the southwest of the Property, that are encircled by R-20 zoning.

II. THE APPLICATION

17. The Application proposes to use the Building's first floor and basement as a small corner store food shop specializing in bagels and bagel sandwiches. The operations

would be limited to the preparation and sale of these items. No cooking or baking would take place on site, only toasting of sandwiches. The Application does not propose any exterior changes to the Building as part of the Application, merely a reconfiguration of the internal layout and minor exterior repair work. (Ex. 123.)

RELIEF REQUESTED

18. The Application, as filed on August 7, 2019, initially requested a use variance from Subtitle U § 201.1 to permit the proposed use as a prepared food shop, as defined in the Zoning Regulations. (Ex. 4 and 8.) The Applicant presented its case for the use variance at the October 30 and December 4, 2019, sessions of the public hearing.

19. In response to the Board's request at the December 4, 2019, continued public hearing to review if the proposed use might qualify as a corner store use, which would require less relief as it is a matter of right use in the R-20 zone, subject to specific conditions, the Applicant determined that the corner store regulations of Subtitle U § 254 would apply to the proposed use. The Applicant asserted that the proposed use complied with all but one of the matter-of-right corner store requirements and submitted a revision to the Application on December 5, 2019, withdrawing the initial request for a use variance from the Subtitle U§ 201.1 and instead requesting the following relief:

- Area variance relief, pursuant to Subtitle U § 254.16, from the location requirements of Subtitle U § 254.6(g) prohibiting corner stores within 750 feet of a property line of a lot in a MU or NC zone (the "**750 Foot Rule**").

The Applicant presented this revised relief to the Board at the December 11, 2019, continued public hearing (at which the Board had already awarded party status to the Party Opponent).

APPLICANT'S SUBMISSIONS

20. In addition to its initial application (Ex. 8) and testimony at the continued public hearing, the Applicant made a total of four submissions to the record in support of its case:

- A revised statement dated November 22, 2019, providing additional information requested by the Board at the October 30, 2019, public hearing (Ex. 113-113C, the "**Supplemental Submission**");
- A revised burden of proof dated December 5, 2019, amending the relief and requesting an area variance from the corner store requirements (Ex. 123, the "**Revised Application**");
- A letter dated December 30, 2019 responding to the Party Opponent's Motion for Continuance (Finding of Fact ["**FF**"] 47) seeking to postpone the January 15, 2020, hearing (Ex. 140, "**Response to Opponent's Motion**,"); and
- A submission dated January 14, 2020 responding to the Party Opponent's Opposition Statement (FF 48) (Ex. 152-152C, "**Response to Party Opponent**").

The Supplemental Submission

21. The Supplemental Submission responded to several informational requests made by the Board at the October 30, 2019 public hearing including:
    - Information and diagrams concerning interior and exterior customer line management which demonstrated that approximately eight to ten people would be able to wait inside the Building, while up to an additional 50 persons could queue in the Property's outdoor space without blocking the public sidewalk (Ex. 113A);
    - The determination that based on this queuing configuration, which the Applicant believed to be the optimal solution, the front door did not need to be reconfigured; and
    - The Owner's statement detailing the practical difficulties the Owner would face if the relief was not granted to allow CYM to fully operate (Ex. 113B, the "**Owner's Statement**").

22. The Owner's Statement declared that the Owner would face practical difficulties without the relief requested to allow CYM, or another prepared food shop (as would be permitted under a corner store use), to open and operate fully in the Building because:
    - The Owner had executed a ten-year lease with CYM for the Property;
    - The Building is currently configured for commercial use with a large, built-in walk-in cooler in the basement, the removal of which would be cost prohibitive to the Owner and so limited the types of businesses that could be viable commercial tenants to prepared food shops and florists;
    - Economic changes have created challenges for traditional retail, as illustrated in articles attached to the Owner's Statement reporting the difficulties facing retail establishments in Georgetown, even along the main commercial corridors of Wisconsin Avenue and M Street, N.W. Nonetheless, the Owner asserted that CYM's proposed prepared food shop use would be successful because of current economic trends showing an increase in "buying experiences and food," but that without the requested relief to allow a prepared food shop it would be "extremely hard to a find a long term successful tenant" for the Property; and
    - The Building's configuration would also prohibit the conversion of the Property to residential use (the main matter-of-right use in the R-20 zone) given that market rent for a residential tenant is significantly lower than for a commercial tenant.

The Revised Application

Corner Store Requirements

23. The Revised Application asserted that the proposed use of the Property meets all of the requirements for a corner store use as specified in Subtitle U § 254 except for Subtitle U § 254.6(g)'s 750 Foot Rule.

Area Variance Relief

24. The Revised Application asserted that the Property is affected by a confluence of factors, including:

- Its proximity (550 feet) to a small MU-3 zoned area when the Property and majority of surrounding area is zoned R-20;
- Its configuration for, and long history as, a commercial use; and
- That it is only one of three corner properties in the area used for commercial purposes.

25. The Revised Application asserted that these unique conditions resulted in practical difficulties for the Owner because:
    - A corner store use would be permitted as a matter of right except for its proximity to the small MU-3 zoned area;
    - The Building's small size and existing configuration for commercial use would make it difficult for the Owner to convert to an entirely residential use, the only other matter-of-right use authorized the R-20 zone; and
    - The restrictions of the Property and the underlying zone district would render it difficult for the Owner to find another tenant for the space.

26. The Application also provided details about the operations of the proposed bagel shop to demonstrate that approval of the Application would not result in any significant detriment to the public good, including the following:
    - Changes to CYM's menu and point of sale system to allow more expeditious processing of orders, thereby reducing the lines and wait times outside the shop;
    - Limited hours of operation (7 A.M. to 3 P.M.);
    - An agreement not to partner with third party delivery services;
    - An agreement not to permit outdoor music; and
    - Commitments to daily trash collection and weekly pest control.

Response to Opponent's Motion for Continuance

27. The Applicant's Response to the Opponent's Motion for Continuance (FF 47) opposed the request for a continuance of the January 15, 2020, limited scope public hearing because:
    - The Board had provided several weeks for the Party Opponent to provide additional responses after her testimony at the December 11, 2019, continued public hearing, more time than is typically afforded to party opponents;
    - The Party Opponent had already provided oral testimony and submitted numerous filings to the record prior to her being granted party status;
    - The Party Opponent had been able to seek legal representation from the beginning of the Application process and had acknowledged that she teaches at a law school and as such, understands legal analysis and argument; and
    - A further extension of the proceedings would only serve to prejudice the Applicant's case.

Response to Party Opponent

28. The Applicant's Response to the Party Opponent reiterated its justification for the

requested area variance, noted that it was seeking relatively minimal relief, and rebutted several claims raised by the Opposition Statement (FF 48), including:

- Confirming that the Owner had properly authorized CYM to represent its interests before the Board in the matter of the Application (Ex. 152A);
- Confirming that the Application had self-certified the requested relief, and that the determination of whether any additional zoning relief would be required would be made by the Zoning Administrator in reviewing a building permit application; and
- Rebutting the Party Opponent's assertion that the Application failed to satisfy the use variance test as it is not applicable to the Application's revised relief request for an area variance, for which the Applicant only had to demonstrate "practical difficulty", not the more stringent "undue hardship" required for a use variance (as had been originally requested).

January 15, 2020, Public Hearing Testimony

29. In response to the Party Opponent, the Applicant testified at the January 15, 2020, continued public hearing that it had self-certified the Application and requested all relief it believed was required for the proposed use under the Zoning Regulations. The Applicant rebutted the Party Opponent's argument that only grocery stores are permitted as a corner store and then only by special exception under Subtitle U § 254.14 because the Applicant asserted that this special exception applies only to corner stores that are fresh market or grocery stores that are unable to meet the additional requirements of Subtitle U § 254.13 whereas the Application falls under the matter-of-right corner store use of Subtitle U § 254. The Applicant noted that the Party Opponent's interpretation was based on language from the Zoning Handbook, not the legal text of the Zoning Regulations. (Public Hearing Transcript of January 15, 2020 ["**Jan. 15 Tr.**"] at 45-46.)

