

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council passes Law 23-98, Security Breach Protection Amendment Act of 2020 to update notification requirements for personal information security breaches
- D.C. Council passes Law 23-107 governing the establishment and duties of the Extreme Risk Protection Order Implementation Working Group
- D.C. Council passes Law 23-108 to extend the D.C. Housing Finance Agency’s Reverse Mortgage Insurance and Tax Payment Program
- Office of Tax and Revenue revises payment requirements for tax deed bills and updates the schedule of service fees
- Department of Health announces funding for the Tobacco Cessation and Health Systems Change Program and the School-Based Health Center Program
- Department of Housing and Community Development announces funding availability for the Nonprofit Capacity Support Grant
- Department of Housing and Community Development sets assistance levels for the Home Purchase Assistance Program
- Office of the Deputy Mayor for Planning and Economic Development announces funding availability for the FY20 Neighborhood Prosperity Fund (NPF)
- Department of Small and Local Business Development announces funding availability for the 2021 Clean Team Grants

DISTRICT OF COLUMBIA REGISTER

Publication Authority and Policy

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

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MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW L23-0096

"Bishop Sherman S. Howard Way Designation 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 23-0068 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0266 and was published in the edition of the D.C. Register (Vol. 67, page 3910). Act A23-0266 was transmitted to Congress on May 05, 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 A23-0266 is now D.C. Law L23-0096, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

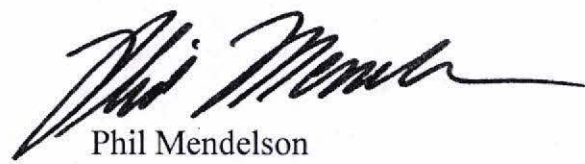
NOTICE

D.C. LAW L23-0097

"Certified Professional Midwife 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 23-0202 on First Reading and Final Reading, on Jan 07, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0267 and was published in the edition of the D.C. Register (Vol. 67, page 3912). Act A23-0267 was transmitted to Congress on May 05, 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 A23-0267 is now D.C. Law L23-0097, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW L23-0098

"Security Breach Protection 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 23-0215 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0268 and was published in the edition of the D.C. Register (Vol. 67, page 3923). Act A23-0268 was transmitted to Congress on May 05, 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 A23-0268 is now D.C. Law L23-0098, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA


NOTICE

D.C. LAW L23-0099

"Woody Ward Recreation Center Designation 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 23-0264 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0269 and was published in the edition of the D.C. Register (Vol. 67, page 3930). Act A23-0269 was transmitted to Congress on May 05, 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 A23-0269 is now D.C. Law L23-0099, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

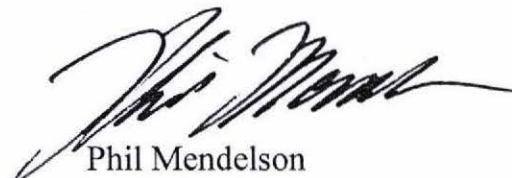
NOTICE

D.C. LAW L23-0100

"James E. Bunn Amphitheater Designation 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 23-0327 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0270 and was published in the edition of the D.C. Register (Vol. 67, page 3932). Act A23-0270 was transmitted to Congress on May 05, 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 A23-0270 is now D.C. Law L23-0100, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW L23-0101

"Zaire Kelly Park Designation 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 23-0366 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0271 and was published in the edition of the D.C. Register (Vol. 67, page 3934). Act A23-0271 was transmitted to Congress on May 05, 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 A23-0271 is now D.C. Law L23-0101, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

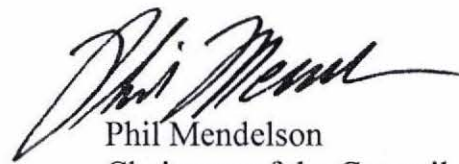
NOTICE

D.C. LAW L23-0102

"Rev. Roy Settles Way Designation 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 23-0455 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0272 and was published in the edition of the D.C. Register (Vol. 67, page 3936). Act A23-0272 was transmitted to Congress on May 05, 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 A23-0272 is now D.C. Law L23-0102, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW L23-0103

"Condominium Warranty Claims Clarification Temporary 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 23-0622 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0273 and was published in the edition of the D.C. Register (Vol. 67, page 3938). Act A23-0273 was transmitted to Congress on May 05, 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 A23-0273 is now D.C. Law L23-0103, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW L23-0104

"Non-Public Student Educational Continuity Temporary 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 23-0651 on First Reading and Final Reading, on Feb 04, 2020, and Mar 03, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0274 and was published in the edition of the D.C. Register (Vol. 67, page 3941). Act A23-0274 was transmitted to Congress on May 05, 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 A23-0274 is now D.C. Law L23-0104, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

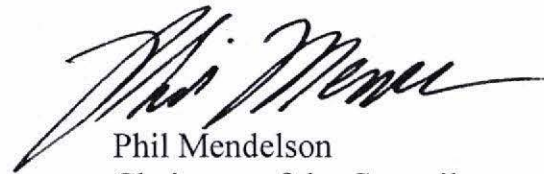
NOTICE

D.C. LAW L23-0105

"Substantive Technical Temporary 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 23-0674 on First Reading and Final Reading, on Mar 03, 2020, and Mar 17, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0275 and was published in the edition of the D.C. Register (Vol. 67, page 3943). Act A23-0275 was transmitted to Congress on May 05, 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 A23-0275 is now D.C. Law L23-0105, effective Jun 17, 2020.


Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW L23-0106

"Leave to Vote Temporary 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 23-0684 on First Reading and Final Reading, on Mar 03, 2020, and Mar 17, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0277 and was published in the edition of the D.C. Register (Vol. 67, page 3948). Act A23-0277 was transmitted to Congress on May 05, 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 A23-0277 is now D.C. Law L23-0106, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW L23-0107

"Extreme Risk Protection Order Implementation Working Group Temporary 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 23-0686 on First Reading and Final Reading, on Mar 03, 2020, and Mar 17, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0278 and was published in the edition of the D.C. Register (Vol. 67, page 3950). Act A23-0278 was transmitted to Congress on May 05, 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 A23-0278 is now D.C. Law L23-0107, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

COUNCIL OF THE DISTRICT OF COLUMBIA

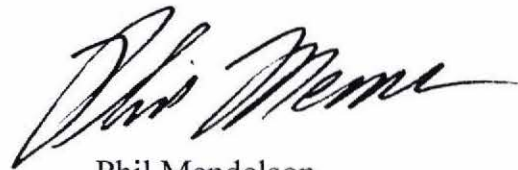
NOTICE

D.C. LAW L23-0108

"Reverse Mortgage Insurance and Tax Payment Program Temporary 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 23-0689 on First Reading and Final Reading, on Mar 03, 2020, and Mar 17, 2020, respectively, pursuant to Section 404(e) of the Charter, the bill became Act A23-0279 and was published in the edition of the D.C. Register (Vol. 67, page 3953). Act A23-0279 was transmitted to Congress on May 05, 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 A23-0279 is now D.C. Law L23-0108, effective Jun 17, 2020.



Phil Mendelson
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

Month	Dates Counted
May	5,6,7,8,11,12,13,14,15,18,19,20,21,22,26,27,28,29
June	1,2,3,4,5,8,9,10,11,12,15,16

ENROLLED ORIGINAL

A CEREMONIAL RESOLUTION

23-276

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

March 3, 2020

To recognize, honor and congratulate the Paul Laurence Dunbar High School Lady Crimson Tide for a successful season winning the 2020 District of Columbia State Interscholastic Athletic Association, (DCIAA) and claiming back-to-back titles.

WHEREAS, Dunbar High School is located in Ward 5 at 101 N Street, NW, and is dedicated to ensuring that every student feels loved, challenged, and prepared to positively influence society and thrive;

WHEREAS, Dunbar High School’s Head Coach, Shayla Williams, Assistant Coaches Jermaine Clark, Marcel Gavin, and Earl Brown and Principal Nadine Smith, Athletic Director Jason Spinks and Assistant Athletic Director Tiffany Jackson and Seneca Surles, Athletic Administrator Tonya Kabia, have been successful in leading the team to the DCIAA championship;

WHEREAS, Dunbar High School dedicated countless hours throughout the season to practice in order to accomplish this goal;

WHEREAS, Dunbar High School’s 2020 overall winning record is recorded for 26 wins and 4 losses and was 12 wins and 0 losses within their respective league;

WHEREAS, Dunbar High School competed and won the DCIAA City Championship, hosted at the Entertainment and Sports Arena, Sunday, February 16th, 2020 against Benjamin Banneker High School and won by a score of 63-35;

WHEREAS, Zy’aire Hairston was named DCIAA tournament MVP for the second straight year, finishing the game with fifteen points, ten assists and four rebounds;

WHEREAS, Dunbar High School competed worthily against Sidwell Friends in the 2020 DCSAA Girls Basketball State Tournament – Class AA Tournament on February 28th at Georgetown University;

WHEREAS, Dunbar High School team members include:

Mackenzie Vest, Sr.

ENROLLED ORIGINAL

Khalia Bryant, Jr.

Jalien Hunter, So.

Zy'aire Hairston, So.

Amare Mercer, Fr.

Cameron Wilkes, Jr.

Kamari Campbell, So.

Dominique Davis, So.

Trinity Roy, So.

Keyemani Milstead, Sr.

Pamela May, Sr.

Sonnay Brown, Sr.

Taijhonna Wyatt, Fr.

Ayana Robinson, Sr.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Paul Laurence Dunbar Lady Crimson Tide Recognition Resolution of 2020."

Sec. 2. The Council of the District of Columbia recognizes and congratulates the Paul Laurence Dunbar Lady Crimson Tide Girls' basketball team for a highly successful season.

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

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

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

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

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

PR23-0837 Ferebee-Hope School Surplus Declaration Resolution of 2020

Intro. 06-18-2020 by Chairman Mendelson and referred to the Committee on Facilities and Procurement

PR23-0838 Ferebee-Hope School Disposition Approval Resolution of 2020

Intro. 06-18-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

COUNCIL OF THE DISTRICT OF COLUMBIA
Notice of Grant Budget Modifications

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

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

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

Telephone: 724-8050

GBM 23-90: FY 2020 Grant Budget Modifications of June 5, 2020

RECEIVED: 2-day review begins June 26, 2020

GBM 23-91: FY 2020 Grant Budget Modifications of June 11, 2020

RECEIVED: 2-day review begins June 26, 2020

GBM 23-92: FY 2020 Grant Budget Modifications of June 15, 2020

RECEIVED: 2-day review begins June 26, 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. 23-109: Request to reprogram \$2,000,000 of Enterprise and Other Funds (Fund Detail 6218) within the Department of Housing Production Trust Fund for fiscal year 2020 was filed in the Office of the Secretary on June 29, 2020. This reprogramming is needed to cover the cost of the Development Finance Division's pipeline items on the approved waiver request.

RECEIVED: 14-day review begins June 30, 2020

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

Placard Posting Date: July 3, 2020
Protest Petition Deadline: September 8, 2020
Roll Call Hearing Date: September 21, 2020
Protest Hearing Date: December 2, 2020

License No.: ABRA-116860
Licensee: Square 656 Owner, LLC
Trade Name: Cambria Hotel Washington DC Capitol Riverfront
License Class: Retailer's Class "C" Hotel
Address: 69 Q Street, S.W.
Contact: Stephen J. O'Brien: (202) 625-7700

WARD 6

ANC 6D

SMD 6D06

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 21, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. **The Protest Hearing date** is scheduled on **December 2, 2020 at 1:30 p.m.**

NATURE OF OPERATION

New Class "C" Hotel with a total of 160 rooms. Establishment will have a Summer Garden with 250 seats and a Sidewalk Café with 15 seats. Licensee is requesting to have an Entertainment Endorsement, including Dancing, inside the premises only.

HOURS OF OPERATION INSIDE PREMISES

Sunday through Saturday 12am – 12am (24-hour operations)

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION AND HOURS OF LIVE ENTERTAINMENT INSIDE PREMISES

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SUMMER GARDEN AND SIDEWALK CAFE

Sunday through Thursday 8am – 12am, Friday and Saturday 8am – 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****CORRECTION**

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: Justin's House of Bourbon, LLC
Trade Name: Justin's House of Bourbon
License Class: Retailer's Class "A" Internet
Address: 2419 Evarts Street, N.E., Unit A
Contact: **Frank Knizner, Esq.: (202) 449-3739 ext. 706

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

HOURS OF OPERATION AND ALCOHOLIC BEVERAGE SALES

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

****RESCIND**

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: July 3, 2020
 Protest Petition Deadline: September 8, 2020
 Roll Call Hearing Date: September 21, 2020
 Protest Hearing Date: December 2, 2020

License No.: ABRA-116918
 Licensees: Jemal's Bulldog L.L.C.; and
 Atlas Hospitality Group LLC
 Trade Name: Parlour Victoria
 License Class: Retailer's Class "C" Restaurant
 Address: 1011 K Street, N.W.
 Contact: Stephen J. O'Brien, Esq.: (202) 625-7700

WARD 2

ANC 2C

SMD 2C01

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 21, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The **Protest Hearing date** is scheduled on **December 2, 2020 at 4:30 p.m.**

NATURE OF OPERATION

A new Retailer's Class C Restaurant with a seating capacity of 148 and Total Occupancy Load of 245. Sidewalk Café with 65 seats and rooftop Summer Garden with 52 seats. Applicant requests an Entertainment Endorsement with a Dance Floor to provide live entertainment inside premises and outdoor in rooftop Summer Garden.

HOURS OF OPERATION FOR INSIDE PREMISES

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

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

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

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

Sunday through Saturday 8am – 12am

HOURS OF LIVE ENTERTAINMENT FOR INSIDE PREMISES

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

HOURS OF LIVE ENTERTAINMENT FOR OUTSIDE IN SUMMER GARDEN

Sunday through Saturday 8am – 10pm

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
7/3/2020

Notice is hereby given that:

License Number: ABRA-076011

License Class/Type: C Tavern

Applicant: Salma, LLC

Trade Name: Red Lounge Hookah

ANC: 1B12

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

2013 A 14TH ST NW, Washington, DC 20009

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
9/8/2020

A HEARING WILL BE
9/21/2020

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

ENDORSEMENT(S): Cover Charge Dancing Entertainment

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	10 am - 12 am	10 am - 12 am	10 am - 12 am
Monday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Tuesday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Wednesday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Thursday:	10 am - 2 am	10 am - 2 am	10 am - 2 am
Friday:	10 am - 3 am	10 am - 3 am	10 am - 3 am
Saturday:	10 am - 3 am	10 am - 3 am	10 am - 3 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

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 8, 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 TWO

20254 **Application of The Government of the Republic of the Zambia**, pursuant to 11 DCMR Subtitle X, Chapter 2, to permit the renovation of the chancery building in the R-1-B Zone at premises 2419 Massachusetts Avenue, N.W. (Square 2506, Lot 22).
ANC 2D

WARD FOUR

20186 **Application of Elisabeth Hando**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the R-Use group requirements of Subtitle U § 203.1(h), under Subtitle D § 5201 from the side yard requirements of Subtitle D § 206.2, from the lot occupancy requirements of Subtitle D § 304.1, and under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to convert an existing expanded child development home to a new child development center with 20 children, and to construct a three-story rear addition and a third story addition to the existing detached dwelling in the R-1-B Zone at premises 240 Quackenbos Street, N.E. (Square 3719, Lot 24).
ANC 4B

WARD FOUR

20243 **Application of 532 Taylor LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U §§ 320.2, to permit the conversion of a flat into a three-unit apartment house in the RF-1 Zone at premises 532 Taylor Street, N.W. (Square 3231, Lot 86).
ANC 4C

WARD SIX

20245 **Application of Christopher Astilla**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the lot occupancy requirements of Subtitle E § 304.1 and from the rear addition requirements of Subtitle E § 205.4, to construct a two story rear addition to
ANC 6A

BZA PUBLIC HEARING NOTICE

JULY 8, 2020

PAGE NO. 2

an existing attached principal dwelling unit in the RF-1 Zone at premises 216 14th Place, N.E. (Square 1055, Lot 31).

WARD FOUR

20247
ANC 4C **Application of Reneau Randolph LLC** (formerly Andrew McGuire and Barbara Rutland), pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the conversion of an existing attached principal dwelling unit into a three-unit apartment house in the RF-1 Zone at premises 1317 Randolph Street, N.W. (Square 2824, Lot 6).

WARD SIX

20248
ANC 6A **Application of Hilary Hansen**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, the rear yard requirements of Subtitle E § 306.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing semi-detached principal dwelling unit in the RF-1 Zone at premises 1006 10th Street, N.E. (Square 931, Lot 25).

WARD SIX

20250
ANC 6A **Application of William and Karen Quarles**, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E § 5201, from the rear addition requirements of Subtitle E § 205.4, from the lot occupancy requirements of Subtitle E § 304.1, and from the nonconforming structure requirements of Subtitle C § 202.2, to construct a two-story rear addition to an existing attached flat in the RF-1 Zone at premises 216 9th Street, N.E. (Square 917, Lot 113).

WARD SIX

20249
ANC 6C **Application of Vincent Gallagher**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the Downtown-use requirements of Subtitle I § 303.1(a), and pursuant to Subtitle X, Chapter 10 for a variance from the MU-Use Group E requirements of Subtitle U § 513.1(a)(2), to permit an animal care and boarding use on the ground floor of an existing mixed-use building in the D-5 Zone at premises 22 M Street, N.E. (Square 672, Lot 858).

BZA PUBLIC HEARING NOTICE

JULY 8, 2020

PAGE NO. 3

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 bzsubmissions@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 በኢሜል Zelalem.Hill@dc.gov ይገናኙ። እንኳን 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。

BZA PUBLIC HEARING NOTICE

JULY 8, 2020

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French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

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

FREDERICK L. HILL, CHAIRPERSON
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

OFFICE OF TAX AND REVENUE

NOTICE OF FINAL RULEMAKING

The Deputy Chief Financial Officer of the District of Columbia Office of Tax and Revenue (OTR) of the Office of the Chief Financial Officer, pursuant to the authority set forth in D.C. Official Code §§ 47-874 and 47-1335 (2015 Repl.), Section 201(a) of the 2005 District of Columbia Omnibus Authorization Act, approved October 16, 2006 (120 Stat. 2019, Pub. L. 109-356; D.C. Official Code § 1-204.24d (2016 Repl.)), and the Office of the Chief Financial Officer Financial Management and Control Order No. 00-5, effective June 7, 2000, hereby gives notice of the adoption of the following amendments to Chapter 3 (Real Property Taxes), of Title 9 (Taxation and Assessments) of the District of Columbia Municipal Regulations (DCMR).