30. The Applicant noted that it did so at its own risk because "[i]f the proposal otherwise fails to meet the Corner Store requirements of the Zoning Regulations, that will ultimately be for the Zoning Administrator to determine" as part of the zoning compliance review of any building permit application based on the Application if approved by the Board. The Applicant asserted that the Board itself has held, in BZA Application No. 18263-B, that when it considers a self-certified application, it is solely concerned with whether the Applicant has met its burden for the requested relief and does not consider potential additional relief that the Zoning Administrator might subsequently determine is needed. (Jan. 15 Tr. at 44-45, 49; Ex. 152B.)

III. RESPONSES TO THE APPLICATION (INITIAL AND REVISED)

OP REPORTS AND TESTIMONY

31. OP submitted three reports reviewing the Application:
    - An October 18, 2019, report recommending approval of the initially requested use variance relief with one condition (Ex. 39);
    - A November 27, 2019, supplemental report providing additional analysis and

continuing to recommend approval of the initially requested use variance (Ex. 117); and

- A December 9, 2019, third report (Ex. 126, the "**Third OP Report**") reviewing the Revised Application and responding to the Board's request at the December 4, 2019, continued public hearing for OP to review the corner store regulations of Subtitle U § 254 to determine if the proposed use might instead qualify as a corner store and so would require less relief than the use variance initially requested by the Application.

The Third OP Report

32. The Third OP Report concluded that the Revised Application had met the area variance test as stated below and therefore recommended approval of the Application as revised.

- ***Extraordinary Condition Resulting in a Practical Difficulty***
  - The Building was originally constructed as a corner store in a residential zone and has been in constant use as such since its construction.
  - "The lower levels have always functioned as commercial spaces and were originally built for a grocery store. Years later the grocery store was replaced with a health store, which was later replaced with a flower/gift shop – all uses that are also consistent with the corner store provisions."
  - Because the Building was constructed as a corner store, and has been used continuously as such, the lower levels "have a commercial space configuration and layout. This includes the building's corner entrance and large display store windows."

- ***No Substantial Detriment to the Public Good***
  - The Revised Application did not propose any exterior changes to the Building that would impact its appearance or the historic character of the surrounding neighborhood.
  - The Applicant's proposed operational measures taken to expedite ordering and preparation would reduce wait times and lines outside the store. The Applicant had also demonstrated that a line could be accommodated outside the shop in such a way as to "prevent potential conflicts with pedestrians".
  - The Applicant would also not provide seating, and customers would not be encouraged to stand in front of the Building after receiving their orders.
  - The Applicant had agreed to provide daily trash collection, weekly pest control, and to limit its hours of operation as proposed by OP.

- ***No Substantial Impairment of the Zone Plan***
  - Granting the variance to locate a corner store less than 750 feet from the MU-3 zone would not harm the intent of the regulations which had been "to minimize potential impacts that a corner store commercial use could have on *commercial corridors"* and "[a]lthough the site is less than 750 feet from the MU-3A zoned area, it is well in excess of 750 feet from the main M Street and Wisconsin Avenue commercial corridors."

- The specific use of the corner store as a bagel shop "is consistent with the use permissions for a corner store, which include eating and drinking establishments (U § 254.2), including food assembly and reheating (U § 254.8)."
- The Applicant had sufficiently demonstrated that it would meet all of the other requirements for a corner store by providing details of its proposed operations including storage, signage, trash collection, number of employees, and hours of operation.

December 11, 2019 Continued Public Hearing Testimony

33. At the December 11, 2019, continued public hearing, OP testified in support of the Revised Application, noting that "the building's history and physical configuration makes it a corner store which is a matter of right use according to the Applicant." (Dec. 11 Tr. at 116.)

34. With regards to the practical difficulty faced by the Property Owner, OP testified that "as a matter of right use, the practical difficulty would be that the Applicant should be allowed to do a matter of right use in a matter of right building or in a building that is—that would allow for a matter of right use." (Dec. 11 Tr. at 116.)

35. OP reiterated that the use of the Building has always been commercial, and as such OP did not feel that the corner store "would be disturbing the character of the street." (Dec. 11 Tr. at 118.)

36. In response to questions from the Party Opponent, OP stated that because the revised relief requested an area variance from a location condition for a matter of right use, OP only analyzed the Property's physical characteristics as regards the 750 Foot Rule from which relief was sought. Since the Application did not seek relief from the other requirements of Subtitle U § 254 for a matter of right corner store use, OP had not analyzed the Property's compliance with those requirements. Since the corner store use "is a matter of right use" and the requested relief is from a location condition, OP had not analyzed the intensity of that use compared to the prior retail use. (Dec. 11 Tr. at 120-121.)

37. OP also noted that while there were other mixed use and commercial properties in the surrounding area, including Saxby's Coffee across the street, OP did not "believe that any of them are defined as corner stores, at least according to the way the Regulations determine them to be." (Dec. 11 Tr. at 122, 124.)

January 15, 2020 Continued Public Hearing Testimony

38. At the January 15, 2020 continued public hearing, OP again testified in support of the Revised Application, noting that
    - the Revised Application was self-certified;
    - OP supported the Revised Application's requested area variance relief; and

- OP accepted the Revised Application's assertion that the corner store use was matter of right in the R-20 zone and had not analyzed relief not requested. (Jan. 15 Tr. at 47-48.)

DDOT REPORT

39. DDOT submitted an October 16, 2019, report (Ex. 37, the "**DDOT Report**") that recommended no objection to the Application based on DDOT's conclusion that approval of the Application would potentially result in only minor increases to vehicle, transit, pedestrian, bicycle trips on the localized transportation network, as well as a slight reduction in the availability of on-street parking.

ANC REPORTS

40. In addition to its testimony at the continued public hearing, ANC 2E made a total of three submissions to the record:
    - A resolution stating that at its regularly scheduled, properly noticed public meeting on October 2, 2019, at which a quorum was present, the ANC voted to support the Application's initial request for a use variance (Ex. 38, the "**First ANC Report**"). The First ANC Report did not raise any issues or concerns with the Application;
    - A correction to the First ANC Report noting that Commissioner Lisa Palmer was the ANC's designated representative (Ex. 114); and
    - A resolution stating that at its regularly scheduled, properly noticed public meeting on January 7, 2020, at which a quorum was present, the ANC voted to support the Application's revised request for an area variance from the 750 Foot Rule of Subtitle U § 254.6(g) for corner stores (Ex. 151, the "**Second ANC Report**").

41. The Second ANC Report expressed the ANC's concern with upholding the integrity of the Zoning Regulations and particularly the intent of 750 Foot Rule but determined that 750 Foot Rule was not intended to apply to the Property because:
    - The 750 Foot Rule was created to focus commercial uses in the main Georgetown commercial corridors and "prevent commercial areas on M Street and Wisconsin Avenue NW from creeping into nearby residential areas";
    - The small MU-3A zoned area was a "small outlier of a zone section comprising only a half-block of property, completely removed from M Street and Wisconsin Avenue NW" and as such, was not the basis for the intent of the 750 Foot Rule; and
    - Exceptions to the 750 Foot Rule were always contemplated as possible, provided the other corner store requirements of Subtitle U § 254 were met, which the ANC believed the Application had demonstrated.

    The Second ANC Report therefore recommended approval of the Application's requested area variance relief from the 750 Foot Rule.

42. The Second ANC Report noted that CYM had been in discussion with the surrounding neighbors regarding the quality of life issues connected to the proposed use and that the ANC supported these discussions and believed that ongoing discussions would allow

the proposed use to be integrated smoothly with the surrounding area.

43. Commissioner Lisa Palmer testified at the December 4, 2019, continued public hearing in support of the Application for the initially requested use variance, stating that:
- The ANC had concluded that the Applicant had demonstrated that the operations of the proposed bagel shop would not result in any substantial detriment to the public good;
- The ANC had determined that the queuing diagrams presented by the Applicant demonstrated that patrons of the shop would be able to queue on the sidewalk without disrupting use of the sidewalk or neighboring properties; and
- the Applicant had expressed its willingness to work with the surrounding community to ensure that the Property was clear of litter.

(Public Hearing Transcript of December 4, 2019 ["**Dec. 4 Tr**."] at 67-71.)

PARTY IN OPPOSITION

44. In addition to her public testimony at the October 30, 2019; December 11, 2019; and January 15, 2020 public hearings, the Party Opponent filed a total of six submissions to the record:
- An initial October 15, 2019, request for party status (Ex. 36, the "**Party Status Request**");
- An October 30, 2019, letter reiterating the concerns raised in the Party Status Request that the proposed bagel shop would result in crowds of patrons "from all over DC and beyond" who would disrupt the surrounding neighborhood. The Party Opponent further contended that CYM had "no fundamental right to open this restaurant at this location." (Ex. 81);
- A December 4, 2019, letter submitted prior to the second hearing, stating the Party Opponent's belief that the Applicant had not met its burden under the variance test for the original use variance and had not fully responded to the Board's questions and requests from the first hearing. The Party Opponent also argued that the Applicant should simply be required to open as a retail establishment under the existing variance (Ex. 119);
- A letter submitted on December 10, 2019, objecting to the Board's denial of the Party Opponent's party status request (Ex. 127);
- Following the Board's granting her party status, a December 19, 2019, motion for continuance to postpone the January 15, 2020, session of the public hearing (the "**Motion for Continuance**", Ex. 138); and
- A January 7, 2020, statement in support of The Party Opponent's December 11, 2019, oral testimony (the "**Opposition Statement**", Ex. 142).

Party Status Request

45. The Party Status Request stated that the Party Opponent believed that her property and the surrounding neighborhood would be adversely affected by the Board's approval of the proposed bagel shop due to large crowds waiting on the sidewalk outside the

Building, noise, trash, litter, rodents, and increased demand for parking. The Party Status Request acknowledged that the Property had been used previously for commercial uses but asserted that the Application would result in a much more intense use than what had been there previously.

December 11, 2019, Continued Public Hearing

46. The Party Opponent participated as a party at the December 11, 2019 continued hearing, and raised the following issues:
    - The Party Opponent questioned whether CYM could properly be considered the "applicant" in the case since the variance test considers impacts on a property owner (Dec. 11 Tr. at 98 and 114);
    - The Party Opponent questioned the Applicant about the feasibility of converting the space to a residential use based on conversions of similar corner properties in the surrounding area (Dec. 11 Tr. at 98-100);
    - The Party Opponent argued that the Applicant had failed to meet its burden under the first two prongs of the variance test, particularly to demonstrate the second prong's practical difficulties, because the Applicant was able to open a bagel shop, albeit only as a retail use, under the Property's existing use variance (Dec. 11 Tr. at 103);
    - One of the Party Opponent's witnesses, Mr. Savage, raised concerns that the Application did not meet the other locational requirements for corner stores, specifically Subtitle U § 254.6(b), which requires corner stores to not be located within 500 feet of another corner store used and defined as an eating and drinking establishment because Saxby's Coffee is located on opposite corner from the Property (Dec. 11 Tr. at 105);
    - Mr. Savage responded to the Applicant's reference to the ANC's support by noting that the ANC had voted in support of the inclusion of the 750 Foot Rule when it was under review in 2015 (Dec. 11 Tr. at 106); and
    - The Party Opponent and Mr. Savage both raised concerns that approval of the Application would result in a "dangerous precedent" by allowing commercial uses in a residential zone. (Dec. 11 Tr. at 111-112.)

Motion for Continuance

47. The Party Opponent's Motion for Continuance cited the need for more time to prepare her response to the Applicant's testimony and filings and to potentially obtain counsel.

Opposition Statement

48. As a preliminary matter, the Opposition Statement contended that the Board's award of party status only at the December 11, 2019, continued public hearing and not earlier materially prejudiced the Party Opponent's case by not allowing her time to obtain counsel.

49. The Opposition Statement alleged the following substantive issues with the Application:

- CYM could not properly be considered as the Applicant in the case, because it was a lessee of the Property and not the owner, and that the Owner had not properly authorized CYM to represent its interests before the Board. The Party Opponent argued that this created confusion as to which entity bore the burden of proof to justify the variance;
- The Application misinterpreted the Zoning Regulations for a corner store, which the Party Opponent asserted was not a matter-of-right use;
- The Application had not demonstrated compliance with the corner store regulations of Subtitle U § 254; and
- The Application did not meet any of the prongs of the variance test required to obtain relief from the 750 Foot Rule requirement of Subtitle U § 254.6(g).

50. With specific regard to the Application's compliance with the variance test, the Opposition Statement asserted the following:
    - *The Application had not demonstrated that the Property was affected by an exceptional condition.*
        - The Building's physical features including the large shop windows, corner door opening, and basement walk-in cooler did not constitute an exceptional condition because the Applicant had not provided any cost estimates for conversions and was "merely speculating" that the cost would be prohibitive.
        - The Applicant had only considered the possibility of conversion to residential use, and not conversion to a retail food establishment without on-site food preparation as is permitted under the existing use variance, and under which CYM could operate but at a reduced capacity.
        - The location of the Property is not "unique" based on its location relative to the MU-3 zone because "any factor relating to the location to the MU-3 zone would affect any other property nearby in the R-20 Zone" and "the extraordinary or exceptional condition must affect a single property." *Metropole Condo Ass'n v. District of Columbia Bd. of Zoning Adjustment*, 141 A.3d 1079, 1082-83 (D.C. 2016). Further, "The granting of a variance where the circumstances do uniquely affect the petitioner's property could lead to similar requests by other property owners … Approval of such requests would be tantamount to an amendment of the zoning map or regulations …" *Taylor v. District of Columbia Bd. of Zoning Adjustment*, 308 A.2d 230, 234 (1973).
        - The Property's history of commercial use is not an exceptional condition because the court has held that "the proposed use of a property is not a sufficient basis for determining the presence of exceptional conditions," *Metropole*, 141 A.3d at 1083, and "the use or prior use of a particular property […] is inapplicable to the first condition that the property itself be unique." *Palmer v. Bd. of Zoning Adjustment*, 287 A.2d 535, 540 (1972).[3]

[3] The Board notes that this quotation is not *Palmer*, but *Capitol Hill Restoration Soc'y, Inc. v. D.C. Bd. of Zoning Adjustment,* 398 A.2d 13, 16 (D.C. 1979) and includes the ellipsis added above.

- *The Application has not demonstrated that it will suffer a practical difficulty if required to comply with the Zoning Regulations.*
  - The Opposition Statement noted that the practical difficulties needed to affect the Owner and not the tenant, and as such any practical difficulties suffered by CYM were not the appropriate basis for the variance test. The Opposition Statement asserted that the Application had failed to show how the Owner would suffer practical difficulties.
  - The Applicant's arguments related to financial hardship were not sufficient because the Board "simply has no authority to grant a variance in order to assure the petitioner a profit." *Taylor,* 308 A.2d at 236.
  - The Applicant's arguments that converting the Building to residential use are not sufficient because the Building could continue as a retail use under the existing variance.
  - The Applicant has not demonstrated that it was unable to find an alternative tenant to CYM, or otherwise been unable to rent or sell the Building. The Opposition Statement noted that CYM's representative had in fact testified that he was aware of significant interest in the Building from other businesses which had contacted him directly.

- *The Application has not demonstrated that it would not result in substantial detriments to the public good or the zone plan.*
  - The Opposition Statement noted that the Applicant had not provided sufficient details as to how it planned to mitigate the adverse impacts of the proposed use including fire and safety hazards, noise, odors, traffic, and parking. In support of this final point the Opposition Statement referenced parking violations incurred by CYM's contractor's during construction.
  - The Opposition Statement asserted that ANC Commissioner Palmer's testimony, given at the December 4, 2019 continued public hearing concerning CYM's operations at its current location, could not be accorded great weight because it has not met the requirements of Subtitle Y § 406.4 to be accompanied by written documentation from the ANC supporting the testimony.
  - The Opposition statement noted that the BZA must "grant only the amount of relief needed to alleviate the difficulty proved" (§ 2120.6 of the 1958 Zoning Regulations) and that "no variance is required to allow CYM to open -- and the BZA by law is required to grant the 'lowest' available relief."

51. The Opposition Statement also asserted that approval of the Application would set a precedent that would jeopardize the integrity of both the commercially and residentially zoned areas of Georgetown.