The amendment to Section 316 (Real Property Tax Sale Redemption and Tax Deed Issuance Rules) amends the regulation to be consistent with the statute by requiring payment of the bill for tax deed within thirty (30) days of the final judgment. The amendment to Section 336 (Fees) updates the schedule of fees and eliminate obsolete fee schedules.

A Notice of Proposed Rulemaking was published in the *D.C. Register* on May 1, 2020 at 67 DCR 004775. No public comments were received, and no changes have been made to the text of the rules as proposed. This rule was adopted as final on June 23, 2020, and will become effective upon publication of this notice in the *D.C. Register*.

Chapter 3, REAL PROPERTY TAXES, of Title 9 DCMR, TAXATION AND ASSESSMENTS, is amended as follows:

Subsection 316.10(c) of Section 316, REAL PROPERTY TAX SALE REDEMPTION AND TAX DEED ISSUANCE RULES, is amended to read as follows:

316.10

...

- (c) The Bill for Tax Deed shall be satisfied within thirty (30) days of the final judgment and may include the following: (1) a Real Property Tax Bill; (2) BID tax bill; (3) Vault Rent Bill; and (4) Payoff Statements from subsequent and prior year tax sale purchasers.

Subsection 336.1 of Section 336, FEES, is amended to read as follows:

336.1

- (a) The following fees shall cover all services and materials for which a charge is imposed.

DESCRIPTION OF SERVICE	FEE
(1) Certificate of Taxes and Assessments Due	\$ 15.00
(2) REPEALED	
(3) Public Release Extract (on CD in Access format)	\$150.00

(4) Residential CAMA Extract (on CD in text format)	\$150.00
(5) Commercial CAMA Extract (on CD in text format)	\$150.00
(6) Condominium CAMA Extract (on CD in text format)	\$150.00
(7) Copying of Real Property Assessment Records (Property Record Cards, Sales Studies, Worksheets, etc.)	\$1.00 per side
	\$ 1.00 per side
(8) Assessor Reference Materials	\$ 75.00
(9) Tax Map (18" x 24")	\$ 30.00
(10) Tax Map (24" x 36")	\$ 30.00
(11) Radius Request	
200-499 feet	\$ 35.00
500-999 feet	\$ 40.00
1000 feet or more	\$100.00
(12) Pertinent Data Book	\$100.00

- (b) The copying charge for furnishing a property owner with a copy of OTR's response to the property owner's appeal to the Real Property Tax Appeals Commission shall be computed using the photocopying charges provided in 1 DCMR § 408. See D.C. Official Code § 47-825.01a(e)(2)(C)(ii)(II).
- (c) For search and copying charges associated with responding to Freedom of Information Requests, see 1 DCMR § 408.
- (d) No charge shall be made for providing copies of a taxpayer's own tax returns, transcripts of property tax bills, or certificates of good tax standing.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF FINAL RULEMAKING****Z.C. CASE NO. 19-14¹****(Text Amendment - Subtitles C, D, E, F, and X of Title 11 DCMR)****(Nonconforming Structures)****May 11, 2020**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)) 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) § 202.2
- Subtitle D (Residential House (R) Zones) §§ 306.4, 706.4, 1006.3, 1206.4, 5007, 5108, 5200, 5201, and 5204
- Subtitle E (Residential Flat (RF) Zones) §§ 205.5, 5007, 5108, 5200, 5201, and 5204
- Subtitle F (Residential Apartment (RA) Zones) §§ 5005, 5107, 5200, 5201, and 5204
- Subtitle X (General Procedures) § 1001.3

Description of the Amendment

The text amendment clarifies the zoning treatment of enlargements and additions to nonconforming structures. In particular, in Subtitle C § 202.2, the text amendment clarifies that nonconforming structures are permitted to expand as a matter of right so long as the enlargement or addition conforms to the development standards. Where non-compliant, zoning relief would be needed from applicable development standards of each subtitle and not from Subtitle C § 202.2 specifically. Although focused on nonconforming structures, the text amendment also changes the relief required for principal residential developments on substandard record lots as well as clarifies and reorganizes the special exception provisions in Subtitles D-F, as follows:

- Subtitle D, Chapter 52: to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;
- Subtitle E, Chapter 52: to remove the current reference to relief from Subtitle C § 202.2; to clarify which development standards are eligible for special exception relief and under what criteria; and to consolidate all special exception authority in this chapter by deleting current §§ 5007, 5108, and 5204;

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

- Subtitle F, Chapter 52: to clarify which development standards are eligible for special exception relief; and to consolidate all special exception authority in this chapter by deleting current §§ 5005, 5107, and 5204; and
- Subtitle X, Chapter 10: to remove the reference to Subtitle C § 202.2 as relief from that section is no longer required.

Procedures Leading to the Adoption of the Amendment

Office of Planning (OP)

OP filed a July 18, 2019, report that served as the pre-hearing report required by Subtitle Z § 501 and as a petition proposing text amendments to the Zoning Regulations. The Commission voted at its July 29, 2019, public meeting to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General (OAG) to refine the proposed text and add any conforming language as necessary.

OP filed an October 30, 2019 hearing report, as required by Subtitle Z § 400.6, that recommended approval of the proposed text amendment as advertised in the Public Hearing Notice.

At its November 7, 2019 hearing, the Commission heard testimony from OP in support of the proposed text amendment and from ANC 6C, which was supportive of the text amendment but highlighted specific provisions for further revision, as discussed below.

In response to concerns raised by ANCs 6B and 6C, as well as by the Commission, that the proposed amendment did not address existing ambiguities in the Zoning Regulations, especially the provisions related to building height special exceptions (Subtitle E § 5203) and rooftop or upper floor additions (Subtitle E § 206.1), OP submitted a November 25, 2019 supplemental report (OP Second Report). The OP Second Report indicated that most of the existing problematic text provisions are included in two text amendments currently before the Commission – Z.C. Case No. 19-13 (Alley Lots) or Z.C. Case No. 19-21 (Roof Top or Upper Floor Elements) – and are less suited to resolution in this Z.C. Case No. 19-14.

ANC Reports

ANC 5D filed a November 12, 2019 written report expressing support for the proposed text amendment's expanded protection of solar panels.

ANC 6B filed an October 29, 2019 written report in support of the proposed text amendment but also recommended changes including:

- Retaining Subtitle E § 5204, a special exception related to alley lots, rather than consolidating alley lot and non-alley lot standards into a revised Subtitle E § 5201 as proposed;
- Further refinements to the proposed text in Subtitle E § 5201; and
- Improvements to the Office of Zoning user handbook (although not related to the specific text amendment and outside the Commission's purview).

ANC 6C filed a November 6, 2019 written report (ANC 6C's First Report) and provided testimony at the November 7, 2020 public hearing in support of the proposed text amendments but also recommending changes including:

- Relief for new principal residential buildings on standard lots (found in proposed text in Subtitle E § 5201);
- Syntax concerns with the proposed text of Subtitle E § 5201.6 and Subtitle F § 5201.6; and
- Repetition and circularity between existing Subtitle E § 206.1 and the zoning relief found in Subtitle E § 5203, for which ANC 6C recommended several modifications to improve the clarity of these sections.

In response to OP's Second Report, ANC 6C filed a supplemental report (ANC 6C's Second Report), in which the ANC agreed with OP that most of the issues raised in ANC 6C's First Report could be addressed in pending Z.C. Case No. 19-21 rather than in Z.C. Case No. 19-14.

At its public hearing on November 7, 2020, the Commission requested that OP provide a detailed response to the issues raised by ANC 6B's and ANC 6C's reports and to specifically identify which pending Commission cases would address these concerns. Upon review of OP's and ANC's Second Reports, the Commission agreed with OP and ANC 6C that the concerns raised by the ANCs were being addressed by pending Z.C. Case No. 19-21 rather than Z.C. Case No. 19-14.

At its public meeting on January 13, 2020, the Commission voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

Proposed Action

VOTE (January 13, 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* (67 DCR 3807, *et seq.*) on April 3, 2020.

No comments were received in response to the NOPR within 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 (2013 Repl.).)

National Capital Planning Commission (NCPC)

The Commission referred the proposed amendment to NCPC for the thirty (30)-day review period required by § 492 of the District Charter on January 16, 2020.

NCPC filed a report dated February 6, 2020, stating that NCPC had determined, pursuant to delegated authority, that the proposed amendment was not inconsistent with the federal elements of the Comprehensive Plan and would not adversely impact any identified federal interests. (Exhibit ["Ex. "]13.)

"Great Weight" to the Recommendations of OP

The Commission must give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)

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

“Great Weight” to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

The Commission finds the reports of ANCs 5D, 6B, and 6C persuasive in their support for the text amendment, with the concerns of ANCs 6B and 6C being addressed in Z.C. Case No. 19-21 pending before the Commission, and concurs with the ANCs in that judgement to approve the text amendment.

At its public meeting on May 11, 2020, the Commission voted to take **FINAL ACTION** and to authorize the publication of a Notice of Final Rulemaking:

Final Action

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

The following amendments to the text of the Zoning Regulations are hereby adopted):

I. Amendments to Subtitle C, GENERAL RULES

Subsection 202.2 of § 202, NONCONFORMING STRUCTURES, of Chapter 2, NONCONFORMITIES, of Subtitle C, GENERAL RULES, is amended to read as follows:

- 202.2 Enlargements or additions may be made to the structure; provided that the addition or enlargement itself shall:
- (a) Conform to the use and development standards;
 - (b) Neither increase nor extend any existing, nonconforming aspect of the structure; nor create any new nonconformity of structure and addition combined; and

- (c) Any enlargement or addition not meeting paragraphs (a) and (b) must obtain relief from the applicable development standards.

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

Subsection 306.4 of § 306, REAR YARD, of Chapter 3, RESIDENTIAL HOUSE ZONES – R-1-A, R-1-B, R-2, AND R-3, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised to read as follows:

- 306.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle U § 5201 if applicable.

Subsection 706.4 of § 706, REAR YARD, of Chapter 7, NAVAL OBSERVATORY RESIDENTIAL HOUSE ZONES – R-12 AND R-13, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised to read as follows:

- 706.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle U § 5201 if applicable.

Subsection 1006.3 of § 1006, REAR YARD, of Chapter 10, FOGGY BOTTOM RESIDENTIAL HOUSE ZONE – R-17, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised to read as follows:

- 1006.3 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle U § 5201 if applicable.

Subsection 1206.4 of § 1206, REAR YARD, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is revised to read as follows:

- 1206.4 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any adjoining principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle U § 5201 if applicable.

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R-ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is deleted in its entirety.

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR R-ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is deleted in its entirety.

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (R), of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R-ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R-ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended to read as follows:

- 5200.1 The provisions of this chapter provide for special exception relief from the specified development standards and regulations, subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.
- 5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R-ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended to read as follows:

5201 SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR R-ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

- 5201.1 For an addition to a principal residential building with one (1) principal dwelling unit on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:
 - (a) Lot occupancy subject to the following table:

TABLE D § 5201.1(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

Zone	Maximum Lot Occupancy
R-3, R-13, and R-17 R-20 - Row dwellings	70%
R-20 - Detached and semi-detached dwellings All other R zones	50%

- (b) Yards, including alley centerline setback; and
- (c) Pervious surface.

5201.2 For a new or enlarged accessory structure to a residential building with only one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy subject to the following table:

TABLE D § 5201.2(a): MAXIMUM PERMITTED LOT OCCUPANCY BY SPECIAL EXCEPTION

Zone	Maximum Lot Occupancy
R-3, R-13, and R-17 R-20 - Row dwellings	70%
R-20 - Detached and semi-detached dwellings All other R zones	50%

- (b) Maximum building area of an accessory building;
- (c) Yards, including alley centerline setback; and
- (d) Pervious surface.

5201.3 For a new or enlarged principal building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Yards, including alley centerline setback; and
- (b) Pervious surface.

5201.4 An application for special exception relief under this section shall demonstrate that the proposed addition, new principal building, or accessory structure shall not have

a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

- (a) The light and air available ...²
- (b) The privacy of use and enjoyment ...
- (c) The proposed addition or accessory structure, together with the original building, or the new principal building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street or alley frontage; and
- (d) In demonstrating compliance with paragraphs ... from public ways.

5201.5 The Board of Zoning Adjustment may require ...

5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories as a special exception.

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty- (40) day period established by Subtitle A § 211:

- (a) District Department of Transportation (DDOT);
- (b) Department of Public Works (DPW);
- (c) Metropolitan Police Department (MPD);
- (d) Fire and Emergency Medical Services Department (FEMS);
- (e) DC Water (WASA); and
- (f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

² The uses of this and other ellipses indicate that other provisions exist in the subsection being amended and that the omission of the provisions does not signify an intent to repeal.

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is deleted to read as follows.

5204 [RESERVED]

III. Amendments to Subtitle E, RESIDENTIAL FLAT ZONES

Subsection 205.5 of § 205, REAR YARD, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is revised as follows:

205.5 A rear wall of a row or semi-detached building may be constructed to extend farther than ten feet (10 ft.) beyond the farthest rear wall of any principal residential building on any adjacent property if approved as a special exception pursuant to Subtitle X, Chapter 9, and subject to Subtitle U § 5201 if applicable.

Section 5007, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is deleted in its entirety.

Section 5108, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is deleted in its entirety.

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF-ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF-ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended to read as follows:

5200.1 The provisions of this chapter provide for special exception relief from the specified development standards and regulations, subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF-ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended to read as follows:

5201 SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF-ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- (b) Yards, including alley centerline setback;
- (c) Courts; and
- (d) Pervious surface.

5201.2 For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy under Subtitle E § 5003 up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- (b) Yards, including alley centerline setback;
- (c) Courts; and
- (d) Pervious surface.

5201.3 For a new or enlarged building on an Alley Record Lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special

exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Yards, including alley centerline setback; and
- (b) Pervious surface.

5201.4 An application for special exception relief under this section shall demonstrate that the proposed addition, new building, or accessory structure shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

- (a) The light and air available ...
- (b) The privacy of use and enjoyment ...
- (c) The proposed addition or accessory structure, together with the original building, or the proposed new building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street and alley frontage; and
- (d) In demonstrating compliance with paragraphs ... from public ways.

5201.5 The Board of Zoning Adjustment may require ...

5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty- (40) day period established by Subtitle A § 211:

- (a) District Department of Transportation (DDOT);
- (b) Department of Public Works (DPW);
- (c) Metropolitan Police Department (MPD);
- (d) Fire and Emergency Medical Services Department (FEMS);
- (e) DC Water (WASA); and
- (f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RF-ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is deleted to read as follows:

5204 [RESERVED]

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

The title of Chapter 50, ACCESSORY BUILDINGS REGULATIONS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

CHAPTER 50 ACCESSORY BUILDING REGULATIONS FOR RA ZONES

Section 5005, SPECIAL EXCEPTION, of Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is deleted in its entirety.

The title of Chapter 51, ALLEY LOT REGULATIONS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

CHAPTER 51 ALLEY LOT REGULATIONS FOR RA-ZONES

Section 5107, SPECIAL EXCEPTION, of Chapter 51, ALLEY LOT REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is deleted in its entirety.

The title of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS (RA), of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

CHAPTER 52 RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RA ZONES

Section 5200, GENERAL PROVISIONS, of Chapter 52, RELIEF FROM REQUIRED DEVELOPMENT STANDARDS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

5200.1 The provisions of this chapter provide for special exception relief to the specified development standards and regulations as a special exception, subject to the provisions of each section and the general special exception criteria at Subtitle X, Chapter 9.

5200.2 Requested relief that does not comply with specific conditions or limitations of a special exception authorized by this chapter shall be processed as a variance pursuant to Subtitle X, Chapter 10.

The title of § 5201, ADDITION TO A BUILDING OR ACCESSORY STRUCTURE, of Chapter 52, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended to read as follows:

5201 SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS

Section 5201, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Chapter 52, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is amended by revising the existing subsections and by adding new §§ 5201.3 and 5201.7 and renumbering, to read as follows:

5201.1 For an addition to a principal residential building on a non-alley lot or for a new principal residential building on a substandard non-alley record lot as described by Subtitle C § 301.1, the Board of Zoning Adjustment may grant relief from the following development standards of this subtitle as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9.

- (a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- (b) Yards, including alley centerline setback;
- (c) Courts; and
- (d) Green Area Ratio.

5201.2 For a new or enlarged accessory structure to a residential building with one (1) principal dwelling unit on a non-alley lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Lot occupancy up to a maximum of seventy percent (70%) for all new and existing structures on the lot;
- (b) Yards, including alley centerline setback;
- (c) Courts; and
- (d) Green Area Ratio.

5201.3 For a new or enlarged building on an Alley Record lot, the Board of Zoning Adjustment may grant relief from the following development standards as a special

exception, subject to the provisions of this section and the general special exception criteria at Subtitle X, Chapter 9:

- (a) Yards, including alley centerline setback; and
- (b) Green Area Ratio.

5201.4 An application for special exception relief under this section shall demonstrate that the proposed addition, new building, or accessory structure, shall not have a substantially adverse effect on the use or enjoyment of any abutting or adjacent dwelling or property, specifically:

- (a) The light and air available ...
- (b) The privacy of use and enjoyment ...
- (c) The proposed addition or accessory structure, together with the original building, or the new building, as viewed from the street, alley, and other public way, shall not substantially visually intrude upon the character, scale, and pattern of houses along the street and alley frontage; and
- (d) In demonstrating compliance with paragraphs... from public ways.

5201.5 The Board of Zoning Adjustment may require ...

5201.6 This section shall not be used to permit the introduction or expansion of a nonconforming use, lot occupancy beyond what is authorized in this section, height, or number of stories, as a special exception.