January 15, 2020, Continued Public Hearing

52. The Party Opponent participated as a party at the continued, limited scope public

hearing of January 15, 2020, asserting that:

- She had been unable to fully participate in the first two portions of the public hearing that the Board held on the initially requested use variance relief;
- The only permissible matter-of-right corner store use in the R-20 zone is a grocery store pursuant to Subtitle U § 254.13, and all other uses would require a special exception pursuant to Subtitle U § 254.14;
- The Application needed waivers from the locational provisions of Subtitle U § 254.6(c) and the prohibition against on-site cooking of Subtitle U § 254.8 (Jan. 15 Tr. at 25-2) and that the Board could only waive the locational requirements of Subtitle U § 254.6(c) if the Applicant demonstrated that the proposed use would not "negatively impact the economic viability or vitality of an area zoned MU or NC that is closer than seven hundred and fifty feet (750 ft.) to an R-20 Zone" nor result in undue impacts on residents of the area. (Subtitle U § 254.15; Jan 15. Tr. at 27);
- Substantial evidence in the record demonstrated that the proposed use would not only result in adverse impacts on the surrounding residential properties but would also negatively impact the MU zone within 750 feet as well as the main Georgetown commercial corridors; and
- Approval of the Application would be precedent setting and would result in more commercial uses in residentially zoned areas. (Jan. 15 Tr. at 28-30.)

53. With regard to the variance test, the Party Opponent reiterated the arguments advanced in the Opposition Statement that:

- The Applicant's argument that the Property was unique due to its location relative to the MU zone was also not sufficient because it would mean that "all of the properties," including her own, would be similarly affected;
- The Application failed to demonstrate that the Property was affected by a unique condition because, per the holding in *Palmer* [*sic*], "the use or prior use of a particular property is inapplicable to the first condition that the property itself be unique." As such the Applicant's arguments regarding the historic use of the property were irrelevant because "just because it's always been commercial doesn't make it unique. It makes it that it has always been commercial." (Jan. 15 Tr. at 31); and
- The Application failed to demonstrate that the Owner would suffer from practical difficulties if CYM was unable to open the proposed bagel shop at the Property because the Owner's Statement's assertion that it would be difficult to find a suitable alternate tenant did not include supporting evidence of the Owner's attempts to find another tenant for the Property. (Jan. 15 Tr. at 31-32, 34.)

PERSONS IN SUPPORT

54. The Board received letters and heard testimony from persons in support of the application, including members of the surrounding community and members of CYM's staff. The community members in support generally cited to the need for more commercial uses in Georgetown. The CYM staff testified in their individual capacities,

and not on behalf of the Applicant, as to the operations of the proposed bagel shop, including measures to minimize potential adverse impacts to the surrounding neighborhood, as well as the company's local ties and commitment to the community.

55. Mr. Christopher Matthews testified at the December 11, 2019 continued public hearing based on his participation in the Citizens Association of Georgetown ("**CAG**") zoning subcommittee that worked with OP in creating the corner store regulations of Subtitle U § 254. Mr. Matthews testified that:
- The intent of the 750 Foot Rule had been to prevent "bleeding commercial activity from M and Wisconsin into the neighborhood";
- The intent of the 750 Foot Rule was not to prevent the ongoing commercial use of historically commercial corner store buildings like the Building; and
- The MU-3A zoned area was an anomaly not anticipated in the creation of the 750 Foot Rule because it was one of the last remaining remnants of an old commercially zoned stretch of west Georgetown.

(Dec. 11 Tr. at 134-137.)

56. In response to questions from the Party Opponent about his involvement in the CAG's support of the 750 Foot Rule, Mr. Matthews explained that based on the discussions between CAG and OP earlier in the process he had believed the 750 Foot Rule only applied to Wisconsin Avenue and M Street, N.W. and not to the small MU-3 area at issue, and that his vote in support was for the larger package of residential zoning changes that included the 750 Foot Rule. (Dec. 11 Tr. at 136-137.)

PERSONS IN OPPOSITION

57. The Board also received letters and heard testimony at the October 30, 2019; December 11, 2019; and January 15, 2020, public hearings from persons in opposition to the application. The persons in opposition commented unfavorably on the Applicant's proposed use of the Property and cited to potential adverse impacts of the operation of the proposed bagel shop including excessive crowds, increased pedestrian and vehicular traffic, reduced parking availability, trash and rodent issues, and noise.

58. D.C. Council Member Jack Evans, Council Member for Ward 2, submitted a letter opposing the Application asserting that the proposed bagel shop would be a more intense use than previous commercial uses of the Property that would result in adverse impacts on the surrounding residential area. (Ex. 40.)

59. Although ANC 2E voted to support the Application, the ANC Single Member Commissioner for the Property, Rick Murphy, submitted a letter in opposition to the Application's initial request for a use variance. Commissioner Murphy cited the need to preserve the "quiet residential character" of the R-20 zone, and expressed his concerns about the amount of traffic, noise and trash that the proposed bagel shop would generate. (Ex. 41.)

CONCLUSIONS OF LAW

PARTY STATUS DECISION

1. At the January 15, 2020 continued public hearing, the Board denied the Party Opponent's Motion for Continuance to further postpone the continued public hearing because the Party Opponent had been provided with numerous opportunities to testify and respond to the Application, both as a non-party and party. (Jan. 15 Tr. at 11-12.) The Board notes that the Party Opponent had ample opportunity to obtain counsel during the nine weeks between the deadline for filing the party status request and the date of the Motion for Continuance and that the Party Opponent had the opportunity to fully participate as a party in the continued public hearing at which the revised relief was presented and was considered.

VARIANCE RELIEF

2. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(3) (2018 Repl.); see also Subtitle X § 1000.1) authorizes the Board to grant variances from the requirements of the Zoning Regulations where:
   i. "*by reason of exceptional narrowness, shallowness, or shape of a specific piece of property … or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property,*
   ii. *the strict application of any zoning regulation "would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of the property," and granting the requested variance would not cause*
   iii. *substantial detriment to the public good or*
   iv. *substantial impairment to the intent, purpose, and integrity of the Zone plan as embodied in the Zoning Regulations and Map.*"

AREA VARIANCE

3. Subtitle X § 1001 distinguishes between use and area variances,[4] with use variances limited to three specific categories:
   - Uses not permitted as a matter of right or by a special exception;
   - Uses expressly prohibited; or
   - A prohibited expansion of a nonconforming use. (Subtitle X § 1001.4.)

4. The area variance category is instead "open ended" and broadly encompasses deviations from requirements "that affect[s] the size, location, and placement of buildings and other structures …" and those that are a "precondition to a matter of right use" amongst

[4] The Zoning Commission adopted definitions of use and area variances into the Zoning Regulations in 2013 in Z.C. Case No. 12-11; prior to that time these categories had been defined by case law. OP's setdown report for Z.C. Case No. 12-11 stated that "use variance treatment is only appropriate when an applicant seeks to establish a use that is not permitted at all within a zone district, as opposed to a use that is permitted, but restricted or conditioned in some way." (Z.C. Case No. 12-11, Ex. 1 at 14.)

other examples. (Subtitle X § 1001.3(a) and (f); *NRG, LLC v. D.C. Bd. Of Zoning Adjustment*, 195 A.3d 35, 61 (D.C. 2018).)

5. An applicant for an area variance must prove that an extraordinary condition of the property would result in "peculiar and exceptional practical difficulties" by demonstrating first that compliance with the area restriction would be unnecessarily burdensome; and, second, that the practical difficulties are unique to the particular property. (*Gilmartin v. D.C. Bd. of Zoning Adjustment*, 579 A.2d 1164, 1170 (D.C. 1990); Subtitle X § 1002.1(a).)

6. "[B]ecause of the nature of the respective types of variances and their effects on the zone plan the higher 'undue hardship' standard applies to requests for use variances while the lower 'practical difficulty' standard applies to area variances." (*Gilmartin*, 579 A.2d at 1170.)

7. The Board concludes that the Application's request for relief from Subtitle U § 254.6(g)'s 750 Foot Rule properly qualifies as an area variance because it falls within two examples of area variances described by Subtitle X § 1001.3 as a deviation from:
   - A "precondition to a matter of right use" and
   - A requirement "that affect[s] the size, **location**, and placement of buildings and other structures …"

   (Subtitle X § 1001.3(a) and (f) (emphasis added).) Further, the Application did not request relief under any of the three specific types of use variances defined in Subtitle X § 1001.4. (*See also Monaco v. D.C. Bd. of Zoning Adjustment*, 409 A.2d 1067, 1072 (D.C. 1979) ("We cannot say that the BZA improperly characterized this change as an area variance simply because it facilitated a change of use accomplished, fundamentally, by special exception").)

Area Variances from Corner Store Location Requirements

8. "The BZA has the flexibility to consider a number of factors, including, but not limited to: 1) the weight of the burden of strict compliance; 2) the severity of the variance(s) requested; and 3) the effect the proposed variance(s) would have on the zone plan." (*Gilmartin*, 579 A.2d at 1171.)

Extraordinary or Exceptional Situation

9. "The extraordinary or exceptional conditions affecting a property can arise from **a confluence of factors**; however, the critical requirement is that the extraordinary or exceptional condition must affect a single property." (*Metropole*, 141 A.3d at 1082-83 (emphasis added).)

10. "[E]xisting structures are as important as topography in creating 'other extraordinary or exceptional situation or condition of a specific piece of property.'" (*Monaco*, 409 A.2d at 1099 (internal citations omitted).)

11. The Board concludes that the Property is affected by an exceptional situation and condition resulting from a confluence of factors, including that:
    - The Property is a corner lot;
    - The Property is smaller than most of the lots in the surrounding area;
    - The Building was constructed for the express purpose of being used as a corner store, and has been used as such continuously since the time of its construction in the 19th century;
    - The Property is one of only three corner commercial properties in a primarily residential area;
    - The Property is an existing corner commercial property that is located less than 750 feet from a half-block area zoned MU-3A;
    - This MU-3A zoned area is a small, outlier zone in an area that is otherwise uniformly zoned R-20; and
    - The Property was already used for a commercial use at the time this half-block was zoned MU-3A.

12. The Board notes that the Property, as a corner lot, differs from the vast majority of properties surrounding it; and its small size, as shown on the Zoning Map, further distinguishes it from the surrounding lots. The Board therefore does not find persuasive the Party Opponent's argument that the Property is not "uniquely affected" because other properties, including the Party Opponent's, are also within 750 feet of the MU zone, and so granting the Application's requested area variance would lead to an effective rezoning of the nearby properties in the R-20 zone. (FF 50.)

13. The Board concludes that the Property's historical commercial use, which was legally sanctioned by the use variance previously granted by the Board, constitutes "unique historical circumstances" that constitutes an extraordinary circumstance analogous to that previously upheld by the Court of Appeals. (*Monaco*, 407 A.2d at 1091.) The Board is not persuaded by the Party Opponent's citation to *Palmer* [actually *Capitol Hill*, 398 A.2d 13] that prior use cannot be an exceptional condition because the *Monaco* Court narrowed the *Capitol Hill* holding, stating:

> [t]hough we recently rejected the possibility that unique circumstances could refer to the personal misfortunes of the applicant or to the previous use of the property, in that case [*Capitol Hill*] the subject site was a row house of design, size, and acreage similar to others in the neighborhood … [and] the history … was merely the previous **illegal** use made of the property made by the owner. (*Monaco*, 407 A.2d at 1097 (internal citation omitted) (emphasis added).)

Just as the *Monaco* Court upheld the Board's grant of a variance based partly on the unique historical circumstances of the property constituting an exceptional circumstance, so in this case the Board concludes that the unique historical and legal commercial use of

the Building that had built for that purpose constitutes one of several factors that flow together to create the exceptional circumstances required for variance relief. (*See French v. District of Columbia Bd. of Zoning Adjustment*, 658 A.2d 1023, 1035 (1995) (upholding Board's finding that "exceptional circumstances existed, given the site's 'irregular shape, steeply sloping grade, the large size and physical configuration of the existing building, and its previous history of chancery use.").)

14. As has been held by the Court, the Board may grant area variances in cases where the Applicant chose the property with the knowledge that variance relief would be needed, as self-created hardship is only a bar to a use variance. (*NRG*, 195 A.3d at 56-57, 60; *See also, Gilmartin*, 579 A.2d at 1171 ("[P]rior knowledge or self-imposition of the difficulty did not bar granting an area variance. Rather, that fact was but one of many factors that BZA might consider in reaching its decision."); *Ass'n for Preservation of 1700 Block of N Street NW v. D.C. Bd. of Zoning Adjustment*, 384 A.2d 674, 678 (D.C. 1978)("self-created hardship is not a factor to be considered in an application for an area variance, … as that factor applies only to a use variance.").)

15. The Board notes that because of the Property's unique circumstances as a corner lot of unusually small size on which the Building was purpose-built for commercial use and consistently used as such in a legal fashion, there are very few, if any, similar properties and so granting the requested area variance would not effectively rezone the R-20 zone surrounding the Property. The Board therefore is not persuaded by the Party Opponent's citation to *Taylor*, 308 A.2 at 230 ("The granting of a variance where the circumstances do not uniquely affect the petitioner's property could lead to similar requests by other property owners, which, as a matter of due process, would have to be granted. Approval of such requests would be tantamount to an amendment of the zoning map or regulations, and the Board is without power to do this directly or indirectly.")

Practical Difficulties

16. "[T]o satisfy the second, "practical difficulties" requirement, the property owner need only demonstrate that compliance with the area restriction would be 'unnecessarily burdensome' and that the difficulties are unique to the particular property. In determining whether this requirement is met, it is proper for the BZA to consider a 'wide range of factors,' including (but not limited to) economic use of property and increased expense and inconvenience to the applicant." (*NRG*, 195 A.3d at 56-57; *Gilmartin*, 579 A.2d 1170-71.)

17. The Board concludes that strict application of the Zoning Regulations would result in peculiar and exceptional practical difficulties to the Owner by preventing its use of the Building as a corner store, as is otherwise a matter-of-right use in the R-20 zone, because the Building was purpose-built for as a corner store, has been continuously used for commercial purposes, and is configured for commercial uses. This past building configuration and use renders it peculiar in the surrounding residential neighborhood.

(S*ee Capitol Hill*, 398 A.2d at 16) ("the use or prior use of a particular property may have some bearing on [the] 'practical difficulties' … determination[] of the second statutory requirement" for a variance.).)

18. The Board concludes that the Applicant has demonstrated that it would suffer economic practical difficulties without the area variance because:
- Traditional retail establishments are struggling to survive even on the main Georgetown commercial corridors of Wisconsin Avenue and M Street, N.W., leading the Board to conclude that it would likely be difficult for a small retail space to survive when significantly removed from these areas;
- The Board credits the Owner's Statement that businesses providing food and unique customer experiences present a better long-term economic option than traditional retail; and
- The Board also finds that the "as-built" condition of the property, particularly the built-in walk-in cooler, limits the Owner's ability to convert the Property to residential use, or even to a broader spectrum of retail uses. This effectively limits the building to a food-based use, or to a florist as was there previously, and in turn further limits the Owner's pool of potential tenants.

The Board therefore concludes that the Owner would face a practical difficulty in trying to find an alternate retail tenant that would be viable in the space.

19. Beyond the impacts on the ability to secure an economically viable tenant, the Board also concludes that a conversion to either another form of retail or to residential use would be "unnecessarily burdensome" on the Owner, because a corner store, including one operating as a prepared food shop, is a matter-of-right use in the R-20 zone and the 750 Foot Rule is intended to protect the main commercial corridors, which OP and the ANC concluded would not be affected by the requested area variance. (*See NRG*, 195 A.3d at 56.) The Board therefore is not persuaded by the argument of the Party Opponent and persons in opposition that the Owner failed to prove "practical difficulties" because the Property could continue with a commercial retail use as a "matter of right" under the existing use variance.

20. The Board notes that the Court of Appeals has recognized that:
- "[i]ncreased expense and inconvenience to applicants for a variance are among the proper factors for [the Board's] consideration,"
- "prior knowledge or self-imposition of the [practical] difficulty did not bar granting an area variance,"
- "at some point economic harm becomes sufficient [for a variance], at least when coupled with a significant limitation on the utility of the structure," and
- "[w]e have never held that proof of economic burden is irrelevant to the decision whether to grant an area variance."