5201.7 Where an application requests relief from the alley centerline setback requirements under this section, the Office of Zoning shall refer the application to the following agencies for their review and recommendations, to be filed in the case record within the forty- (40) day period established by Subtitle A § 211:

- (a) District Department of Transportation (DDOT);
- (b) Department of Public Works (DPW);
- (c) Metropolitan Police Department (MPD);
- (d) Fire and Emergency Medical Services Department (FEMS);
- (e) DC Water (WASA); and
- (f) If a historic district or historic landmark is involved, the Historic Preservation Office (HPO).

Section 5204, SPECIAL EXCEPTION CRITERIA ALLEY LOTS, of Chapter 52, SPECIAL EXCEPTION RELIEF FROM CERTAIN REQUIRED DEVELOPMENT STANDARDS, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is deleted to read as follows:

5204 [RESERVED]

V. Amendment to Subtitle X, GENERAL PROCEDURES

Subsection 1001.3 of § 1001, VARIANCE TYPES, of Chapter 10, VARIANCES, of Subtitle X, GENERAL PROCEDURES, is amended as follows:

1001.3 Examples of area variances are requests to deviate from:

(a) Requirements that ...

...

(d) Limitations on the alteration or conversion of certain structures on alley lots as stated in Subtitle D § 1610; Subtitle E § 1104; Subtitle F § 903; and Subtitle G § 1503; and

(e) Preconditions to the establishment of ... a more intense use.

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 July 3, 2020.

ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**NOTICE OF PROPOSED RULEMAKING****Z.C. CASE NO. 20-04****(Text Amendment – Subtitle K of Title 11 DCMR)****(Preferred Use Requirements of the Capitol Gateway Zone)**

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 Repl.), 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 [Zoning Regulations], to which all references are made unless otherwise specified).

The proposed text amendment clarifies the application of the preferred use requirements to properties with street frontage along Potomac Avenue, S.W., as follows:

- Subtitle K, Special Purpose Zones

Chapter 5, Capitol Gateway Zones – CG-1 through CG-7

§ 509.1 – adding Potomac Avenue, S.W. to the designated street list subject to preferred use requirements

§ 509.3 – adding a new ground floor use requirement for properties that front on Potomac Avenue, S.W., and clarifying text

Setdown

On January 31, 2020, the Office of Planning (OP) filed a petition proposing these changes which were designed to encourage uses that activate Potomac Avenue, S.W. OP filed a pre-hearing report on April 24, 2020, confirming the changes to the proposed text amendment due to consultation with the Office of Attorney General and the Department of Consumer and Regulatory Affairs as published in the public hearing notice.

At its February 10, 2020, public meeting, the Commission voted to grant's OP's request to set down the proposed text amendment for a public hearing.

ANC Report

Advisory Neighborhood Commission (ANC) 6D, which includes the area affected by the proposed text amendment, submitted a May 4, 2020, report that supported the proposed text amendment but raised two concerns:

- To encourage smaller retailers and services in ground floor spaces, the proposed amendment to § 509.3(b) might be more effective by substituting the current 0.5 FAR requirement with a seventy-five foot (75 ft.) maximum depth instead of the proposed minimum depth; and
- The current twenty-five percent (25%) limit on general or financial services, while useful for financial service uses, might also prevent general services uses needed by the new community being created at Buzzard Point, such as an urgent care facility.

Public Hearing

At its May 4, 2020, hearing, the Commission heard testimony from OP in support of the proposed text amendment and from the ANC's authorized representative. OP explained that the seventy-five foot (75 ft.) minimum depth was chosen as the best way of encouraging uses that activate Potomac Avenue, S.W. because this would provide flexibility to owners of property with very deep lots that would be disadvantaged by the 0.5 FAR limitation proposed by the ANC. OP acknowledged the ANC's concern about the twenty-five percent (25%) limit on general or financial services but asserted that this raised larger issues that should be considered as part of a broader text amendment and not be limited by the narrow scope of the proposed text amendment.

Great Weight" to the Recommendations of OP

The Commission must give "great weight" to the recommendations of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8. *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).

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

"Great Weight" to the Written Report of the ANCs

The Commission must give great weight to the issues and concerns raised in the written report of an affected ANC that was approved by the full ANC at a properly noticed public meeting pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. *Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016). The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." *Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).

The Commission concludes that OP satisfactorily addressed the two specific issues raised by the ANC report, including considering the ANC's broader concerns in a future text amendment with a larger focus. The Commission notes the ANC's general support for the text amendment.

At the close of the public hearing, the Commission agreed with OP's suggestion that the ANC's proposed changes were better addressed by a future broader text amendment and therefore voted to take **PROPOSED ACTION** and to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (May 4, 2020): **5-0-0** (Peter G. May, Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Michael G. Turnbull to **APPROVE**)

The complete record in the case, including the OP reports and transcript of the public hearing, 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*.

Title 11, ZONING REGULATIONS OF 2016, are amended as follows:

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 K, SPECIAL PURPOSE ZONES

Subsections 509.1 and 509.3 of § 509, USE REQUIREMENTS FOR DESIGNATED STREETS (CG), of Chapter 5, CAPITOL GATEWAY ZONES – CG-1 THROUGH CG-7, of Subtitle K, SPECIAL PURPOSE ZONES, are proposed to be amended as follows:

- 509.1 Preferred use requirements shall apply only to the following designated streets:
- (a) First Street, S.E.;
 - (b) Half Street, S.E.; ~~and~~
 - (c) First Street, S.W.; ~~and~~
 - (d) Potomac Avenue, S.W.**
- 509.2 Preferred uses of this section ...¹
- 509.3 Any new building ~~or structure~~ with frontage on the streets identified in Subtitle K § 509.1 shall **comply with the following:**
- (a) ~~Devote~~ **Except for buildings with street frontage on Potomac Avenue, S.W., buildings shall devote** not less than 0.5 FAR of the ground floor gross floor area to one (1) or more of the ~~designated use categories~~ **preferred uses;**
 - (b) For buildings with street frontage on Potomac Avenue, S.W., one (1) or more preferred uses must be provided on the ground floor for a minimum depth of seventy-five feet (75 ft.) from the building's Potomac Avenue frontage;**
 - ~~(b)~~ **(c)** Devote no more than twenty-five percent (**25%**) of the ground floor gross floor area ~~retail preferred use~~ requirement to service ~~general or financial~~ uses **(general or financial);**

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

- (e) ~~(d)~~ Devote one hundred percent (100%) of the building's street frontage along the designated street to ~~required~~ **preferred** uses except for space devoted to building entrances or required for fire control; **and**
- ~~(d)~~ **(e)** For good cause shown, the Zoning Commission may authorize interim occupancy **by a non-preferred use** of the preferred use space required by that this subsection ~~by a non-preferred use requires to be reserved for preferred uses~~ for up to five (5) years, provided that:
- (1) The ~~ground floor~~ **interim non-preferred use** space is suitably designed for future occupancy by ~~the a~~ preferred use ~~space~~; and
 - (2) The ~~ground floor area~~ **interim non-preferred use space** is designed to fully meet the applicable design regulations of Subtitle K § 510.

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.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Behavioral Health (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 § 7-1141.07, and the Department of Mental Health Establishment Act of 2001, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code §§ 7-1131.04 and 7-1131.12 (2018 Repl.)), hereby gives notice of the adoption, on an emergency basis, of a new Chapter 30 to be entitled “Free Standing Mental Health Clinic Certification Standards”, of Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The Department is responsible for coordinating and monitoring publicly funded mental health services for the residents of the District of Columbia. Currently the Department of Health Care Finance (DHCF), upon the recommendation of the Department, certifies and monitors Free Standing Mental Health Clinics (FSMHCs) to provide publicly-funded clinic-based mental health services under Title 29 DCMR, Chapter 8. The Department of Behavioral Health Establishment Act of 2013 and Department of Mental Health Establishment Act of 2001 granted the Department of Behavioral Health exclusive authority to certify and regulate FSMHCs providers upon promulgation of regulations in accordance with D.C. Official Code §§ 2-501, *et seq.* This rulemaking implements the statutory authority that established the Department as the monitoring and certifying agency for FSMHCs.

The chapter allows FSMHCs currently certified through DHCF to continue operating as long as they submit a new certification application to the Department within one hundred and twenty (120) calendar days of publication of this notice in the *D.C. Register* and become a certified FSMHC, in accordance with the rules set forth in this chapter, within two hundred and seventy (270) calendar days of publication of this notice in the *D.C. Register*. The proposed chapter also establishes the certification requirements for FSMHCs and services they provide.

This emergency rulemaking is necessary for the immediate preservation of the health, safety, and welfare of District residents by decreasing barriers to access for vital behavioral health services provided by FSMHCs. These actions are needed to ensure FSMHC services are delivered in accordance with the quality and oversight provisions set forth in this chapter.

This rule was adopted on June 12, 2020, and shall become effective on the date of publication of this notice in the *D.C. Register*. The emergency and proposed rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until October 10, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director gives notice of the 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*.

Title 22-A DCMR, MENTAL HEALTH, is amended by adding a new Chapter 30 to read as follows:

**CHAPTER 30 FREE STANDING MENTAL HEALTH CLINIC CERTIFICATION
STANDARDS**

- 3000 GENERAL PROVISIONS**
- 3001 ELIGIBLE CONSUMERS**
- 3002 CERTIFICATION PROCESS**
- 3003 DENIAL AND DECERTIFICATION PROCESS**
- 3004 CERTIFICATION REQUIREMENTS: GENERAL**
- 3005 STAFFING AND ADMINISTRATION**
- 3006 PROGRAM MANUAL**
- 3007 RECORDS**
- 3008 MEDICAL RECORDS**
- 3009 INDIVIDUAL PLAN OF CARE**
- 3010 REIMBURSEMENT**
- 3011 COMPLIANCE AND INTEGRITY PROGRAM**
- 3012 AUDITS AND REVIEWS**
- 3013 REPORTING UNUSUAL INCIDENTS**
- 3014 NOTICES OF INFRACTION**
- 3099 DEFINITIONS**

3000 GENERAL PROVISIONS

- 3000.1 Free Standing Mental Health Clinic (FSMHC) services are services provided by behavioral health practitioners within a clinic setting to eligible individuals (consumers) living in the community. The purpose of these rules is to set forth the requirements for:
- (a) Certification by the Department of Behavioral Health (Department) of organizations to provide Free Standing Mental Health Clinic (FSMHC) services;
 - (b) Eligibility of individuals to receive treatment at FSMHCs;
 - (c) Services to be provided at FSMHCs; and
 - (d) Administrative requirements for an FSMHC.
- 3000.2 A FSMHC shall be certified by the Department in accordance with the rules set forth in this chapter. No person or entity shall operate a FSMHC without a valid FSMHC certification.
- 3000.3 The transition timeline from the Department of Health Care Finance (DHCF) certification to Department of Behavioral Health certification is as follows:

- (a) Providers who were certified as an FSMHC by the Department of Health Care Finance (DHCF) prior to the publication of this rule in the *D.C. Register* may retain certification under DHCF for one hundred and twenty (120) calendar days.
 - (b) All DHCF certifications will expire one hundred and twenty (120) calendar days following publication of this rule in the *D.C. Register*.
 - (c) Any provider wishing to continue to provide services as a FSMHC must submit a complete certification application with the Department prior to the expiration of the one hundred and twenty (120) calendar day grace period and obtain full certification by the Department within two hundred and seventy (270) calendar days following publication of this rule in the *D.C. Register*.
 - (d) Failure to complete the certification process within that time frame will result in the loss of certification to provide FSMHC services.
 - (e) The Department will grant provisional certification to any existing FSMHC provider that submits a complete certification application prior to the expiration of the one hundred and twenty (120) calendar day grace period. The provisional certification will expire upon full certification under this chapter, the end of the two hundred and seventy (270) calendar day certification window, or upon denial or decertification in accordance with this chapter, whichever occurs first.
- 3000.4 An FSMHC shall meet the requirements of this chapter in order to obtain certification.
- 3000.5 Each certified FSMHC shall treat all consumers who meet the eligibility guidelines in § 3001.2 and require treatment. A FSMHC that seeks reimbursement for providing services to individuals eligible for local funding under § 3001.2 shall enter into a Human Care Agreement (HCA) with the Department prior to providing any services to those individuals.
- 3000.6 Upon certification, but prior to providing services, each FSMHC shall enter into a Medicaid Provider Agreement with DHCF. All Medicaid reimbursement for FSMHC services shall be through DHCF. All local dollar reimbursement for FSMHC services shall be through an HCA with the Department.
- 3000.7 Entities certified as an FSMHC in accordance with the requirements set forth in this chapter are eligible to apply for certification as a Health Home in accordance with the requirements set forth in 22-A DCMR §§ 2500, *et seq.*
- 3000.8 An FSMHC that is certified as a Health Home is eligible to receive reimbursement

for the provision of Health Home services in accordance with the requirements set forth in 29 DCMR §§ 6900, *et seq.*

3001 ELIGIBLE CONSUMERS

3001.1 Consumers eligible for Medicaid-funded FSMHC services must meet the following requirements:

- (a) Are enrolled in Medicaid, or be eligible for enrollment and have an application pending; and
- (b) Are children youths, or adults with a mental health condition or diagnosis, or at risk of developing a mental health diagnosis.

3001.2 Consumers eligible for locally-funded FSMHC services are those individuals who are not eligible for Medicaid or are not enrolled in any other third-party insurance program, except the D.C. Healthcare Alliance or Immigrant Children's Program, and who meet the following requirements:

- (a) Are bona fide residents of the District pursuant to D.C. Official Code § 7-1131.02(29) (2018 Repl.);
- (b) Are children, youth, or adult with a mental health condition or diagnosis, or at risk of developing a mental health diagnosis; and
- (c) For individuals eighteen (18) years of age and older, live in households with a countable income of less than two hundred percent (200%) of the federal poverty level, and for individuals under eighteen (18) years of age, live in households with a countable income of less than three hundred percent (300%) of the federal poverty level.

3001.3 Neither Medicaid nor the Department shall reimburse providers for FSMHC services provided to any consumer that does not meet the eligibility requirements set forth above.

3002 CERTIFICATION PROCESS

3002.1 Subject to the initial transition period in § 3000.3, FSMHC providers shall be certified in accordance with the requirements of this Section.

3002.2 Each applicant seeking certification as an FSMHC shall submit a certification application in the format required by the Department.

3002.3 The Department shall review the certification application upon receipt to determine if it is complete. If a certification application is incomplete, the Department shall return the incomplete certification application to the applicant. An incomplete

certification application shall not be regarded as a certification application. The Department shall deny any application that contains false representations or documents and the applicant shall be barred from resubmitting an application for twelve (12) months.

- 3002.4 Following the Department's review and acceptance of the documentation contained in the certification application, the Department shall determine whether the applicant's services and activities meet the certification standards described in this chapter. The Department shall schedule and conduct an on-site survey of the applicant's services to determine whether the applicant satisfies all certification standards.
- 3002.5 An FSMHC seeking recertification shall submit a recertification application at least ninety (90) calendar days prior to the termination of its current certification. A FSMHC that timely submits a renewal application may continue to provide FSMHC services until the Department takes action to renew or deny renewal of certification.
- 3002.6 The Department may also conduct an on-site survey at the time of certification renewal, or at any other time during the period of certification.
- 3002.7 Upon request, the Department shall be provided access to all FSMHC records, including but not limited to consumer records, claims and billing records, and FSMHC employee records, to verify compliance with certification standards, and may conduct interviews with FSMHC staff. All FSMHC shall cooperate with the Department's certification and compliance reviews.
- 3002.8 Certification as an FSMHC shall be for one (1) calendar year for new applicants, and two (2) calendar years for existing providers seeking renewal. Certification shall start from the date of issuance of certification by the Department, subject to the FSMHC's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to § 3003. The Certification shall specify the effective date of the certification and the date the certification expires.
- 3002.9 A Certification is not transferable from one organization to another.
- 3002.10 An applicant or FSMHC that fails to comply with these Department certification standards may receive a Statement of Deficiencies (SOD) from the Department. The SOD shall describe the areas of non-compliance, identify actions needed to bring operations into compliance, and establish a timeframe for the provider's submission of a written Corrective Action Plan (CAP). The Department may, at its discretion, proceed directly to denial or decertification without issuing an SOD when the deficiencies relate to the health or safety of consumers, or constitute a material misrepresentation, fraud, or abuse.

- 3002.11 When the Department issues a SOD, the applicant or FSMHC shall submit a CAP. The CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to the Department no later than (10) business days from the date of receipt of the Department's SOD.
- 3002.12 The Department shall notify the applicant or FSMHC whether the applicant or FSMHC's CAP is accepted within ten (10) business days after receipt. Failure to comply with the CAP shall be grounds for denial or decertification.
- 3002.13 The Department may issue certification after it verifies that the applicant or FSMHC has complied with its CAP and meets all the certification standards.
- 3002.14 These rules do not create any rights or entitlements. Certification as a FSMHC depends upon the Director's assessment of the need for additional providers(s) and availability of funds. No certifications shall be issued during the period of time that the Department has imposed a moratorium via published notice in the *District of Columbia Register*.
- 3002.15 The Director may deny or revoke certification if the applicant or FSMHC fails to comply with any certification standard, or if the FSMHC fails to maintain a provider agreement with DHCF.
- 3002.16 Certification shall be considered terminated and invalid if the FSMHC fails to apply for renewal of certification with a complete application ninety (90) calendar days prior to the expiration date of the current certification, voluntarily relinquishes certification or goes out of business.
- 3002.17 The FSMHC shall notify the Department within forty-eight (48) hours of any changes in its operation that affect the FSMHC's continued compliance with these certification standards, including changes in:
- (a) Ownership or control;
 - (b) Services;
 - (c) Key clinical staff, e.g., psychiatrist, therapists, or the FSMHC Clinical Administrator; and
 - (d) Any affiliation and referral arrangements.
- 3002.18 Each certification application shall contain the following information:
- (a) A list of the services to be provided, target population for its services and potential referral sources;

- (b) Identification of the psychiatrist(s) who will provide clinical and administrative direction, and provide direct services;
- (c) Personnel documentation including:
 - (1) Staff roster that includes for each individual the name, position, license/degree, full or part time status, and the services provided. Roster must include a full time Clinical Administrator, although one or more persons may share part time duties to equal full-time coverage.
 - (2) A signed contract for each clinical staff member, or a letter signed by each clinician that attests to his/her intention to become an employee with the organization. Documents must include the time frame of the commitment and the scope of service and responsibilities that will be expected as a condition of employment.
 - (3) Completed background checks on all personnel to ensure none of the individuals employed by, or affiliated with, the administration or governing board or body, if any, are excluded from participation in federal reimbursements or as a District contractor.
 - (4) Completed criminal background checks as outlined in D.C. Official Code § 44-551 and Title 22-B Chapter 47 for all unlicensed individuals employed or contracted with the FSMHC.
 - (5) Completed child protection registry check for all staff.
 - (6) A copy of the current license and resume for each licensed practitioner and a copy of the resume(s) for the designated full-time equivalent Clinical Administrator(s).
- (d) A program manual that contains all policies listed in § 3006;
- (e) An organizational chart that clearly indicates all clinical and administrative positions within the FSMHC.
 - (1) If the FSMHC is contained within a larger parent organization, the chart must clearly show how the FSMHC program fits administratively and clinically into the larger organizational structure; and
 - (2) The chart shall clearly define the agency structure, staff responsibilities, lines of authority, and clinical process flow.