(*Gilmartin*, 579 A.2d at 1169, 1171; *Tyler v. District of Columbia Bd. of Zoning Adjustment*, 606 A.2d 1362, 1366-67 (1992)) The Board is therefore not persuaded by

Party Opponent's arguments that the Board is unable to consider economic burdens when evaluating the second prong of the variance test. The Board notes that the Party Opponent's argument relies on the Court's statement in *Palmer* that "it is certain that a variance cannot be granted where property conforming to the regulations will produce a reasonable income but, if not put to another use, will yield a greater return." (*Palmer*, 287 A.2d at 542.) However, the Board notes that the Court of Appeals subsequently stated that *Palmer* "merely set forth a general standard … leaving specific questions regarding the nature and extent of burden to a cases-by-case analysis …. Although this statement was within the section of the [*Palmer*] opinion discussing area variances, it appears that it refers to the particular use of a property and thus the economic discussion is more appropriately confined to use variances". (*Gilmartin,* 579 A.2d at 1170.)

21. The Board is not persuaded by the Party Opponent's arguments that CYM's representative's testimony regarding interest in the Property is sufficient to disprove the foregoing. The Board notes that the Party Opponent herself commented on the "well documented vacancy rate and empty storefronts in the main commercial corridor of M/Wisconsin Streets." (Ex. 142 at 7.) The Board credits the Owner's Statement that given the limitations of the Property and the difficulties facing traditional retail establishments, that it would be difficult to find an economically viable alternate tenant, and notes that although some interest has been expressed in the Building, that may not necessarily constitute viable tenants.

22. The Board concludes that the Owner has provided sufficient evidence of both the difficulty of finding an economically viable tenant due to the broader economic conditions and specific physical attributes of the Property, as well as the difficulty and expense in converting the Property to alternate retail or residential use. The Board does not find persuasive the Party Opponent's assertion that the Owner's Statement provided insufficient evidence of the practical difficulties the Owner would face without the requested area variance. The Board found the Owner's Statement credible, and credits OP's corroborating conclusion that the practical difficulties justified the approval of the area variance request. The Court of Appeals has upheld the Board's approval of area variances without requiring

> evidence supporting [the applicant's] claim that compliance with the zoning regulations was 'not feasible,' such as the purchase price, financial projections, comparative financial scenarios, or costs from development alternatives.… **The mere fact that petitioners presented contrary evidence … is immaterial**. As the trier of fact, the Board may credit the evidence upon which it relies to the detriment of conflicting evidence, and need not explain why it favored the evidence on one side over that of the other. … Petitioner perhaps misconceives the variance process to require [the applicant] to defend every economic aspect of its proposed development design as a *sine qua non* to variance approval. **We discern**

no such absolute obligation in this case from D.C. Code § 6-641.07(g)(3).

(*Fleischman*, 27 A.3d at 561-62, 563 (internal quotation and citation omitted) (emphases added); *see also Monaco*, 409 A.2d at 1072 ("BZA found that [Applicant] has shown "practical difficulties" by demonstrating that " the building is not readily adaptable to residential use.") and *St. Mary's Episcopal Church v. District of Columbia Zoning Commission*, 174 A.3d 260, 270 (2017).)

No Substantial Detriment to the Public Good

23. "Any concern that some area variances might "drastically" alter the character of the zoned district is addressed by the requirement that an applicant for a variance of any type must bear the burden of demonstrating that the variance will cause no substantial detriment to the public good and will not substantially impair the intent, purpose, and integrity of the zone plan." (*NRG,* 195 A.3d at 62.)

24. The Board concludes that the scope and scale of the proposed corner store utilizing the area variance from the 750 Foot Rule will be limited and will not negatively impact the economic viability or vitality of either the MU-3A zoned area or the commercial corridors of Wisconsin Avenue and M Street, N.W. which are what the Board finds the 750 Foot Rule was truly intended to protect. The Board notes that the Applicant will only be offering a limited range of products and has agreed to limit their hours of operation. The Board credits the reports and testimony of OP and the ANC that the area variance from the 750 Foot Rule would not result in any substantial undue impacts on the commercial uses in nearby commercial corridors. The Board credits the statements in the ANC Report, as further supported by the testimony of Mr. Matthews, that the 750 Foot Rule was intended to protect the businesses located along the main commercial corridors of Wisconsin Avenue and M Street, N.W., not isolated pockets of commercial or mixed-use zone property, and that it was always expected that there would be exceptions for specific corner store uses. (FF 56.) The Board is therefore not persuaded by the Party Opponent's arguments that the corner store use would unduly impact existing businesses in the MU-3A zone, because the Board notes that the Property has been operating as a commercial use less than 750 feet from the MU-3A zone for years and that the Party Opponent did not present sufficient supporting evidence to convince the Board that specific businesses in the MU-3A zone would be impacted by the granting of the area variance.

25. The Board concludes that approval of the requested variance relief will not result in substantial detriment to the immediately surrounding properties because:
- The Property has historically been used for commercial uses;
- The corner store use is permitted as a matter of right;
- The corner store regulations limit the operations to the preparation and toasting of sandwiches and prohibit a full kitchen;
- The Applicant has proposed operational limitations, including measures proposed to

expedite the ordering and service process, as depicted in the Applicant's queuing diagrams;

- The Applicant has accepted conditions to this Order that limit and mitigate potential adverse impacts on the surrounding neighborhood, including limits on the hours of operation, noise, and third-party delivery services, as well as required trash removal and pest control.

The Board specifically credits the ANC Report and testimony of the ANC's authorized representative, Commissioner Palmer, that the Applicant had already engaged in discussions with the community to ensure the successful integration of the proposed use into the neighborhood. (Ex. 151; FF 43.) The Board therefore is not persuaded by the Party Opponent's argument that the Applicant has not provided specific mitigations for any of the potential adverse impacts. The Board also notes that the Party Opponent's concerns about fire and building safety will be addressed during the licensing and Certificate of Occupancy process.

No Substantial Impairment of the Zone Plan

26. The Board concludes that approval of the requested variance from the 750 Foot Rule will not result in substantial impairment of the zone plan because corner store uses are permitted as a matter of right in the R-20 zone pursuant to Subtitle U § 254.1 and so will not degrade the overall residential character of the R-20 zone. The Board credits the analysis of the Third OP Report, as well as OP's testimony at the hearings, which did not object to or raise concerns with the Applicant's interpretation of the Zoning Regulations and which concluded that the Application had met the requirements for a corner store as well as the area variance test. (FF 33-38) The Board concurs with the Application's interpretation of the Zoning Regulations that the special exception use referenced in Subtitle U § 254.14 applies only to corner store uses that are fresh markets or grocery stores which do not meeting the additional requirements of Subtitle U § 254.13. The Board therefore is not persuaded by the Party Opponent's argument that the Application does not meet the requirements for a corner store and therefore is not a matter-of-right use and notes that the Party Opponent did not cite to any provision in the Zoning Regulations in advancing this claim, but instead relied upon language in the D.C. Zoning Handbook. (Ex. 142 at 3-4.)

27. The Board concludes that the variance will not undermine the specific intent of the 750 Foot Rule as discussed above (CL 24), finding that the Zoning Commission "never intended the requirement to be inflexible, but that it was merely designed to establish a "standard of reference" which could be waived or modified in appropriate cases," in the words of the *French* Court upholding a similar area variance. (*French*, 658 A.2d at 1035.)

28. The Board concludes that because the Property is approximately 200 feet, or 27%, short of the distance from a MU zone required by the 750 Foot Rule, the requested area variance was a relatively minor variance that would not substantially impair the zone

plan. (*See French*, 658 A.2d at 1035.)

29. The Board notes that due to the very nature of the variance test, cases are analyzed based on the facts of the specific case. (*Palmer,* 287 A.2d at 542; *St. Mary's Episcopal Church v. District of Columbia Zoning Com'n*, 174 A.3d 260, 271 (2017).) The Board concludes that the Property is affected by unique circumstance not applicable to many other properties in the area, including both residential and commercial uses. The Board is therefore not persuaded by the Party Opponent's citations to previous BZA cases involving proposed deli uses to be persuasive because those cases were prior to the adoption of the current Zoning Regulations, involved use variances which have a different standard than the area variance requested by the Application, and were opposed by the ANC.

30. The Board notes that the Application is self-certified and that the Zoning Administrator will ultimately determine whether additional relief is required. The Board stands by its rulings in prior cases that this is a risk inherent in all self-certified applications and that the potential for this additional relief does not have bearing on the Board's analysis of the relief requested in the Application.[5] The Board therefore is not persuaded by the Party Opponent's argument that the Board cannot grant the Application because it also requires relief from Subtitle U § 254.6(c), which states that a corner store shall "*not be located within five hundred feet (500 feet) of more than three (3) other lots with a corner store use defined as retail, general service, or arts, design, and creation uses.*" The Board credits OP's testimony that the properties cited by the Party Opponent as commercial uses within 500 feet of the Property did not meet the definition of a "corner store" in the Zoning Regulations. The Board notes that the Party Opponent did not provide any evidence that the commercial uses she cited are designated as corner stores based on a determination or certificate of occupancy issued by DCRA or any other District agency.

"GREAT WEIGHT" TO THE RECOMMENDATIONS OF OP

31. The Board must give "great weight" to the recommendations of OP under § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04) and Subtitle Y § 405.8.

32. The Board finds persuasive OP's recommendation to approve the Application based on OP's analysis that the Application satisfied the area variance test, would not cause substantial detriment to the public good or surrounding neighborhood, and would not result in substantial impairment to either the general intent of the R-20 zone, or to the specific intent of the 750 Foot Rule to reduce impacts to the main Georgetown commercial corridors of Wisconsin Avenue and M Street, N.W. The Board therefore concurs with OP's recommendation to approve the Application.

[5] BZA Application No. 18263-B. (Ex. 152B.)

"GREAT WEIGHT" TO THE WRITTEN REPORT OF THE ANC

33. The Board must give "great weight" to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy the great weight requirement, the Board must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole*, 141 A.3d at 1087.) 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).)

34. The Board finds persuasive the ANC Reports' recommendation to approve the Application, and the Second ANC Report's concerns to maintain the integrity of the Zoning Regulations and to ensure quality of life for the Property's neighbors.

35. As discussed above, the Board concurs with the ANC's conclusion that the requested area variance would not damage the intent of the 750 Foot Rule. In reaching this conclusion, the Board also credits the additional information provided by Mr. Matthews that provided background for the ANC's position.

36. The Board notes that that the Second ANC Report, in expressing its support for the Application, praised the communication with the Applicant on quality of life issues and the conditions agreed to by the Applicant governing its operations.

37. The Board notes that the December 4, 2019, testimony of ANC Commissioner Palmer regarding the Applicant's proposed operations and agreement to the proposed conditions cannot be accorded great weight because the specifics of her testimony were not formally adopted in writing by the ANC pursuant to Subtitle Y § 406.4, even though the ANC Reports nominated Commissioner Palmer to represent the ANC. Nonetheless, the Board finds Commissioner Palmer's testimony credible and informative.

38. The Board therefore concludes that the issues and concerns raised by the ANC Reports were addressed by the Applicant, including the conditions included in this order and concurs with the ANC Reports' support for the Application.

DECISION

In consideration of the case record, the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied the burden of proof for an area variance from the

corner store location requirements of Subtitle U § 254.6(g), and therefore **ORDERS** that the Application is **GRANTED**, subject to the following conditions:

1. The Building shall be constructed in accordance with the Approved Plans, dated May 14, 2019 (Ex. 6), as required by Subtitle Y §§ 604.9 and 604.10.

2. The hours of operation for the proposed use shall be 7 a.m. to 3 p.m. daily.

3. The Applicant shall provide weekly pest control on the Property.

4. The Applicant shall not permit any outdoor music or speakers.

5. The Applicant shall not provide any outdoor seating.

6. The Applicant shall not partner with any delivery service apps, including but not limited to, UberEats and Caviar.

VOTE (Jan 15, 2020): 3-0-2 (Frederick L. Hill, Carlton E. Hart and Peter A. Shapiro, to **APPROVE**; Lorna L. John not participating; one Board seat vacant)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 16, 2020

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

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

OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20196 of Sonia Ahmed and Farzaam Esmaeilian, as amended, pursuant to 11 DCMR Subtitle X, Chapters 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and from the rear yard requirements of Subtitle D § 306.2, to replace the rear deck addition to an existing attached principal dwelling unit in the R-3 zone at premises 220 Ascot Place, N.E. (Square 3557, Lot 69).

HEARING DATES: February 20 and June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 39 (Revised); Exhibit 15 (Original).)[2]

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 5E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on April 21, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 61.)

OP Report. The Office of Planning submitted a report recommending approval of the amended application. (Exhibit 41.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 40.)

[1] The initial hearing on this application was held on February 20, 2020 and was continued to March 25, 2020. The continued hearing was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

[2] The original application requested area variance relief from the lot occupancy requirements of Subtitle D § 304.1, but was revised to request special exception relief instead, based on corrected lot occupancy calculations.

Persons in Support. The Board received five letters from neighbors in support of the application. (Exhibits 35 and 58.)

Persons in Opposition. The Board received a letter in opposition to the application from the adjacent neighbors residing at 222 Ascot Place, N.E. (Exhibit 44.) The Applicant revised the proposed plans to address the neighbors' concerns. (Exhibits 52-56.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1 and from the rear yard requirements of Subtitle D § 306.2.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS** at **EXHIBITS 52 - 56.**

VOTE: **3-0-2** (Carlton E. Hart, Lorna L. John, and Michael G. Turnbull to APPROVE; Frederick L. Hill not participating and one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2020

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20218 of Gwendolyn Keita, as amended, pursuant to 11 DCMR Subtitle X, Chapter 10, for a use variance from the use permissions for accessory apartments of Subtitle U § 253.5, to permit an accessory apartment within an existing, semi-detached principal dwelling unit in the R-3 Zone at premises 5200 4th Street N.W. (Square 3257, Lot 88).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 36 (Revised); Exhibit 6 (Original).)[2]

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

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

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on February 19, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 41.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 38.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 33.)

Persons in Support. The Board received one letter in support of the application. (Exhibit 29.)

[1] This application was originally scheduled for public hearing on March 18, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

[2] The application was revised to correct the citation for the use variance relief requested from Subtitle U § 201.1 to Subtitle U § 253.5.

Variance Relief

The Applicant seeks relief under Subtitle X § 1002.1 for a use variance from the use permissions for accessory apartments of Subtitle U § 253.5.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 11, 2020

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.2, THIS ORDER SHALL NOT BE VALID FOR MORE THAN SIX MONTHS AFTER IT BECOMES EFFECTIVE UNLESS THE USE APPROVED IN THIS ORDER IS ESTABLISHED WITHIN SUCH SIX-MONTH PERIOD.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR

PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20224 of Brittney Etheridge, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle F § 5201 from the lot occupancy requirements of Subtitle F § 304.1, and from the rear yard requirements of Subtitle F § 305.1, to construct a second-story rear addition to an existing, attached principal dwelling unit in the RA-1 Zone at premises 407 51st Street, S.E. (Square 5318, Lot 164).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 7.)

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 7E.

ANC Report. The ANC did not submit a report, but the Single Member District Commissioner submitted a letter in support of the application. (Exhibit 13.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 30.)

[1] This application was originally scheduled for public hearing on March 18, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle F § 5201 from the lot occupancy requirements of Subtitle F § 304.1, and from the rear yard requirements of Subtitle F § 305.1.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS** at **EXHIBIT 5.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 11, 2020

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20229 of David and Grace Kelly, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions from the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504.1 from the penthouse setback requirement of Subtitle C § 1502.1(c)(1)(A) and 1502.1(c)(5), and the penthouse wall requirements of Subtitle C § 1500.9, to construct a penthouse and guardrails on top of the third floor addition to an existing attached principal dwelling unit in the RF-1 zone at premises 906 11th Street, N.E. (Square 957, Lot 20).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 38.)[2]

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

ANC Report. The ANC submitted two reports to the record. The first ANC report indicated that at a regularly scheduled, properly noticed public meeting on January 9, 2020, at which a quorum was present, the ANC voted to support the original application. (Exhibit 42.) The second ANC report indicated that at a regularly scheduled, properly noticed public meeting on March 12, 2020, at which a quorum was present, the ANC voted to support the additional special exception relief in the amended application. (Exhibit 42A.)

[1] This application was originally scheduled for public hearing on March 25, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

[2] The original application was accompanied by a memorandum from the Zoning Administrator indicating that special exception relief was needed from the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C §1504.1 from the penthouse setback requirement of Subtitle C § 1502.1(c)(1)(A) and 1502.1(c)(5). (Exhibit 11.) The Applicant revised the application by adding a request for special exception relief from the penthouse wall requirements of Subtitle C § 1500.9.