- (f) A job description for the psychiatrist(s) that includes a description of how the psychiatrist(s) will provide clinical and administrative direction for all services provided by the FSMHC.

3003 DENIAL AND DECERTIFICATION PROCESS

3003.1 The Director may deny initial certification if the applicant fails to comply with any certification standard or the application fails to demonstrate the applicant's capacity to deliver high quality FSMHC services on a sustained and regular basis. The Director may also deny certification if the applicant proposes to operate a facility in an area already served by one or more providers. The Department's priority shall be to grant certification to applicants with the demonstrated capacity to deliver high quality FSMHC services that will address unmet needs of the behavioral health system.

3003.2 While applicants may make minor corrections and substitutions to their applications during the certification process, evidence of one or more of the following shall constitute good cause to deny the application for certification when the circumstances demonstrate deliberate misrepresentations, organizational instability, or the lack of preparedness or capacity to meet and sustain compliance with this chapter:

- (a) An incomplete application;
- (b) False information provided by applicant or contained in an application;
- (c) One or more changes to an organizational chart during the application process;
- (d) A facility that is inadequate in health, safety, size or configuration to provide FSMHC services consistent with high quality care and privacy standards;
- (e) The lack of demonstrated experience providing FSMHC services by the applicant's clinical leadership, practitioners, or staff;
- (f) An applicant's lack of financial resources to carry out its commitments and obligations under this chapter for the foreseeable future;
- (g) An applicant's failure to timely respond to the Department's requests for information; or
- (h) History of poor performance.

3003.3 Upon written request submitted by the applicant and received by the Department within fifteen (15) days of the certification denial, the Department shall provide an applicant an impartial administrative review of the decision. The Department shall conduct the administrative review to determine whether the certification denial

complied with §§ 3003.1-3003.2. Each request for an administrative review shall contain a concise statement of the reason(s) why the certification denial was in error. The Director shall issue a written decision within fifteen (15) days. The Director's decision is final and not subject to further appeal. An applicant, its principals, and successor in interests shall not be allowed to reapply for certification for twelve (12) months following the date of denial.

- 3003.4 The Department shall decertify existing providers who fail to comply with the certification requirements contained in this chapter. Evidence of one or more of the following shall constitute good cause to decertify:
- (a) An incomplete recertification application;
 - (b) False information provided by provider or contained in a recertification application;
 - (c) High staff turnover during the certification period demonstrating organizational instability;
 - (d) One or more documented violations of the certification standards during the certification period that evidence a provider's lack of capacity to meet and sustain compliance with this chapter;
 - (e) Claims audit error rate in excess of twenty-five percent (25%);
 - (f) Poor quality of care;
 - (g) A provider's lack of financial resources to carry out its commitments and obligations under this chapter for the foreseeable future; or
 - (h) Failure to cooperate with Department investigations or lack of timely response to information requests.
- 3003.5 Any written notice of revocation shall include the factual basis for the revocation, the effective date, and describe the FSMHC's right to request an administrative review.
- 3003.6 Within fifteen (15) business days of the date on the notice of revocation, the FSMHC may request an administrative review from the Director.
- 3003.7 Each request for an administrative review shall contain a concise statement of the reason(s) why the FSMHC asserts that it should not have its certification revoked and include any relevant supporting documentation.
- 3003.8 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.

3003.9 The Director shall issue a written decision and provide a copy to the FSMHC. If the Director approves the revocation of the FSMHC's certification, the FSMHC may, within fifteen (15) business days of the receipt of the Director's written decision, request a hearing under the D.C. Administrative Procedure Act, effective October 21, 1968 (Pub. L. 90-614, D.C. Official Code §§ 2-501 *et seq.*) The administrative hearing shall be limited to the issues raised in the administrative review request.

3003.10 Once certification is revoked, the FSMHC shall not be allowed to reapply for certification for a period of two (2) years following the date of the order of revocation. If an FSMHC reapplies for certification, the FSMHC must reapply in accordance with the established certification standards for the type of services provided, and show evidence that the grounds for the revocation have been corrected.

3004 CERTIFICATION REQUIREMENTS: GENERAL

3004.1 The purpose of certification is to ensure that FSMHC have the necessary qualifications and capacity to provide high quality mental health services to District residents.

3004.2 The FSMHC shall conform with Federal and local laws and regulations pertaining to health and fire safety, drug procurement and distribution, disposal of medications and controlled substances, building construction, maintenance and equipment standards, sanitation, and communicable and reportable diseases.

3004.3 The FSMHC setting shall have sufficient and appropriate office space to conduct individual and group interventions including intake, therapy, and assessment in such way that the confidentiality of the consumer is maintained and preserved.

3004.4 The FSMHC shall operate and provide services in accordance with all applicable provisions of the D.C. Human Rights Act, effective June 28, 1994 (D.C. Law 2-38; D.C. Official Code §§ 2-1401.01, *et seq.*).

3004.5 The FSMHC shall ensure that all services, as set forth in § 3010.8 of this chapter, are provided by or under the direction of a psychiatrist. Health Home services provided by a FSMHC shall be provided in accordance with requirements set forth in 29 DCMR §§ 6900 *et seq.* and 22-A DCMR §§ 2500 *et seq.*

3004.6 The FSMHC shall comply with its Medicaid Provider Agreement and provide services to all eligible consumers who have been determined by the independently licensed behavioral health practitioner to be clinically appropriate to receive services in an outpatient mental health setting.

3004.7 The FSMHC shall comply with all requirements of the Health Insurance Portability and Accountability Act (HIPAA) and its implementing regulations, and the D.C.

Mental Health Information Act (MHIA), effective March 3, 1979 (D.C. Law 2-136; D.C. Official Code § 7-1201.01).

3004.8 The FSMHC shall have the technological and administrative capacity to electronically submit claims to DHCF, the Department, and third-party payers.

3004.9 The FSMHC shall provide evidence of Commercial General Liability insurance coverage of at least one million (\$1,000,000) per occurrence limits, three million (\$3,000,000) aggregate; Bodily Injury and Property Damage including: premises-operations; broad form property damage, Products and Advertising Injury; contractual liability and independent providers. The provider shall maintain Completed Operations coverage for five (5) years following final acceptance of the work performed.

3005 STAFFING AND ADMINISTRATION

3005.1 Each FSMHC shall be staffed with licensed behavioral health practitioners who shall be professionally responsible for the provision of the mental health services delineated in its approved provider agreement.

3005.2 Each FSMHC shall have a psychiatrist on staff who is available on a regular and emergency basis and who shall be responsible for the provision of the mental health services provided by the FSMHC.

3005.3 Each participating FSMHC's approved organizational chart and program manual shall clearly show that its services will be provided by or under the direction of a psychiatrist. The psychiatrist shall spend as much time on site as necessary to ensure consumers are getting services in a safe and efficient manner in accordance with accepted standards of medical care. "Under the direction of a psychiatrist" means the psychiatrist shall:

- (a) Assure that the services provided are medically necessary; and
- (b) Assume professional responsibility for the services provided.

3005.4 The supervision and management of consumer care shall be the responsibility of the psychiatrist, and the psychiatrist shall be available for advice and consultation with the treating staff as often as necessary to ensure adequate supervision and quality of care.

3005.5 Each participating FSMHC shall have a full-time equivalent Clinical Administrator who shall have the authority and responsibility for the conduct of the affairs of the FSMHC, except for those matters committed by the provisions of this chapter to the authority of the psychiatrist. The Clinical Administrator shall be an independently licensed behavioral health practitioner.

3005.6 The Clinical Administrator's qualifications, authority, and duties shall be defined in writing.

3005.7 The organizational chart shall also show relationships between the clinic and outside entities, such as the following:

- (a) The Board of Directors;
- (b) Steering committees;
- (c) Advisory boards; and
- (d) Professional health or service association affiliations.

3006 PROGRAM MANUAL

3006.1 Each FSMHC shall have a current program manual that outlines all of its policies and procedures.

3006.2 The program manual shall, at a minimum, include, the following:

- (a) A mission statement reflecting the goals and mission of the Department;
- (b) The range of services to be provided, and a description of the service delivery model;
- (c) Fee schedules;
- (d) The population to be served;
- (e) Operational schedules;
- (f) Personnel policies as listed in § 3006.3;
- (g) Other policies as listed in § 3006.4;
- (h) Financial and record-keeping procedures;
- (i) Compliance and integrity program that complies with § 3011; and
- (j) Consumer rights statement that complies with the District of Columbia Mental Health Consumer Protection Act, effective December 18, 2001 (D.C. Law 14-56; D.C. Official Code § 7-1231.04).

3006.3 Minimum personnel administration requirements include the following:

- (a) Written job descriptions of all staff positions, procedures for employee

hiring, evaluations, grievances, and in-service training;

- (b) A minimum of one (1) hour per week of supervision for all behavioral health practitioners who deliver services with supervision, as described in § 3010.9, furnished by an independently licensed behavioral health practitioner designated as the supervisor. Supervision shall cover consumer related and other activities;
- (c) An up-to-date listing of professional staff licensure information; and
- (d) Written policies and procedures for emergency care.

3006.4 The program manual shall include the following policies:

- (a) Admission, Waitlist, Transfer, and Discharge Policy, which describes pre-admission, intake, screening, assessment, referral, transfer, and discharge procedures and inform all consumers of the right to freely choose the provider(s) from whom they will receive services;
- (b) Training Policy, which incorporates a written plan for staff development and organizational onboarding, including the training and performance improvement needs of all employees working in the FSMHC;
- (c) Anti-Discrimination Policy, which complies with the D.C. Human Rights Act;
- (d) Billing and Payment Policy, which requires the FSMHC provider to have the necessary operational capacity to verify the eligibility for Medicaid and other third-party payers, submit Medicaid and third-party claims timely and accurately, document information on services provided, and track payments received;
- (e) Care Coordination Policy, which establishes the roles and responsibilities of FSMHC staff in the coordination of care across behavioral health treatment and primary care treatment settings, especially in regards to transitions into or from more intensive levels of care or institutional settings;
- (f) Clinical Records Maintenance and Storage Policy, which at a minimum meets the requirements in § 3007 of this chapter;
- (g) Complaint and Grievance Policy, which establishes a well-publicized complaint and grievance system, including written policies and procedures for handling consumer, family, and practitioner complaints and grievances that conforms to the requirements in 22-A DCMR § 306;

- (h) Consent to Treatment Policy, which shall establish and adhere to policies and procedures for obtaining written informed consent to treatment from consumers which comply with applicable Federal and District laws and regulations, including 22-A DCMR Chapter 1;
- (i) Cultural Competence Policy, which shall define the set of values, principles, attitudes, policies and demonstrative behaviors that will enable the FSMHC to work effectively cross-culturally;
- (j) Disaster Recovery Plan, which shall establish policies and procedures for maintaining the security and privacy of protected health information and data. Each plan shall also stipulate back-up and redundant systems and measures that are designed to prevent the loss of data and information and to enable the recovery of data and information lost due to disastrous events;
- (k) Infection Control Policy, which shall establish policies and procedures governing infection control that comply with applicable Federal and District laws and regulations, including, but not limited to, the blood borne pathogens standard set forth in 29 CFR § 1910.1030;
- (l) Interpreter Policy, which, at a minimum, requires using a professional interpreter or interpretation service including qualified sign language interpreters in order to effectively communicate with deaf consumers and those with limited English proficiency;
- (m) Medication Storage and Administration Policy, which complies with applicable Federal and District laws and regulations regarding the purchasing, receipt, storage, distribution, dispensing, administering, return, and destruction of medications and require the FSMHC to maintain all medications and prescription blanks in a secured and locked area;
- (n) Consumer Choice Policy, which shall establish policies and procedures governing the means by which consumers shall be informed of the full choices of FSMHC providers and other mental health service providers available;
- (o) On-Call Policy, which shall require the FSMHC to adopt procedures for handling routine, urgent, and emergency situations that include referral procedures to local emergency departments and on-call arrangements for clinical staff and physicians. The policy shall describe the availability of timely access to face-to-face crisis support services, specify how the FSMHC provider will interact and coordinate services with Department-designated crisis and emergency services, and include procedures for triaging consumers who require crisis services or psychiatric hospitalization;

- (p) Staff Performance Review Policy, which shall require at a minimum annual evaluations of clinical and administrative staff performance that includes an assessment of clinical competence, as well as general organizational work requirements and an assessment of key functions as described in the job description;
- (q) Primary Care Provider Communication Policy, which shall establish policies and procedures governing communication with the consumer's primary care providers, including the FSMHC provider's interface with primary health care providers, managed health care plans, and other providers of mental health services. This policy shall also describe the FSMHC provider's activities which will enhance consumer access to primary health care and the coordination of mental health and primary health care services;
- (r) Quality Improvement ("QI") Policy, which shall describe the objectives and scope of its QI program and require provider staff, consumer and family involvement in the QI program. The QI program shall ensure and measure the following: access and availability of services; coordination of care with behavioral health treatment and primary care treatment settings; compliance with FSMHC certification standards; adequacy, appropriateness and quality of care; efficient utilization of resources; and consumer and family satisfaction with services. The FSMHC shall submit a written report to the Department annually on the outcomes identified in the QI program.
- (s) Consumer Privacy and Release of Information Policy, which shall outline how the FSMHC will protect consumer's health information and ensure compliance with the HIPAA and the MHIA. The program shall develop policies and procedures to disclose protected behavioral health information to other certified providers, primary health care providers, and other health care organizations when necessary to coordinate the care and treatment of its consumers. These procedures shall include entering into an agreement with the District's Health Information Exchange (HIE). The program shall advise each consumer of the program's notice of privacy practices that authorizes this disclosure to other providers and shall afford the consumer the opportunity to opt-out of that disclosure in accord with the MHIA. The program shall document the individual's decision;
- (t) Supervision and Peer Review Policy, which shall meet the requirements of § 3006.3(b) and require personnel files of clinical staff working under supervision to contain evidence that the Supervision Policy is observed;
- (u) Bullying Prevention Policy, which conforms to the requirements of 4 DCMR Chapter 15; and
- (v) Plan of Care Policy, which shall adhere to § 3009 of this chapter and follow

best industry practices.

3006.5 The Department shall review and approve each FSMHC provider's policies during the certification process. The FSMHC provider shall submit any policies that have been revised to the Department for review and approval during recertification.

3007 RECORDS

3007.1 In order to ensure that the treatment provided and reimbursed by the District is of the highest quality and fully meets all standards for certification and reimbursement, each participating FSMHC shall maintain consumer records and individual plans of care in a manner that will render them amenable to audit and review by authorized Federal, District, and Department personnel.

3007.2 The requirements of § 3007.1 shall comply with mandated access requirements in federal and local law.

3007.3 The participating FSMHC shall maintain, and make immediately available upon request by the Department and local Medicaid personnel, complete financial, claims, and medical records. Failure to cooperate may result in suspension of payment(s), referral to the Medicaid Fraud Control Unit, and termination of the provider's contract.

3007.4 All required financial and treatment records and information shall be properly maintained for a period of at least ten (10) years following the date of treatment for which a claim for reimbursement was made, or the date at which the consumer turns eighteen (18), or until an audit or litigation has been completed, whichever is the latest date.

3007.5 All medical records shall be retained in accordance with Federal and District law.

3008 MEDICAL RECORDS

3008.1 All phases of the consumer's treatment and related information shall be entered in the consumer's medical record. The FSMHC shall use electronic medical records. Each FSMHC shall participate in the District's Health Information Exchange (HIE). The Department may only waive the requirement to interface with the District's HIE during the initial period of certification.

3008.2 The medical records shall include, but are not limited to, the following:

- (a) Complete identification data, including Medicaid number and other third-party payer information;
- (b) Medical history, initial psychiatric evaluation, psychosocial assessment, and histories, and, if appropriate, social service and nursing care plans for

meeting current and future personal, financial, social, and nursing needs of the consumer;

- (c) A record of a screening for the presence of a co-occurring substance use disorder at intake and upon any treatment plan revision;
- (d) Individual plan of care, completed in accordance with § 3009 of this chapter;
- (e) Psychiatrist's, Physician's Assistant, or APRN's medication orders that shall include:
 - (1) The name of the drug(s);
 - (2) The dosage, route and frequency of administration;
 - (3) The quantity given;
 - (4) The number of refills; and
 - (5) The signature of the authorized staff rendering the service.
- (f) Documentation of all behavioral health-related medical treatment received during treatment at the FSMHC and appropriate encounter notes related to it. Consumers on medications should have, where indicated, routine blood or other examinations to detect irregularities duly recorded;
- (g) Encounter notes, to include sufficient written clinical documentation to support each therapy, service, activity, or session for which billing is made which, at a minimum, consists of:
 - (1) The specific service type rendered;
 - (2) The date, duration, and actual beginning and ending time (denoting a.m. or p.m.) during which the services were rendered;
 - (3) Name, title, credentials and signature of the person providing the services;
 - (4) A description of each encounter or service sufficient to document that the service was provided; and
 - (5) A description of the consumer's response to the intervention.