OP Report. The Office of Planning submitted a report recommending approval of the amended application. (Exhibit 40.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 27.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions from the penthouse requirements of Subtitle C § 1500.4, and under Subtitle C § 1504.1 from the penthouse setback requirement of Subtitle C § 1502.1(c)(1)(A) and 1502.1(c)(5), and the penthouse wall requirements of Subtitle C § 1500.9.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[3] at **EXHIBITS 51 and 52.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 11, 2020

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

[3] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20241 of Jerry Thomas, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the MU-Use Group E requirements of Subtitle U § 513.1(m), to allow an animal boarding use to an existing mixed-use building in the MU-5 zone at premises 907 Barry Place, N.W. (Square 2882, Lot 1041).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 5, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 32.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 36.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 33.)

[1] This application was originally scheduled for public hearing on April 1, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exception under the MU-Use Group E requirements of Subtitle U § 513.1(m), to allow an animal boarding use to an existing mixed-use building in the MU-5 zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 5.**

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2020

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST

[2] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20242 of IDI Water Street L.C., pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 710.3 from the parking lot location requirements of Subtitle C § 710.2(a), and pursuant to Subtitle X, Chapter 10, for area variances from the driveway width requirement of Subtitle C § 711.6 (a), from the minimum dimensions for full-sized parking spaces and aisles of Subtitle C § 712.5, and from the minimum dimensions for compact parking spaces and aisles of Subtitle C § 712.6, to construct a 7-story residential building in the MU-13 zone at premises 3401-3403 Water Street, N.W. (Square 1183, Lot 813).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 3.)

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2E.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 2, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 30.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 35.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application, subject to conditions. (Exhibit 33.) The Board adopted the proposed conditions as part of this order.

[1] This application was originally scheduled for public hearing on April 1, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Variance Relief

The Applicant seeks relief under Subtitle X § 1002.1 for area variances from the driveway width requirement of Subtitle C § 711.6 (a), from the minimum dimensions for full-sized parking spaces and aisles of Subtitle C § 712.5, and from the minimum dimensions for compact parking spaces and aisles of Subtitle C § 712.6, to construct a 7-story residential building in the MU-13 zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle C § 710.3 from the parking lot location requirements of Subtitle C § 710.2(a) to locate parking spaces less than 20 feet from the lot lines.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 31A1-31A2**, and with the following **CONDITIONS:**

[2] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

1. The Applicant shall have minor flexibility to modify the approved plans as required by Commission of Fine Arts and Old Georgetown Board, provided that zoning relief is not increased or affected.

2. The Applicant shall unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile.

3. The Applicant shall identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators shall act as points of contact with DDOT, goDCgo, and Zoning Enforcement.

4. The Applicant shall provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report Transportation Demand Management ("TDM") activities and data collection efforts to goDCgo once per year.

5. Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications.

6. Transportation Coordinators shall receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.

7. The Applicant shall provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com.

8. The Applicant shall provide residents who wish to carpool with detailed carpooling information and shall be referred to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.

9. Transportation Coordinators shall subscribe to goDCgo's residential newsletter.

10. The Applicant shall post all TDM commitments on website, publicize availability, and allow the public to see what commitments have been promised.

11. The Applicant shall provide a SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride.

12. Long-term bicycle storage rooms shall accommodate non-traditional sized bikes including cargo, tandem, and kids bikes.

13. The Applicant shall install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, carsharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles.

14. The Applicant shall fund the installation of a Capital Bikeshare (CaBi) expansion plate at a nearby station to be selected by DDOT.

15. The Applicant shall not lease unused residential parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events).

16. The Applicant shall provide an annual CaBi membership to each resident for the first year after the building opens.

17. The Applicant shall provide four additional short-term bicycle parking spaces (two inverted U-racks) in the vicinity of the site.

18. The Applicant shall provide a bicycle repair station in each long-term bicycle parking storage room.

19. The Applicant shall provide one collapsible shopping cart (utility cart) for every 25 residential units, for a total of two carts to encourage residents to walk to the grocery store and for other shopping errands.

20. The Applicant shall expand the sidewalk space along the building's entire Water Street, N.W. frontage to ensure the pedestrian realm is ADA accessible, subject to DDOT approval.

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2020

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

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application No. 20244 of 1777 Bond Street Equities LLC and Columbia Road of DC LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2, from the minimum parking requirement of Subtitle C § 701.5, to construct a 40 new residential units and ground level retail addition to an existing mixed-use building in the MU-5A zone at premises 1767-1777 Columbia Road, N.W. (Square 2580, Lot 522).

HEARING DATE: June 3, 2020[1]
DECISION DATE: June 10, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 28A (Updated); Exhibit 4 (Original).)

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on March 4, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 29.) Commissioner Japer Bowles also testified in support of the application at the public hearing.

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

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application, subject to conditions. (Exhibit 32.) The Board adopted the proposed conditions in this order.

[1] This application was originally scheduled for public hearing on April 1, 2020 but was rescheduled for a virtual public hearing on June 3, 2020 based on the closures and postponements related to the public health emergency declared on March 11, 2020. Notice of the virtual public hearing was provided to the parties and to the property owners within 200 feet of the subject property.

Persons in Opposition. The Board received three letters from neighbors in opposition to the application that raised concerns about notice defects with the initial notice of the application provided by mail in February and requested postponement of the hearing. (Exhibits 38-40.) The Board considered the concerns raised but determined that, despite the potential issues with the initial mailed notice in February, notice of the hearing had been provided through other means and was sufficient to justify continuing with the June 3, 2020 hearing as scheduled.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle C § 703.2, from the minimum parking requirement of Subtitle C § 701.5.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, subject to the **APPROVED PLANS**[2] at **EXHIBIT 5** and subject to the following **CONDITIONS:**

1. The Applicant shall implement the following Transportation Demand Management ("TDM") plan for the life of the project, unless otherwise stated:

    a. The Applicant shall unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;

    b. The Applicant shall identify Transportation Coordinators for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement;

[2] Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

c. The Applicant shall provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on site, and report TDM activities and data collection efforts to goDCgo once per year;

d. Transportation Coordinators shall receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan;

e. Transportation Coordinators shall develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on property website and in any internal building newsletters or communications;

f. The Applicant shall provide welcome packets to all new residents that should, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, CaBi coupon or rack card, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. Brochures can be ordered from DDOT's goDCgo program by emailing info@godcgo.com;

g. Transportation Coordinators shall subscribe to goDCgo's residential newsletter;

h. The Applicant shall provide a SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride;

i. The Applicant shall provide 10 additional long-term bicycle spaces above the zoning requirement, for a total of 60 long-term bicycle spaces. Long-term bicycle storage will be provided free of charge to residents and will be designed to accommodate non-traditionally sized bikes including cargo, tandem, and kids' bikes;

j. The Applicant shall provide a bicycle repair station in each long-term parking storage room;

k. The Applicant shall provide three collapsible shopping carts (utility carts) to encourage residents to walk to the grocery store and run errands; and

l. The Applicant shall provide a $5,000 contribution to DDOT toward the expansion of Capital Bikeshare in ANC 1C.

VOTE: **4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May (by absentee vote) to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT
A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: June 12, 2020

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

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL

AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
NOTICE OF FILING
Z.C. Case No. 20-13
(Forest City SEFC, LLC – Text Amendment to Subtitle K § 238.3)
June 15, 2020

THIS CASE IS OF INTEREST TO ANC 6D

On June 11, 2020, the Office of Zoning received an application from Forest City SEFC, LLC (the "Petitioner") for approval of a text amendment for the above-referenced subtitle. The Southeast Federal Center ("SEFC") zones comprise a large master planning area known as "The Yards," which consists of several development parcels that are located on and near the southeast waterfront.

The Petitioner is requesting to allow office uses, including chanceries, in the SEFC-3 zones, where such uses are not currently permitted. The Petitioner is requesting this text amendment to facilitate a "swap" of uses between Parcels H and Q and to align the Zoning Regulations with the Master Plan by authorizing office uses on Parcel Q.

Development and use parameters in the SEFC zones can be found in Subtitle K, Chapter 2 of the Zoning Regulations.

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.