3009 INDIVIDUAL PLAN OF CARE

- 3009.1 Each FSMHC shall develop an individual plan of care for each consumer. Copies of individual plans of care shall be filed in consumer records.
- 3009.2 The plans of care shall include the following:
- (a) A written assessment of the consumer's current mental condition, co-occurring substance use, and physical co-morbidity;
 - (b) A diagnosis by a licensed behavioral health practitioners able to diagnose in accordance with his or her professional license, using the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) currently in use by the Department;
 - (c) The names of the behavioral health practitioner(s) involved in the approval and direction of the plan of care;
 - (d) The treatment goals, strengths, challenges, objectives, and interventions;
 - (e) The name and title of other staff who shall participate in carrying out the plan of care; and
 - (f) The independently licensed behavioral health practitioner's certification, by dated signature: (1) of the medical necessity for all mental health services detailed in the plan, and (2) that outpatient treatment is an appropriate level of care for the identified consumer.
- 3009.3 The plan of care shall be reviewed and amended, as needed in case of a change in the consumer's status and at least annually by the independently licensed behavioral health practitioner. The consumer's continuing need for treatment and medical necessity of treatment shall be clearly documented. The independently licensed behavioral health practitioner shall certify by his or her signature:
- (a) That the review occurred;
 - (b) The medical necessity for all mental health services detailed in the plan; and
 - (c) That outpatient treatment is an appropriate level of care for the identified consumer.
- 3009.4 The Consumer, and/or the parent or guardian, if applicable, shall sign his or her plan of care.

3010 REIMBURSEMENT

- 3010.1 In order to be reimbursed, FSMHC services shall be medically necessary, reasonable in duration, and in full compliance with this chapter. A participating FSMHC shall agree to accept as payment in full the amount determined by DHCF or the Department, as appropriate, as the fee for the authorized services provided to Medicaid consumers and other eligible consumers for whom the District of Columbia is reimbursing the provider for services. No additional charge may be made to the consumer, any member of the family, or to any other source.
- 3010.2 A participating FSMHC shall agree to bill any and all other known third-party payers prior to billing Medicaid or the District.
- 3010.3 The payment and satisfaction of any FSMHC claim will be from federal and District funds. Any false claims, statements, documents, or concealment of material facts by the FSMHC shall be referred to the DHCF Office of Program Integrity and considered grounds for denial of claims, recoupment of false claims previously paid, and decertification. These remedies are in addition to any other remedies that the law may provide for false claims.
- 3010.4 DHCF and the Department shall establish rates and reimburse for only those services outlined in § 3010.8 and provided under the direction of a psychiatrist. Reimbursement for Medicaid-funded and locally-funded FSMHC services shall be at the rate contained in the District of Columbia Medicaid fee schedule available online at www.dc-medicaid.com. 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 29 DCMR § 988. Health Home services provided by a FSMHC shall be provided in accordance with the requirements set forth in 29 DCMR §§ 6900 *et seq.* and 22-A DCMR §§ 2500 *et seq.*
- 3010.5 Treatment-related services, such as information and referral services, charting, internal case conferences, transportation, person and agency conferences, and similar charges shall not be reimbursable under these rules. FSMHCs certified as a Health Home shall be reimbursed for the provision of Health Home services in accordance with the requirements set forth in 29 DCMR §§ 6900 *et seq.* and 22-A DCMR §§ 2500 *et seq.*
- 3010.6 Recreational therapy shall not be reimbursed as an FSMHC service.
- 3010.7 Excluding Health Home services provided in accordance with requirements set forth in 29 DCMR §§ 6900 *et seq.* and 22-A DCMR §§ 2500 *et seq.*, a participating FSMHC may be reimbursed for no more than one individual therapy session, one group therapy session, and one psychiatrist visit per person on the same day. Any other service combinations require prior approval from the Department before service delivery.

3010.8 The following services shall be reimbursable if the independently licensed behavioral health practitioner certifies that the services are medically necessary, a current plan of care outlines the required services, and the services are provided by a behavioral health practitioner acting within applicable Federal and District laws and regulations:

- (a) Diagnostic Evaluation - behavior assessment procedures used to identify the psychological, behavioral, emotional, cognitive, and social factors important to the treatment planning process;
- (b) Psychiatric Diagnostic Evaluation - integrated biophysical assessments, including history, mental status, and recommendations;
- (c) Comprehensive Psychological Testing - up to five (5) hours of psychometric and projective tests with a written report done under the direction of a psychologist;
- (d) Therapy:
 - (1) Individual Psychotherapy - verbal, drug augmented, or other therapy methods provided by a behavioral health practitioner in a face-to-face involvement with one (1) consumer to the exclusion of other consumers and duties. Session length is pursuant to the Current Procedural Terminology (CPT) Manual (most current edition);
 - (2) Family therapy - therapy with or without the consumer and one (1) or more family members present. Verbal or other therapy methods by a behavioral health practitioner in a personal involvement with the consumer and family to the exclusion of other consumers and duties. Session length is pursuant to the CPT Manual (most current edition). The clinic may bill Medicaid only for the Medicaid consumer; and
 - (3) Group therapy - verbal or other therapy methods provided by a behavioral health practitioner in face-to-face involvement with at least three (3) and no more than twelve (12) consumers. Session length is pursuant to the Current Procedural Terminology (CPT) Manual (most current edition);
- (e) Prescription visits - a visit with a physician for review and evaluation of the medication history of the consumer and the writing or renewal of prescriptions as necessary. A minimum of ten (10) minutes shall be allotted to the visit; and
- (f) Family conferences - meeting with the family or other significant persons (school, court, or other agency officials) to interpret or explain: medical,

psychiatric, or psychological examinations and procedures; other accumulated data; and advice on how to assist the patient. A minimum of fifty (50) minutes shall be allotted to personal involvement with the family or other significant persons. The clinic may bill Medicaid only for the Medicaid patient.

3010.9 Behavioral health practitioners for FSMHC are described below:

	INDEPENDENTLY LICENSED BEHAVIORAL HEALTH PRACTITIONER	LICENSED BEHAVIORAL HEALTH PRACTITIONER AND OTHER BEHAVIORAL HEALTH PRACTITIONER WITH SUPERVISION
Diagnostic Evaluation	<ul style="list-style-type: none"> • Psychiatrist • Psychologist • Licensed Independent Clinical Social Worker (LICSW) • Advance Practice Registered Nurse (APRN) • License Professional Counselor (LPC) • License Marriage and Family Therapist (LMFT) 	<ul style="list-style-type: none"> • License Graduate Social Worker (LGSW) • License Graduate Professional Counselor (LGPC) • Licensed independent Social Worker (LISW) • Registered Nurse (RN) • Physician Assistant • Psychology Associate • Students, interns, or residents for any of the allowed licenses for examination and assessment
Psychiatric Diagnostic Evaluation	<ul style="list-style-type: none"> • Psychiatrist • APRN 	<ul style="list-style-type: none"> • Physician Assistant
Comprehensive Psychological Testing	<ul style="list-style-type: none"> • Psychologist 	<ul style="list-style-type: none"> • Psychology Associate • Psychology student/intern
Therapy	<ul style="list-style-type: none"> • Psychiatrist • Psychologist • LICSW • APRN • LPC • LMFT 	<ul style="list-style-type: none"> • LGSW • LGPC • LISW • Psychology Associate • Students, interns, or residents for any of the allowed licenses for therapy
Prescription Visits	<ul style="list-style-type: none"> • Psychiatrist • APRN 	<ul style="list-style-type: none"> • Physician Assistant
Family Conferences	<ul style="list-style-type: none"> • Psychiatrist • Psychologist 	<ul style="list-style-type: none"> • LGSW • LGPC

	<ul style="list-style-type: none"> • LICSW • APRN • LPC • LMFT 	<ul style="list-style-type: none"> • LISW • RN • Psychology Associate • Students, interns, or residents for any of the allowed licenses for therapy
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3011 COMPLIANCE AND INTEGRITY PROGRAM

3011.1 Each provider shall establish and adhere to a plan for ensuring compliance with the Medicaid program and this regulation. Each provider shall submit its Corporate Compliance Plan and any modifications thereto to the Department as part of the certification or recertification process. At a minimum, the plan shall:

- (a) Designate an officer or director with responsibility and authority to implement and oversee the operation of the Corporate Compliance Plan;
- (b) Require initial, and, thereafter, quarterly exclusion checks on all employees to ensure no individual is excluded from participation in a federal health care program as found on the Department of Health and Human Services “List of Excluded Individuals/Entities” (<http://oig.hhs.gov/fraud/exclusion.asp>) or the General Services Administration “Excluded Parties List System” (<http://www.wpls.gov>) or the “District of Columbia Excluded Parties List” (<http://ocp.dc.gov/DC/Excluded+Parties+List>) maintained by the District’s Debarment and Suspension Panel;
- (c) Require that all officers, directors, managers, and employees enforce its provisions and receive annual compliance training;
- (d) Include procedures designed to prevent and detect potential or suspected false claims, abuse or fraud in the administration and delivery of FSMHC services;
- (e) Include procedures for the confidential reporting of violations of the Corporate Compliance Plan to the Department, including procedures for the investigation and follow-up of any reported violations;
- (f) Require that the FSMHC conduct annual internal audit using RAT-STATS, a statistical software package provided free of charge by the U.S. Department of Health and Human Services Office of the Inspector General, or other comparable software program. The audit shall utilize statistically valid and random sampling and identify any overpayments. The error rate for each audit shall be calculated as provided in § 3012;

- (g) Require the FSMHC provide a copy of the internal audit and all supporting documents to the Department and to repay any overpayments identified in the provider's internal audit within sixty (60) days;
- (h) Ensure that the identities of individuals reporting suspected violations of the Corporate Compliance Plan are protected and that individuals reporting suspected violations, fraud, or abuse are not retaliated against;
- (i) Require that confirmed violations of the compliance plan be reported to the Department within twenty-four (24) hours of confirmation;
- (j) Require any confirmed or suspected fraud and abuse under District or Federal law or regulation be reported to the Department;
- (k) Require cooperation with Department investigations of unusual incidents, consumer deaths related to suicide, and the death of a child or youth consumer; and
- (l) Require data reporting regarding key performance indicators published annually in the *D.C. Register*.

3012 AUDITS AND REVIEWS

- 3012.1 This Section sets forth the requirements for audits and reviews of FSMHC services and provider records. The Department, DHCF, and the D.C. Office of the Inspector General Medicaid Fraud Control Unit, among other entities, may conduct audits and reviews of FSMHC operations, including billing and treatment. The Department and DHCF shall perform regular audits of FSMHC providers to ensure that payments are consistent with efficiency, economy, quality of care, and are made in accordance with Federal and District conditions of payment, including programmatic duties, documentation, and reimbursement requirements under this chapter.
- 3012.2 The audit process shall utilize statistically valid sampling methods when the audit is based on claims sampling. The audit process may review all claims by type, time-period, and/or other criteria established by the Department, DHCF, or other entities. Statistically valid and commonly accepted standards methods for calculating overpayments will be followed.
- 3012.3 If DHCF or the Department denies a Medicaid claim during an audit, DHCF or the Department shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:

- (a) DHCF and the Department shall issue a joint Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review;
- (b) The FSMHC shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
- (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
- (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
- (e) Within fifteen (15) days of receipt of the FNMOR, the FSMHC may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
- (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.

3012.4

If DHCF or the Department denies a locally-funded claim during an audit, DHCF or the Department shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:

- (a) The Department shall issue an overpayment demand letter which sets forth the reasons for the recoupment, including specific reference to the particular sections of the statute, rule, or provider agreement, the amount to be recouped and the procedures for requesting an Administrative review;
- (b) The FSMHC shall have thirty (30) days from the date of the demand letter to request an Administrative Review and submit documentary evidence and written argument to DBH against the proposed action;
- (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;
- (d) The Department shall conduct an Administrative Review conducted by a group of independently licensed clinicians who have not previously examined the claims under review. The DBH Director will then make a

final determination regarding the claims under review;

- (e) The Department shall mail a written determination relative to the Administrative Review not later than ten (10) days from the date of the written request for review. Any recoupment remaining after the Administrative Review will begin thirty (30) days following the date of the written determination;
- (f) Within fifteen (15) days of receipt, the FSMHC may appeal the written determination by filing a written notice of appeal with OAH; and
- (g) Filing an appeal with the OAH shall not stay any action to recover any overpayment.

3012.5 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested. DHCF or the Department shall retain the right to conduct announced or unannounced audits or reviews at any time and audits or reviews.

3012.6 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the auditing official.

3012.7 The failure of a provider to release or to grant access to program documents and records to auditors in a timely manner, after reasonable notice by DHCF or the Department to the provider to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement. This provision in no way limits DHCF's ability to terminate any Medicaid Provider Agreement for any other reason, or for the Department to terminate an HCA for any other reason.

3012.8 As part of the audit process, providers shall grant access to necessary records to verify compliance with certification standards and conditions of payment, including but not limited:

- (a) FSMHC financial records;
- (b) Statistical data to verify costs previously reported;
- (c) Program documentation;
- (d) A record of all service authorization and prior authorizations for services;
- (e) A record for all request for change in services;

- (f) Any records listed in §§ 3008 and 3009 in addition to any other records relating to the adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider(s); and
- (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of FSMHC services.

3012.9 Nothing in this rule affects a provider's independent legal obligation under this chapter and Federal and District law to implement and enforce an internal auditing program that self-identifies overpayments and reimburses DHCF or other payers within sixty (60) days of discovery.

3013 REPORTING UNUSUAL INCIDENTS

3013.1 An FSMHC shall immediately notify the Department of any unusual incident that may adversely affect the health, safety, or welfare of any enrolled consumer by submitting a completed Department Unusual Incident Report form to the Department's Division of Incident Management and Investigation email address.

3013.2 An FSMHC shall also provide a copy of the completed Unusual Incident Report form provided to the Department to the consumer's parent(s) or guardian(s) of each child or youth affected by the unusual incident.

3013.3 Unusual incidents may include, but are not limited to, the following:

- (a) Death of a person occurring at the FSMHC;
- (b) Death of a consumer related to suicide;
- (c) Death of a child or youth in treatment at the FSMHC;
- (d) Injury to or illness of any consumer that occurs while the consumer is at the FSMHC that requires hospitalization or emergency medical treatment;
- (e) Damage to the FSMHC or to any FSMHC vehicle or equipment that interferes with the capability of the provider to protect the health, safety and welfare of the children and adults at the FSMHC;
- (f) Outbreak of or a single occurrence of communicable disease at the FSMHC that is required to be reported to DC Health in accordance with Title 22 of the District of Columbia Municipal Regulations;

- (g) Unauthorized departure of an enrolled child or youth consumer or any circumstances under which a child or youth consumer is deemed unaccounted for or missing;
- (h) Any traffic accident involving a vehicle rented, owned, maintained, or contracted by the FSMHC and in which consumers were transported at the time of the accident;
- (i) Any adverse or negative action that the provider takes against an employee, volunteer, or household member related to any substantiated crime against a consumer; and
- (j) Any other incident at the FSMHC that requires a response by emergency service personnel, such as police, fire, ambulance, or poison control.

3013.4 In the case of a traffic accident or an incident involving perceived or actual criminal activity, the FSMHC shall also file a report with the appropriate law enforcement authorities.

3013.5 Any FSMHC staff member who knows or reasonably believes that an enrolled child consumer is, has been, or is in immediate danger of being abused or neglected shall, as required by the District of Columbia Prevention of Child Abuse and Neglect Act of 1977, effective September 23, 1977 (D.C. Law 2-22; D.C. Official Code §§ 4-1321.01 *et seq.*), make or cause to be made an immediate oral report to:

- (a) The Child Protective Services Division of the Child and Family Services Administration (CFSA), via the CFSA twenty-four (24) hour Child Abuse and Neglect Hotline; and
- (b) The Metropolitan Police Department (MPD).

3013.6 Any FSMHC staff member who knows or reasonably believes that an enrolled adult consumer is, has been, or is in immediate danger of being abused or neglected shall, as required by the Adult Protective Services Act of 1984, effective March 14, 1985 (D.C. Law 5-156; D.C. Official Code §§ 7-1901, *et seq.*), make or cause to be made an immediate oral report to:

- (a) Adult Protective Services in the Department of Aging and Community Living (DACL), via the twenty-four (24) hour Adult Protective Services Hotline; and
- (b) MPD.

3013.7 In the unusual incident reports required by this section, the staff member shall include:

- (a) The name, age, sex, and household address of the consumer who is the subject of the report;
- (b) A statement that the consumer who is the subject of the report is receiving services at the FSMHC;
- (c) The name, address, and telephone number of the FSMHC;
- (d) To the extent known, the name, age, and sex of each sibling or child living in the same household as the consumer who is the subject of the report;
- (e) To the extent known, the name, age, and sex of each parent, guardian, or other caretaker of the consumer;
- (f) The information that led the staff member to suspect that the consumer who is the subject of the report is being, or is at risk of being, abused or neglected, the nature and extent of the perceived or actual abuse or neglect, and the identity of the person(s) responsible for it;
- (g) Any other information that may be helpful in establishing whether the consumer who is the subject of the report is being, or is at risk of being, abused or neglected, the cause of the suspected abuse or neglect, and the identity of the person(s) responsible for it;
- (h) The name, title, or occupation, and contact information of the staff member making the report;
- (i) Any actions taken by the staff member or the FSMHC concerning the consumer in response to the situation; and
- (j) Any other information required by law.

3014 NOTICES OF INFRACTION

3014.1 The Department may issue a Notice of Infraction (NOI) for any violation of this chapter. The fine amount for any NOI issued under this chapter shall be as follows:

- (a) For the first offense five hundred dollars (\$500);
- (b) For the second offense one thousand dollars (\$1,000);
- (c) For the third offense two thousand dollars (\$2,000); and
- (d) For the fourth and subsequent offenses for thousand dollars (\$4,000).

3014.2 The administrative procedure for the appeal of an NOI issued under this chapter shall be governed by 16 DCMR §§ 3100 *et seq.*

3099 DEFINITIONS

3099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Clinical Administrator – an independently licensed behavioral health practitioner, as defined in this chapter, who has the authority and responsibility for the conduct of the affairs of the FSMHC, except for those matters committed by the provisions of this chapter to the authority of the psychiatrist.

Consumer – a person eligible to receive FSMHC services as defined in this chapter.

Free Standing Mental Health Clinic – a formally organized psychiatric clinic furnishing psychiatric services, under the direction of a physician (psychiatrist) who is licensed in the District of Columbia, in a facility not administered by a hospital, but organized and operated to provide mental health services on an outpatient basis.

Independently Licensed Behavioral Health Practitioner – any person who is an APRN, LICSW, LMFT, LPC, psychiatrist, or psychologist, as defined in this chapter.

Medical history – a record of the following information, at a minimum, about the consumer:

- (a) Major surgical procedures that have been performed on the consumer and any related complications;
- (b) Any present, past, or recurring diseases; and
- (c) The consumer’s current medical condition and status, including the names of physician(s) rendering current medications or other ongoing treatments to the consumer.

Licensed Behavioral Health Practitioners – the following practitioners are licensed behavioral health practitioners for the purposes of this chapter.

- (a) “**APRN**” – a person licensed as an advanced practice registered nurse in accordance with applicable District laws and regulations, and who has psychiatry as a specialty area of practice, works in a collaborative protocol with a psychiatrist, or demonstrates proficiency in mental health by having at least five (5) years of experience in psychiatric care delivery.
- (b) “**LGPC**” – a person licensed as a graduate professional counselor in accordance with applicable District laws and regulations.

- (c) “**LGSW**” – a person licensed as a graduate social worker in accordance with applicable District laws and regulations.
- (d) “**LICSW**” – a person licensed as an independent clinical social worker in accordance with applicable District laws and regulations.
- (e) “**LISW**” – a person licensed as an independent social worker in accordance with applicable District laws and regulations.
- (f) “**LMFT**” – a person licensed as a marriage and family therapist in accordance with applicable District laws and regulations.
- (g) “**LPC**” – a person licensed as a professional counselor in accordance with applicable District laws and regulations.
- (h) “**RN**” – a person licensed as a registered nurse in accordance with applicable District laws and regulations with training and experience in mental health.
- (i) **Physician’s Assistant** – a person licensed as a physician’s assistant in accordance with applicable District laws and regulations, and who works under supervision of a psychiatrist.
- (j) **Psychiatrist** – a physician licensed in accordance with applicable District laws and regulations who has completed a residency program in psychiatry accredited by the Residency Review Committee for Psychiatry of the Accreditation Council for Graduate Medical Education and is eligible to sit for the psychiatric board examination.
- (k) **Psychologist** – a person licensed as a psychologist in accordance with applicable District laws and regulations.
- (l) **Psychology Associate** – a person registered to practice as a psychology associate under the supervision of a licensed psychologist in accordance with applicable District laws and regulations.

Medication Orders – sequential records of all medications prescribed, dispensed, or administered by appropriate clinic staff.

Mental Health Condition – having or being at risk of having a diagnosable mental or emotional disorder which impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the DSM-5 or the ICD-10 equivalent (or any subsequent revisions), with the exception of intellectual disability, other developmental disorders, substance use disorders or seizure disorders, unless those exceptions co-occur with

another diagnosable mental illness.

Provider – a free standing mental health clinic certified by the Department of Behavioral Health as eligible to provide services under this chapter.

Residents of the District – persons who voluntarily live in the District and have no intention of presently removing themselves from the District. The term “residents of the District” shall not include persons who live in the District solely for a temporary purpose. Residency shall not be affected by temporary absence from and the subsequent return or intent to return to the District. Residency shall not depend upon the reason that persons entered the District, except to the extent that it bears upon whether they are in the District for a temporary purpose.

All persons desiring to comment on the subject matter of this 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.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FIFTH 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 intent to adopt, on an emergency basis, a revised Chapter 63 (Certification Standards for Substance Use Disorder Treatment and Recovery Providers), to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations (“DCMR”).

The original Chapter 63 substance use disorder (“SUD”) regulation was published in 2015. Since 2015, the Department and its provider network identified areas where the regulation could be improved for the benefit of quality of care, accountability and efficiency. Throughout 2019, the Department published a series of emergency and proposed rulemakings to implement those improvements. Specifically, the first emergency rulemaking was adopted and became effective on April 5, 2019. It was published in the *D.C. Register* on August 2, 2019 at 66 DCR 10010. On August 2, 2019, the second Emergency rulemaking was adopted and became effective. It was published in the *D.C. Register* on September 13, 2019 at 66 DCR 12192. On November 26, 2019, the third Emergency rulemaking was adopted and became effective. It was published in the *D.C. Register* on December 27, 2019 at 66 DCR 16593. Most recently, the Fourth Emergency and Proposed rulemaking was adopted and became effective on February 18, 2020, and was published in the *D.C. Register* on February 28, 2020 at 67 DCR 2252. It is set to expire on June 17, 2020.

During the rulemaking process, the Department, in partnership with the Department of Health Care Finance (“DHCF”), submitted a Section 1115 Behavioral Health Transformation Demonstration Program (“demonstration program”) application to the Centers for Medicare and Medicaid Services (“CMS”) on June 3, 2019, and received federal approval on November 6, 2019. The goals of this demonstration program are to increase access to a broader continuum of behavioral health services for District Medicaid beneficiaries, advance the District’s goals in the Opioid Strategic Plan, *Live.Long.DC.*, and support movement towards a more person-centered system of physical and behavioral health care.

Under the demonstration program, the District received authority to provide new behavioral health services reimbursed by the Medicaid program between January 1, 2020 and December 31, 2024. To comply with the demonstration project requirements, the Department made broad revisions to the existing Chapter 63 regulation to align the regulatory efforts with the District’s transformation efforts under the demonstration program. Additional changes to the regulation are required to implement additional services under the demonstration program. These rules are also proposed in conjunction with an amendment to the District of Columbia Medicaid State Plan being proposed by DHCF. The State Plan Amendment (SPA) requires approval by the CMS. These changes will become effective upon publication or the effective date determined by CMS contingent in its approval of the corresponding SPA, whichever is later.

The key changes to this chapter from the 4th Emergency and Proposed Rulemaking are highlighted in the chart below:

Section Number	Description of Change	Reasoning
6305	Add more detail to what constitutes good cause to decertify	Remove ambiguous language
6318	Add language regarding Certified Food Handler requirements	Provide clarity on requirements for food prepared on- versus off-site
6329	Remove reference to “physical examination” and add reference to “medical triage”	Clarify intention that the appropriate personnel be able to conduct medical triage
6339	Add timeframes for how often a Plan of Care should be updated	Provide clear expectations related to how often a Plan of Care needs updating and highlight the difference by level of care
6339	Add requirement for outpatient Level OTP and Levels 1, 2.1, and 2.5 providers to assess clients for interest in and potential eligibility for Supported Employment services in accordance with the requirements established in 22-A DCMR Chapter 37	Ensure that all clients in outpatient levels of care who could benefit from Supported Employment services are screened and referred for them
6339	Update the Plan of Care elements	To align Plan of Care elements with that included in Chapter 34 (Mental Health Rehabilitation Services Provider Certification Standards)
6350	Add other sources of income to eligibility requirements for Environmental Stability	Allow clients who receive income from a non-employment source to access Environmental Stability services
6334, 6335, 6336, 6337,	Add discharge planning language for residential levels of care	Ensure that clients are discharged from residential settings with appropriate follow-up measures and necessary care in place
6337, 6339, 6340, 6341, 6342	Add to list of Qualified Practitioners of respective service	To align with proposed changes to the Adult Substance Abuse Rehabilitative Services (ASARS) Medicaid State Plan Amendment

In response to the Notice of Fourth Emergency and Proposed Rulemaking, the Department received comments from La Clinica del Pueblo, the SUD Providers Coalition and Amerihealth Caritas DC. The comments and any changes are addressed below.

Two commenters stated that the requirements under § 6329.1 that all certified providers offer Intake and Assessment services as a core responsibility is unreasonably burdensome, as it presents financial, staffing, and logistical challenges. The Department did not agree with this comment. This section was originally amended to ensure that clients are able to visit any Department-certified SUD treatment provider and receive same-day assessment and placement in the appropriate level of care. This section creates a more accessible SUD network, which aligns with the Department's mandate to create a more person-centered system of care under the demonstration program and *Live.Long.D.C.* The Department will review waivers to this requirement pursuant to § 6304 on a case by case basis.

A commenter stated that the requirement under § 6308.4 that providers offer services at least once a month on a Saturday for four (4) hours is unreasonably financially burdensome. The Department does not agree with this comment. This section was amended to ensure clients have adequate access to core services on different days and at a variety of times, which create a more accessible and person-centered system of care as required by the demonstration program and *Live.Long.D.C.* The Department will review waivers to this requirement pursuant to § 6304 on a case by case basis.

A commenter requested that the Department clarify some of the bases of decertification under § 6305.3, namely: (1) an incomplete recertification application; (2) false information provided by a provider or contained in a recertification application; (3) high staff turnover during the certification period demonstrating organizational instability; and (4) poor quality of care. The Department does not agree that terms (1) and (2) require clarification. However, the Department agrees that terms (3) and (4) are ambiguous, and has amended this section by clarifying term (3) and deleting term (4).

A commenter requested that the Department clarify the requirements for providers preparing food on-site as compared to those sourcing food off-site under §6318.3. The Department acknowledges the distinction, and added clarifying language.

A commenter stated that the requirements in §§ 6329.3 and 6339.11 are inconsistent and confusing. The Department agrees and has amended these sections to clarify its intention that the appropriate personnel be able to conduct medical triage as defined in the chapter.

A commenter stated that the Plan of Care requirements in § 6339.6 are overly prescriptive and fail to align with the capacities of DBH's electronic health record for SUD services, "DataWITS." The Department agrees and has aligned this section with the Plan of Care requirements for Mental Health Rehabilitation Services Providers found in 22-A DCMR Chapter 34, which offer a framework for Plan of Care development versus specific requirements. The Department also agrees to address person-centered planning and plan of care development via department policy at a later date.

A commenter requested that the Department add a section allowing the Department to waive certification requirements for out-of-state residential treatment providers if they meet an equivalent

level of certification with their respective state behavioral health agencies or have national accreditation status. The Department does not agree that this language is appropriate. The Department may certify out of state providers under this chapter. Further, this chapter allows for providers certified or accredited by a national body to apply for partial deemed status. However, the interest of District residents are best served by continuing to ensure that all certified SUD providers in the district meet the requirements of this chapter.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents. This demonstration program was conceived, in large part, as a response to the crisis unfolding in the District relating to opioid use and abuse. To meet the deadline required by requirements of this demonstration, the Department requires the Emergency and Proposed Rules to begin the next phase of work immediately.

The emergency rulemaking was adopted and became effective on June 17, 2020. The emergency rules will remain in effect for one hundred twenty (120) days after the date of adoption, October 15, 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 63, CERTIFICATION STANDARDS FOR SUBSTANCE USE DISORDER TREATMENT AND RECOVERY PROVIDERS, of Title 22-A DCMR, MENTAL HEALTH, is repealed and replaced by a new Chapter 63 to read as follows:

**CHAPTER 63 CERTIFICATION STANDARDS FOR SUBSTANCE USE
DISORDER TREATMENT AND RECOVERY PROVIDERS**

6300 GENERAL PROVISIONS

- 6300.1 The Department of Behavioral Health (“Department”) is the Single State Agency (“SSA”) responsible for the development and promulgation of rules, regulations, and certification standards for prevention and treatment services related to the abuse of alcohol, tobacco, and other drugs (“ATOD”) in the District of Columbia (“District”). The Department is responsible for the inspection, monitoring, and certification of all District of Columbia substance use disorder (“SUD”) treatment and recovery support service providers.
- 6300.2 The purpose of these rules is to establish service and certification requirements for operating a SUD treatment or recovery program in the District of Columbia.
- 6300.3 Providers seeking certification shall specify the age ranges of the clients they will be serving. Providers serving youth shall be known as Adolescent Substance Abuse Treatment Expansion Program (“ASTEP”) providers.
- 6300.4 The SUD treatment framework in this chapter is based on levels of care established by the American Society of Addiction Medicine (“ASAM”).

- 6300.5 No person or entity shall own or operate a program that offers or proposes to offer non-hospital SUD treatment services without being certified by the Department pursuant to this chapter. This chapter does not apply to Health Maintenance Organizations, physicians, and other licensed behavioral health and medical professionals in individual or group practice.
- 6300.6 The Department shall issue one (1) certification for each provider that is valid only for the programs, premises, and Level(s) of Care stated on the certificate. The certificate is the property of the Department and must be returned upon request by the Department.
- 6300.7 The Department's staff, upon presentation of proper identification, has authority to enter the premises of a certified SUD treatment or recovery program during operating hours to conduct announced or unannounced inspections and investigations.
- 6300.8 Providers certified as Levels 1 - 3, except Medically Monitored Inpatient Withdrawal Management ("MMIWM"), may also receive a special designation as a program serving parents with children, subject to § 6326 of this chapter.
- 6300.9 Each certified provider shall comply with all the provisions of this chapter consistent with the scope of the authorized Level of Care.

6301 ELIGIBILITY FOR SUBSTANCE USE DISORDER SERVICES

- 6301.1 SUD is a chronic relapsing disease characterized by a cluster of cognitive, behavioral, and psychological symptoms indicating that the client continues using the substance despite significant substance-related problems. A diagnosis of SUD requires a client to have had persistent, substance related problem(s) within a twelve (12)-month period in accordance with the most recent version of the American Psychiatric Association's Diagnostic and Statistical Manual ("DSM"). SUD services as described throughout this chapter include both treatment and Recovery Support Services ("RSS").
- 6301.2 To be eligible for SUD treatment, a client must have received a diagnosis of SUD in accordance with § 6301.1. Eligibility for Medicaid-funded or Department-funded SUD services shall be determined in accordance with § 6301.4.
- 6301.3 To be eligible for RSS, a client must have an identified need for RSS and:
- (a) Be actively participating in the Department treatment system;
 - (b) Have completed treatment; or
 - (c) Have a self-identified substance use issue that is not assessed as needing active treatment.

6301.4 A client shall meet the following eligibility requirements in order to receive Medicaid-funded SUD services:

- (a) Be bona fide residents of the District, as required in 29 DCMR §2405.1(a); and
- (b) Be referred for SUD services by a treatment provider or other intake center authorized by the Department.
- (c) Be enrolled in Medicaid, or be eligible for enrollment and have an application pending; or
- (d) For new enrollees and those enrollees whose Medicaid coverage has lapsed:
 - (1) There is an eligibility grace period of ninety (90) calendar days from the date of first service for new enrollees, or from the date of eligibility expiration for enrollees who have a lapse in coverage, until the date the Department of Human Services' Economic Security Administration ("ESA") makes an eligibility or renewal determination.
 - (2) In the event the client appeals a denial of eligibility or renewal by the ESA, the Director may extend the ninety (90) calendar day eligibility grace period until the appeal has been exhausted. The ninety (90) calendar day eligibility grace period may also be extended at the discretion of the Director for other good cause shown.
 - (3) Upon expiration of the eligibility grace period, SUD services provided to the client are no longer reimbursable by Medicaid. Nothing in this section alters the District's timely-filing requirements for claim submissions.

6301.5 Clients eligible for locally-funded SUD treatment are those individuals who are not eligible for Medicaid or Medicare or are not enrolled in any other third-party insurance program except the D.C. Healthcare Alliance, or who are enrolled in a third-party insurance program that does not cover SUD treatment and who meet the following requirements:

- (a) For individuals eighteen (18) years of age and older, live in households with a countable income of less than two hundred percent (200%) of the federal poverty level, and for individuals under eighteen (18) years of age, live in households with a countable income of less than three hundred percent (300%) of the federal poverty level.
- (b) A client that does not meet the income limits of § 6301.5(a) above may receive treatment services in accordance with the following requirements:

- (1) The client must, within ninety (90) calendar days of enrollment for services, apply to the ESA for certification, which will verify income; and
- (2) An individual with income over the limits in paragraph (a) above may receive treatment services in accordance with rates determined by the Department.

6302 SERVICES FOR PEOPLE WITH CO-OCCURRING MENTAL ILLNESSES

- 6302.1 A provider shall not decline to provide SUD services because of a person's co-occurring mental illness.
- 6302.2 All SUD treatment providers shall screen each client for SUD and mental illness during the Initial or Comprehensive Diagnostic Assessment.
- 6302.3 If a client screens positive for a co-occurring mental illness, the SUD treatment provider shall take the following steps in addition to providing SUD treatment:
- (a) If certified to provide mental health services, offer the client mental health treatment in addition to SUD treatment with the provider. If the client declines, the provider shall make the appropriate referrals for the client to receive mental health treatment at another qualified provider.
 - (b) If the provider is not certified to provide mental health services, the provider shall ensure the client is referred to an appropriate mental health provider.
 - (c) If a client that screens positive for a co-occurring mental illness receives mental health treatment at another provider, the Clinical Care Coordinator shall ensure the Plan of Care and subsequent care and treatment of the client is coordinated with the mental health provider.

6303 PROVIDER CERTIFICATION PROCESS

- 6303.1 The Department utilizes the certification process to thoroughly evaluate an applicant's capacity to provide high quality SUD services in accordance with this regulation and the needs of the District's behavioral health system. Each applicant seeking certification as a provider shall submit a certification application to the Department. A certified provider seeking renewal of certification shall submit a certification application at least ninety (90) calendar days prior to the termination of its current certification. The certification of a provider that has submitted a timely application for renewal of certification shall continue until the Department renews or denies renewal of the certification application.
- 6303.2 An applicant may apply for certification for one or more of the following Levels of Care ("LOC"):

- (a) Level: Opioid Treatment Program (“OTP”);
- (b) Level 1: Outpatient;
- (c) Level 2.1: Intensive Outpatient;
- (d) Level 2.5: Day Treatment;
- (e) Level 3.1: Clinically Managed Low-Intensity Residential;
- (f) Level 3.3: Clinically Managed Population-Specific High-Intensity Residential;
- (g) Level 3.5: Clinically Managed High-Intensity Residential Services (Adult Criteria) or Clinically Managed Medium-Intensity Residential Services (Adolescent Criteria);
- (h) Level 3.7-WM: Medically Monitored Inpatient Withdrawal Management (“MMIWM”); and
- (i) Level-R: RSS.

6303.3 Providers may also be certified to provide one or more of the following specialty services based on their LOC certifications from the Department:

- (a) Medication Management;
- (b) Adolescent – Community Reinforcement Approach (“ACRA”);
- (c) Medication Assisted Treatment (“MAT”);
- (d) Trauma Recovery and Empowerment Model (“TREM”); and
- (e) Environmental Stability.

6303.4 All certified providers, except those only certified as Level-R, shall provide all of the following core services according to the requirements of this chapter and the individual needs of the client as outlined in the Plan of Care:

- (a) Diagnostic Assessment and Plan of Care;
- (b) Clinical Care Coordination (“CCC”);
- (c) Crisis Intervention;
- (d) SUD Counseling/Therapy, including the following:
 - (1) Individual Counseling/Therapy;

- (2) Group Counseling/Therapy;
 - (3) Family Counseling/Therapy;
 - (4) Group Counseling – Psychoeducation.
- (e) Drug Screening, as follows:
- (1) Toxicology Sample Collection;
 - (2) Breathalyzer Testing.
- (f) RSS.

- 6303.5 Certification shall be considered terminated if the provider:
- (a) Fails to submit a complete certification application ninety (90) calendar days prior to the expiration date of the current certification;
 - (b) Voluntarily relinquishes certification; or
 - (c) Terminates operations.
- 6303.6 Upon receipt of a certification application, the Department shall review the certification application to determine whether it is complete. If a certification application is incomplete, the Department shall return the incomplete application to the applicant. An incomplete certification application shall not be regarded as a certification application. The Department shall not take further action to issue certification unless a complete certification application is submitted within ninety (90) calendar days prior to the expiration of the applicant's current certification.
- 6303.7 Following the Department's acceptance of the certification application, the Department shall determine whether the applicant's facility, services and activities meet the certification standards described in this chapter. The Department shall conduct an on-site survey of the applicant's facility, services, and activities to determine whether the applicant satisfies all the certification standards. The Department shall have access to all records necessary to verify compliance with certification standards and may conduct interviews with staff, others in the community, and clients.
- 6303.8 The Department may conduct an on-site survey at the time of initial certification or certification renewal, or at any other time during the period of certification.
- 6303.9 Applicant or provider interference with the on-site survey, or submission of false or misleading information, or lack of candor by the applicant or provider, shall be grounds for an immediate suspension of any prior certification, or denial of a new certification application.

- 6303.10 A Statement of Deficiency (“SOD”) is a written notice to a provider identifying non-compliance with this chapter. The intent of the SOD is provide existing certified providers with an opportunity to correct minor deficiencies to avoid decertification and disruption of service to existing clients. When utilized, the SOD shall describe the areas of non-compliance, suggest actions needed to bring operations into compliance with the certification standards, and set forth a timeframe of no more than ten (10) business days for the provider’s submission of a written Corrective Action Plan (“CAP”).
- 6303.11 The issuance of an SOD is a separate process from the issuance of a Notice of Infraction (“NOI”). NOIs shall be issued promptly upon observation of violations of this chapter, especially when they are recurrent, endanger client or staff health or safety or when there is a failure to comply with core requirements of operating an SUD treatment facility.
- 6303.12 The Department is not required to utilize the SOD or NOI process. It may immediately deny certification or re-certification or proceed with decertification.
- 6303.13 A certified provider’s CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to the Department within ten (10) business days after receipt of the SOD from the Department, or sooner if specified in the SOD.
- 6303.14 The Department shall notify the certified provider whether the provider’s CAP is accepted within ten (10) business days after receipt. In addition to utilizing the SOD process in § 6303.10 during renewal of certification stage, the Director may utilize the same procedures at any other time to address violations of this chapter.
- 6303.15 The Department may only issue its certification after the Department verifies that certified provider has remediated all of the deficiencies identified in the CAP and meets all the certification standards.
- 6303.16 The Department may grant full or provisional certification to an SUD applicant after conducting on-site surveys and reviewing application materials, including CAPs. A determination to grant full certification to a provider or program shall be based on the Department’s review and validation of the information provided in the application, facility inspection findings, CAPs, and the provider or program’s compliance with this chapter.
- 6303.17 The Department may grant provisional certification to a new provider or program that can demonstrate substantial compliance with this chapter and (a) has not previously held any certification issued by the Department; or (b) is in the process of securing a facility within the District at the time of application.
- 6303.18 Provisional certification shall not exceed a period of six (6) months and may be renewed only once for an additional period not to exceed ninety (90) calendar days.

- 6303.19 Full certification as an SUD treatment provider or RSS provider shall be for one (1) calendar year for new applicants and two (2) calendar years for existing providers seeking renewal of certification. Certification shall start from the date of issuance of certification by the Department, subject to the provider's continuous compliance with this chapter. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to this chapter. The certification shall specify the effective date of the certification, the program(s), level(s) of care, and services that the provider is certified to provide.
- 6303.20 The provider shall notify the Department within forty-eight (48) hours of any changes in its operation that affect the provider's continued compliance with this chapter, including changes in ownership or control, changes in service, and changes in its affiliation and referral arrangements.
- 6303.21 Prior to adding an SUD service during the term of certification, the provider shall submit a certification application describing the service. Upon determination by the Department that the provider is in compliance with certification standards, the Department may certify the provider to provide that service. A provider that applies for certification during an open application period as published in the District of Columbia Register may appeal the denial of certification under this subsection by utilizing the procedures contained in § 6305. The Department shall not accept any applications for which a notice of moratorium is published in the District of Columbia Register.
- 6303.22 In the event that a certification application is under review while a moratorium is put in place, the Department will continue to process the application for a time period of no more than thirty (30) calendar days. If, after thirty (30) calendar days, the application is deemed incomplete, the provider will be granted ten (10) business days to resolve all items of incompleteness. Any items not resolved or provided by the due date will result in the incomplete application being returned to the applicant. The Department will take no further action to issue certification. The applicant must then wait until the moratorium is lifted in order to submit any subsequent certification application.
- 6303.23 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. New certification as a provider shall depend upon the Director's assessment of the need for additional providers(s) and availability of funds.
- 6303.24 Certification shall be limited to the applicant granted the certification and shall be limited to the location and services as indicated on the certificate. Certification is not transferable to any other organization.
- 6303.25 Written notice of any change in the name or ownership of a program owned by an individual, partnership, or association, or in the legal or beneficial ownership of ten percent (10%) or more of the stock of a corporation that owns or operates the program, shall be given to the Department at least thirty (30) calendar days prior to the change in ownership.

- 6303.26 The provider shall notify the Department in writing thirty (30) calendar days prior to implementing any of the following operational changes, including all aspects of the operations materially affected by the changes:
- (a) A proposed change in the program's geographic location;
 - (b) The proposed addition or deletion of core (§ 6303.4) or specialty (§6303.3) service components, which is anything that would alter or disrupt services where the client would be impacted by the change, or any change that would affect compliance with this regulation;
 - (c) A change in the required staff qualifications for employment;
 - (d) A proposed change in organizational structure;
 - (e) A proposed change in the population served; or
 - (f) A proposed change in program capacity and, for residential programs, a proposed change in bed capacity.

6303.27 Providers shall forward to the Department within thirty (30) calendar days all inspection reports conducted by an oversight body and all corresponding corrective actions taken regarding cited deficiencies.

6303.28 Providers shall immediately report to the Department any criminal allegations involving provider staff.

6303.29 The Department may consider a provider's accreditation by one or more national accrediting bodies as evidence of compliance with one or more certification standards in this chapter.

6304 CERTIFICATION: EXEMPTIONS FROM STANDARDS

6304.1 Upon good cause shown, including but not limited to a conflict between a certification standard and a provider's third-party contract or agreement, the Department may exempt a provider from a certification standard if the exemption does not jeopardize the health and safety of clients, violates a client's rights, or otherwise conflict with the purpose and intent of these rules.

6304.2 If the Department approves an exemption, such exemption shall end on the expiration date of the provider certification, or at an earlier date if specified by the Department, unless the provider requests renewal of the exemption prior to expiration of its certificate or the earlier date set by the Department.

6304.3 The Department may revoke an exemption that it determines is no longer appropriate.

6304.4 All requests for an exemption from certification standards must be submitted in writing to the Department.

6305 DENIAL OR DECERTIFICATION PROCESS

6305.1 The Director may deny initial certification if the applicant fails to comply with any certification standard or the application fails to demonstrate the applicant's capacity to deliver high quality SUD services on a sustained and regular basis. Furthermore, to avoid an over concentration of providers in areas with existing providers and to encourage increased access to underserved areas of the District, the Director may deny certification if the applicant proposes to operate a facility in an area already served by one or more providers. The Department's priority shall be to grant certification to applicants with the demonstrated capacity to deliver high quality SUD services that will address unmet needs of the behavioral health system. While applicants may make minor corrections and substitutions to its application during the certification process, evidence of one or more of the following shall constitute good cause to deny the application for certification when the circumstances demonstrate deliberate misrepresentations, organizational instability, or the lack of preparedness or capacity to meet and sustain compliance with this chapter:

- (a) An incomplete application;
- (b) False information provided by applicant or contained in an application;
- (c) One or more changes to an organizational chart during the application process;
- (d) A facility that is inadequate in health, safety, size or configuration to provide SUD services consistent with high quality care and privacy standards;
- (e) The lack of demonstrated experience providing SUD services by the applicant's clinical leadership, practitioners, and/or staff;
- (f) An applicant's lack of financial resources (e.g., inability to pay all staff, or inability to provide at least ninety (90) days of running capital as dictated by the provider's monthly operating budget, etc.) to carry out its commitments and obligations under this chapter for the foreseeable future;
- (g) An applicant's failure to timely respond to the Department's requests for information; and
- (h) History of poor performance.

6305.2 Upon written request submitted by the applicant and received by the Department within fifteen (15) business days of the certification denial, the Department shall provide an applicant an impartial administrative review of the decision. The Department shall conduct the administrative review to determine whether the

certification denial complied with § 6305.1. Each request for an administrative review shall contain a concise statement of the reason(s) why the certification denial was in error. The Director shall issue a written decision within fifteen (15) business days. The Director's decision is final and not subject to further appeal. An applicant, its principals, and successor in interests shall be prohibited from reapplying for certification for twelve (12) months following the date of the certification denial.

6305.3 The Department shall decertify existing providers who fail to comply with the certification requirements contained in this chapter. Evidence of one or more of the following shall constitute good cause to decertify:

- (a) An incomplete recertification application;
- (b) False information provided by provider or contained in a recertification application;
- (c) High staff turnover where there are two or more changes made to the leadership staff within a certification period, demonstrating organizational instability;
- (d) One or more documented violations of the certification standards during the certification period that evidence a provider's lack of capacity to meet and sustain compliance with this chapter;
- (e) Claims audit error rate in excess of twenty-five percent (25%);
- (f) A provider's lack of financial resources to carry out its commitments and obligations under this chapter for the foreseeable future; evidenced by an inability to all pay staff, or an inability to provide at least ninety (90) days of running capital as dictated by the provider monthly operating budget;
- (g) Failure to cooperate with Department investigations or lack of timely response to information requests.

6305.4 Nothing in this chapter requires the Director to issue an SOD prior to decertifying a provider. If the Director finds that there are grounds for decertification, the Director shall issue a written notice of decertification setting forth the factual basis for the decertification, the effective date, and the provider's right to request an administrative review.

6305.5 The provider may request an administrative review from the Director within fifteen (15) business days of the date on the notice of decertification.

6305.6 Each request for an administrative review shall contain a concise statement of the reason(s) why the provider asserts that it should not have had its certification revoked and include any relevant supporting documentation.

- 6305.7 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.
- 6305.8 The Director shall issue a written decision and provide a copy to the provider. If the Director denies the appeal and approves the decertification, the provider may request a hearing under the D.C. Administrative Procedure Act, within fifteen (15) business days of the receipt of the Director's written decision. The administrative hearing shall be limited to the issues raised in the administrative review request. The decertification shall be stayed pending resolution of the hearing.
- 6305.9 Upon decertification, the provider and its executive leadership shall not be allowed to reapply for certification for a period of two (2) years following the date of the order of revocation. If a provider reapplies for certification, the provider must reapply in accordance with the established certification standards for the type of services provided and show evidence that the grounds for the revocation have been corrected.

6306 NOTICES OF INFRACTION

- 6306.1 The fine amount for any NOI issued under this chapter shall be as follows:
- (a) For the first offense \$500.00;
 - (b) For the second offense \$1,000.00;
 - (c) For the third offense \$2,000.00;
 - (d) For the fourth and subsequent offenses \$4,000.00.
- 6306.2 The administrative procedure for the appeal of an NOI issued under this chapter shall be governed by 16 DCMR §§ 3100 *et seq.*

6307 CLOSURES AND CONTINUITY OF CLIENT CARE

- 6307.1 A provider shall provide written notification to the Department at least ninety (90) calendar days prior to its impending closure, or immediately upon knowledge of an impending closure less than ninety (90) calendar days in the future. This notification shall include plans for continuity of care and preservation of client records.
- 6307.2 The Department shall review the continuity of care plan and make recommendations to the provider as needed. The plan should include provision for the referral and transfer of clients, as well as for the provision of relevant treatment information, medications, and information to the new provider. The provider shall incorporate all Department recommendations necessary to ensure a safe and orderly transfer of care.

6307.3 Closure does not absolve a provider from its legal responsibilities regarding the preservation and the storage of client records as described in § 6323 of this chapter and all applicable Federal and District laws and regulations. A provider must take all necessary and appropriate measures to ensure client records are preserved, maintained, and made available to clients upon request after closure of a program.

6307.4 A provider shall be responsible for the execution of its continuity of care plan in coordination with the Department.

6308 GENERAL MANAGEMENT AND ADMINISTRATION STANDARDS

6308.1 Each provider shall be established as a recognized legal entity in the District of Columbia and qualified to conduct business in the District. Evidence of qualification to conduct business includes a certificate of good standing and clean hands, or an equivalent document, issued by the District of Columbia Department of Consumer and Regulatory Affairs (DCRA). Each provider shall maintain the clinical operations, policies, and procedures described in this section. These operations, policies and procedures shall be reviewed and approved by the Department during the certification survey process. Providers certified or accredited by a national body may apply for deemed status. To be considered for deemed status, a prospective provider submitting an application for certification must request “Deemed Status” on the certification application. Providers must also provide a current copy of their national accreditation certificate along with their most recent accreditation report. Deemed Status does not waive the requirement of service specific requirements and/or fiscal responsibility requirements.

6308.2 All providers shall report to the Department in a form and manner prescribed by the Department’s policy on major unusual incidents, including but not limited to abuse or neglect of client or any other event that may compromise the health, safety, or welfare of clients.

6308.3 Each provider shall:

- (a) Comply with all applicable Federal and District laws and regulations;
- (b) Participate through a formal agreement with a registered Health Information Exchange (“HIE”) entity of the DC Health Information Exchange (“DC HIE”), defined in Chapter 87 of Title 29 DCMR;
- (c) Hire personnel with the necessary qualifications to provide SUD treatment and/or RSS to meet the needs of its enrolled clients; and
- (d) For SUD treatment, employ Qualified Practitioners to ensure provision of services as appropriate and in accordance with this chapter.

6308.4 Providers shall make services available a minimum five (5) days per week on a regular schedule for at least eight (8) hours per day, in the evening by appointment, and at least once a month on a Saturday for four (4) hours. An independently

licensed clinician with the ability to provide and supervise the offered services must be available on-site during regular hours of operation.

- 6308.5 Each provider shall have a full-time program director with authority and responsibility for the administrative direction and day-to-day operation of the program(s).
- 6308.6 Each provider shall have a clinical director responsible for the full-time clinical direction and day-to-day delivery of clinical services provided to clients of the program(s). The clinical director must be a clinician who is licensed to practice independently in the District and supervise other clinical staff.
- 6308.7 The program director and clinical director shall devote adequate time and authority to perform necessary duties to ensure that service delivery is in compliance with applicable standards set forth in this chapter and in applicable policies issued by the Department. The program director and clinical director shall not be the same individual.
- 6308.8 Each provider shall establish and adhere to policies and procedures for selecting and hiring staff, including but not limited to requiring:
- (a) Evidence of licensure, certification, or registration, as applicable and as required by the job being performed;
 - (b) Evidence of an appropriate degree, training program, or credentials, such as academic transcripts or a copy of degree;
 - (c) Evidence of all required criminal background checks, and for all non-licensed staff members, application of the criminal background check requirements contained in District Official Code §§ 44-551 *et seq.*, Unlicensed Personnel Criminal Background Check, as well as child abuse registry checks (for both state of residence and employment);
 - (d) Evidence of quarterly checks that no individual is excluded from participation in a federally funded health care program as listed on the Department of Health and Human Services' "List of Excluded Individuals/Entities," the General Services Administration's "Excluded Parties List System," or any similar succeeding governmental list; and
 - (e) Evidence of a negative result on a tuberculosis test or medical clearance related to a positive result.
- 6308.9 Each provider shall establish and adhere to written job descriptions for all positions, including, at a minimum, the role, responsibilities, reporting relationships, and minimum qualifications for each position. The minimum qualifications established for each position shall be appropriate for the scope of responsibility and clinical practice (if any) described for each position.

- 6308.10 Each provider shall establish and adhere to policies and procedures requiring a periodic evaluation of clinical and administrative staff performance that requires an assessment of clinical competence (if appropriate), general organizational work requirements, and key functions as described in the job description. The periodic evaluation shall also include an annual individual development plan for each staff member.
- 6308.11 Each provider shall establish and adhere to a supervision policy to ensure that services are provided according to this chapter and Department policies on supervision and service standards as well as District laws and regulations.
- 6308.12 Each provider shall establish and adhere to a training policy in accordance with § 6319 of this chapter.
- 6308.13 Personnel policies and procedures shall apply to all staff and volunteers working for a provider and shall include:
- (a) Compliance with Federal and District equal opportunity laws, including the Americans with Disabilities Act and the D.C. Human Rights Act;
 - (b) A current organizational flow chart reflecting each program position and, where applicable, the relationship to the larger program or provider of which the program is a part;
 - (c) Written plans for developing, posting, and maintaining files pertaining to work and leave schedules, time logs, and on-call schedules for each functional unit, to ensure adequate coverage during all hours of operation;
 - (d) A written policy requiring that a designated individual be assigned responsibility for management and oversight of the volunteer program, if volunteers are utilized;
 - (e) A written policy regarding volunteer recruitment, screening, training, supervision, and dismissal for cause, if volunteers are utilized; and
 - (f) Provisions through which the program shall make available to staff a copy of the personnel policies and procedures.
- 6308.14 Providers shall develop and implement procedures that prohibit the possession, use, or distribution of controlled substances or alcohol, or any combination of them, by staff during their duty hours, unless medically prescribed and used accordingly. Staff possession, use, or distribution of controlled substances or alcohol, or any combination of them, during off duty hours that affects job performance shall also be prohibited. These policies and procedures shall ensure that the provider:
- (a) Provides information about the adverse effects of the non-medical use and abuse of controlled substances and alcohol to all staff;

- (b) Initiates disciplinary action for the possession, use, or distribution of controlled substances or alcohol, which occurs during duty hours or which affects job performance; and
- (c) Provides information and assistance to any impaired staff member to facilitate his or her recovery.

6308.15 Individual personnel records shall be maintained for each person employed by a provider and shall include, at a minimum, the following:

- (a) A current job description for each person, that is revised as needed;
- (b) Evidence of a negative result on a tuberculosis test or medical clearance related to a positive result;
- (c) Evidence of the education, training, and experience of the individual, and a copy of the current appropriate license, registration, or certification credentials (if any);
- (d) Documentation that written personnel policies were distributed to the employee;
- (e) Notices of official tour of duty: day, evening, night, or rotating shifts; payroll information; and disciplinary records;
- (f) Documentation that the employee has received all health care worker immunizations recommended by the District of Columbia Department of Health; and
- (g) Criminal background checks as required in § 6308.8.

6308.16 All personnel records shall be maintained during the course of an individual's employment with the program and for three (3) years following the individual's separation from the program.

6309 EMPLOYEE CONDUCT

6309.1 All staff shall adhere to ethical standards of behavior in their relationships with clients as follows:

- (a) Staff shall maintain an ethical and professional relationship with clients at all times;
- (b) Licensed or certified staff must adhere to their professional codes of conduct, as required by District licensing laws and regulations;

- (c) Staff shall not enter into dual or conflicting relationships with individuals that might affect professional judgment, therapeutic relationships, or increase the risk of exploitation; and
- (d) The provider shall establish written policies and procedures regarding staff relationships with both current and former clients that are consistent with this section.

- 6309.2 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with clients.
- 6309.3 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with former clients.
- 6309.4 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with clients' relatives or other individuals with whom clients maintain a close personal relationship.
- 6309.5 No staff, including licensed professionals, support personnel, and volunteers, shall provide services to individuals with whom they have had a prior sexual or other significant relationship.
- 6309.6 Staff, including licensed professionals, support personnel, and volunteers, shall only engage in appropriate physical contact with clients and are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.
- 6309.7 No staff, including licensed professionals, support personnel, and volunteers, shall sexually harass clients. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.
- 6309.8 No provider or employee of a provider shall be a representative payee for any person receiving services from a treatment or RSS program.

6310 QUALITY IMPROVEMENT

- 6310.1 Each provider shall establish and adhere to policies and procedures governing quality improvement ("Quality Improvement Policy").
- 6310.2 The Quality Improvement Policy shall require the provider to adopt a written quality improvement ("QI") plan describing the objectives and scope of its QI program and requiring provider staff, client, and family involvement in the QI program.
- 6310.3 The Department shall review and approve each provider's QI program at a minimum as part of the certification and renewal of certification process. The QI program shall submit data to the Department upon request.

6310.4 The QI program shall be directed by a coordinator (“QI Coordinator”) who has direct access to the Program Director if applicable. In addition to directing the QI program’s activities, the QI Coordinator shall also review unusual incidents, deaths, and other sentinel events; monitor and review utilization patterns; and track consumer complaints and grievances. The QI Coordinator shall be one of the following:

- (a) Physician;
- (b) Psychologist;
- (c) Licensed Independent Clinical Social Worker (“LICSW”);
- (d) Advanced Practice Registered Nurse (“APRN”);
- (e) Licensed Professional Counselor (“LPC”);
- (f) Licensed Marriage and Family Therapist (“LMFT”);
- (g) Registered Nurse (“RN”);
- (h) Licensed Independent Social Worker (“LISW”);
- (i) Licensed Graduate Professional Counselor (“LGPC”);
- (j) Licensed Graduate Social Worker (“LGSW”);
- (k) Certified Addictions Counselor (“CAC”) I or II;
- (l) Physician Assistant (“PA”); or
- (m) An individual with a Bachelors’ Degree and a minimum of two (2) years of relevant, qualifying experience, such as experience in behavioral health care delivery or health care quality improvement initiatives.

6310.5 The QI program shall be operational and shall measure and ensure at least the following:

- (a) Easy and timely access and availability of services;
- (b) Treatment and prevention of acute and chronic conditions;
- (c) Close monitoring of high-volume services, clients with high risk conditions, and services for children and youth;
- (d) Coordination of care across behavioral health treatment and primary care treatment settings;
- (e) Compliance with all certification standards;

- (f) Adequacy, appropriateness, and quality of care for clients;
- (g) Efficient utilization of resources;
- (h) Client and family satisfaction with services;
- (i) Quarterly random samplings of client outcomes, including but not limited to biological markers such as drug/alcohol screening results, in a format approved by the Department; and
- (j) Any other indicators that are part of the Department QI program for the larger system.

6310.6 When the provider identifies a significant problem or quality of service issue, the provider shall notify the Department. The provider shall act to correct the problem or improve the effectiveness of service delivery, or both, and shall assess corrective or supportive actions through continued monitoring.

6310.7 Providers certified through Deemed Status or accredited by nationally-recognized bodies may submit their QI program accepted by that body to fulfill the requirements in § 6310.5.

6311 FISCAL MANAGEMENT STANDARDS

6311.1 Applicants or providers that are in financial distress and at risk of imminent closure represent a risk both to the Department's clients and the behavioral health system. The Department shall not certify any applicant or re-certify any provider without evidence that the applicant or provider has sufficient financial resources (e.g., ability to provide at least ninety (90) days of running capital as dictated by the provider's monthly operating budget) to carry out its commitments and obligations under this chapter for the foreseeable future. The provider shall have adequate financial resources to deliver all required services and shall provide documented evidence at the time of certification and renewal of certification that it has adequate resources to operate a SUD program. Documented evidence shall include federal and state tax returns, including Form 990s for non-profit organizations, for the three (3) most recent tax reporting years, and a current financial statement signed and verified by a certified public accountant.

6311.2 A provider shall have fiscal management policies and procedures and keep financial records in accordance with generally accepted accounting principles.

6311.3 A provider shall include adequate internal controls for safeguarding or avoiding misuse of client or organizational funds.

6311.4 A provider shall have a uniform budget of expected revenue and expenses as required by the Department. The budget shall:

- (a) Categorize revenue by source;

- (b) Categorize expenses by type of service; and
 - (c) Estimate costs by unit of service.
- 6311.5 A provider shall have the capacity to determine direct and indirect costs for each type of service provided.
- 6311.6 A written schedule of rates and charges shall be conspicuously posted and available to staff, clients, and the general public.
- 6311.7 Fiscal reports shall provide information on the relationship of the budget to actual spending, including revenues and expenses by category and an explanation of the reasons for any substantial variance.
- 6311.8 Providers shall correct or resolve all adverse audit findings prior to recertification.
- 6311.9 A provider shall have policies and procedures regarding:
- (a) Purchase authority, product selection and evaluation, property control and supply, storage, and distribution;
 - (b) Billing;
 - (c) Controlling accounts receivable;
 - (d) Handling cash;
 - (e) Management of client fund accounts;
 - (f) Arranging credit; and
 - (g) Applying discounts and write-offs.
- 6311.10 All business records pertaining to costs, payments received and made, and services provided to clients shall be maintained for a period of ten (10) years or until all audits and ongoing litigations are complete, whichever is longer.
- 6311.11 All providers must maintain proof of liability insurance coverage, which must include malpractice insurance of at least three million dollars (\$3,000,000) aggregate and one million dollars (\$1,000,000) per incident and comprehensive general coverage of at least three million dollars (\$3,000,000) per incident that covers general liability, vehicular liability, and property damage. The insurance shall include coverage of all personnel, consultants, or volunteers working for the provider.
- 6311.12 Environmental Stability providers that handle client funds must maintain financial records with separate accounting for each Environmental Stability client's funds.

6311.13 A provider shall ensure that clients employed by the organization are paid in accordance with all applicable laws and regulations governing labor and employment, including those governing minimum wage.

6311.14 All money earned by a client shall accrue to the sole benefit of that individual and be provided to the client or the client's legal representative upon discharge or sooner.

6312 ADMINISTRATIVE PRACTICE ETHICS

6312.1 All providers shall operate in an ethical manner, including but not limited to complying with the provisions of this section. A provider shall not offer or imply to offer services not authorized on the certification issued by the Department.

6312.2 A provider shall not use any advertising that contains false, misleading, or deceptive statements or claims or that contains false or misleading information about fees.

6312.3 A provider shall not offer or imply to offer services not authorized on the certification issued by the Department.

6312.4 A provider shall comply with all Federal and District laws and regulations, including but limited to the False Claims Act, 31 USC §§ 3729-3733, the Anti-Kickback Statute, 42 USC § 1320a-7b, the Physician Self-Referral Law (Stark law), 42 USC § 1395nn, and the Exclusion Statute, 42 USC § 1320a-7.

6312.5 The provider shall keep all employees informed of policy changes that affect performance of duties.

6312.6 The provider must treat all allegations of ethical violations as major unusual incidents.

6312.7 Any research must be conducted in accordance with Federal law.

6313 PROGRAM POLICIES AND PROCEDURES

6313.1 Each program must document the following:

- (a) Organization and program mission statement, philosophy, purpose, and values;
- (b) Organizational structure;
- (c) Leadership structure;
- (d) Program relationships;
- (e) Staffing;

- (f) Relationships with parent organizations, affiliated organizations, and organizational partners;
- (g) Treatment philosophy and approach;
- (h) Services provided;
- (i) Characteristics and needs of the population served;
- (j) Performance metrics, including intended outcomes and process methods;
- (k) Contract services, if any;
- (l) Affiliation agreements, if any;
- (m) The scope of volunteer activities and rules governing the use of volunteers, if any;
- (n) Location of service sites and specific designation of the geographic area to be served; and
- (o) Hours and days of operation of each site.

6313.2 Each program shall establish written policies and procedures to ensure each of the following:

- (a) Service provision based on the individual needs of the client;
- (b) Consideration of special needs of the client and the program's population of focus;
- (c) Placement of clients in the least restrictive setting necessary to address the acuity of the client's presenting illness and circumstances; and
- (d) Facilitation of access to other more appropriate services for clients who do not meet the criteria for admission into a program offered by the provider.

6313.3 Each program shall develop and document policies and procedures subject to review by the Department related to each of the following:

- (a) Program admission and exclusion criteria;
- (b) Termination of treatment and discharge or transition criteria;
- (c) Outreach;
- (d) Infection control procedures and use of universal precautions, addressing at least those infections that may be spread through contact with bodily fluids;

- (e) Volunteer utilization, recruitment, and oversight;
- (f) Crisis intervention and medical emergency procedures;
- (g) Safety precautions and procedures for participant volunteers, employees, and others;
- (h) Record management procedures in accordance with “Confidentiality of Substance Use Disorder Patient Records” (“42 CFR Part 2”), this chapter, and any other Federal and District laws and regulations regarding the confidentiality of client records;
- (i) The on-site limitations on use of tobacco, alcohol, and other substances;
- (j) Clients’ rules of conduct and commitment to treatment regimen, including restrictions on carrying weapons and specifics of appropriate behavior while in or around the program;
- (k) Clients’ rights;
- (l) Addressing and investigating major unusual incidents;
- (m) Addressing client grievances;
- (n) Addressing issues of client non-compliance with established treatment regimen and/or violation of program policies and requirements; and
- (o) The purchasing, receipt, storage, distribution, return, and destruction of medication, including accountability for and security of medications located at any of its service site(s) (“Medication Policy”).

6313.4 Gender-specific programs shall ensure that staff of that specific gender is in attendance at all times when clients are present.

6314 EMERGENCY PREPAREDNESS PLAN

6314.1 Each provider shall establish and adhere to a written disaster evacuation and continuity of operations plan in accordance with the Department policy on Disaster Evacuation/Continuity of Operations Plans.

6314.2 A provider shall immediately notify the Department and implement its Continuity of Operations Plan if an imminent health hazard exists because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, gross unsanitary conditions, or other circumstances that may endanger the health, safety, or welfare of its clients.

6315 FACILITIES MANAGEMENT

- 6315.1 A provider shall establish and maintain a safe environment for its operation, including adhering to the following provisions:
- (a) Each provider's service site(s) shall be located and designed to provide adequate and appropriate facilities for private, confidential individual and group counseling/therapy sessions;
 - (b) Each provider's service site(s) shall have appropriate space for group activities and educational programs;
 - (c) In-office waiting time shall be less than one (1) hour from the scheduled appointment time. Each provider shall also demonstrate that it can document the time period for in-office waiting;
 - (d) Each provider shall comply with applicable provisions of the Americans with Disabilities Act in all business locations;
 - (e) Each service site shall be located within reasonable walking distance of public transportation;
 - (f) Providers shall maintain fire safety equipment and establish practices to protect all occupants. This shall include clearly visible fire extinguishers, with a charge, that are inspected annually by a qualified service company or trained staff member; and
 - (g) Each provider shall annually obtain a written certificate of compliance from the District of Columbia Department of Fire and Emergency Medical Services ("FEMS") indicating that all applicable fire and safety code requirements have been satisfied for each facility.
- 6315.2 Each window that opens shall have a screen.
- 6315.3 Each rug or carpet in a facility shall be securely fastened to the floor or shall have a non-skid pad.
- 6315.4 Each hallway, porch, stairway, stairwell, and basement shall be kept free from any obstruction at all times.
- 6315.5 Each ramp or stairway used by a client shall be equipped with a firmly secured handrail or banister.
- 6315.6 Each provider shall maintain a clean environment free of infestation and in good physical condition, and each facility shall be appropriately equipped and furnished for the services delivered.

- 6315.7 Each provider shall properly maintain the outside and yard areas of the premises in a clean and safe condition.
- 6315.8 Each exterior stairway, landing, and sidewalk used by clients shall be kept free of snow and ice.
- 6315.9 Each facility shall be located in an area reasonably free from noxious odors, hazardous smoke and fumes, and where interior sounds may be maintained at reasonably comfortable levels.
- 6315.10 A provider shall take necessary measures to ensure pest control, including:
- (a) Refuse shall be stored in covered containers that do not create a nuisance or health hazard; and
 - (b) Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.
- 6315.11 A provider shall ensure that medical waste is stored, collected, transported, and disposed of in accordance with applicable Federal and District laws, as well as guidelines from the Centers for Disease Control and Prevention (“CDC”).
- 6315.12 Each provider shall ensure that its facilities have comfortable lighting, proper ventilation, and moisture and temperature control. Rooms, including bedrooms and activity rooms below ground level, shall be dry and the temperature shall be maintained within a normal comfort range.
- 6315.13 Each facility shall have potable water available for each client.
- 6315.14 No smoking shall be allowed inside a program’s facility.
- 6315.15 Providers’ physical design and structure shall be sufficient to accommodate staff, clients, and functions of the program(s), and shall make available the following:
- (a) A reception area;
 - (b) Private areas for individual treatment services;
 - (c) An area(s) for dining, if applicable; and
 - (d) Separate bathrooms and/or toilet facilities in accordance with District law where the:
 - (1) Required path of travel to the bathroom shall not be through another bedroom;
 - (2) Windows and doors provide privacy; and

- (3) Showers and toilets not intended for individual use provide privacy.
- 6315.16 If activity space is used for purposes not related to the program’s mission, the provider shall ensure that:
- (a) The quality of services is not reduced;
 - (b) Activity space in use by other programs shall not be counted as part of the required activity space; and
 - (c) Client confidentiality is protected, as required by 42 CFR Part 2 and other applicable Federal and District laws and regulations.
- 6315.17 The use of appliances such as cell phones, computers, televisions, radios, CD players, recorders, and other electronic devices shall not interfere with the therapeutic program.
- 6315.18 Each facility shall maintain an adequately supplied first-aid kit which:
- (a) Shall be maintained in a place known and readily accessible to clients and employees; and
 - (b) Shall be adequate for the number of persons in the facility.
- 6315.19 Each provider shall have on-site at each facility a fully functioning automatic external defibrillator (“AED”) and shall ensure that all staff are trained in how to use the AED.
- 6315.20 Each provider shall have on-site at each facility at least one dose of naloxone that is unexpired and shall ensure that all staff are trained in how to administer the naloxone.
- 6315.21 Each provider shall post emergency numbers near its telephones for fire, police, and poison control, along with contact information and directions to the nearest hospital.
- 6315.22 A provider shall have an interim plan addressing safety and continued service delivery during construction.
- 6315.23 If the facility has had work done requiring a DCRA building permit or other related permits such as plumbing or electrical within the twelve (12) months prior to application for initial certification or re-certification, the applicant shall also submit copies of the DCRA permits and post-work inspection approvals during initial certification and re-certification.

6316 MEDICATION STORAGE AND ADMINISTRATION STANDARDS

- 6316.1 Controlled substances shall be maintained in accordance with applicable Federal and District laws and regulations.
- 6316.2 An SUD treatment program shall implement written policies and procedures to govern the acquisition, safe storage, prescribing, dispensing, labeling, administration, and the self-administration of medication, including medications clients may bring into the program that shall have a record of the prescribing physician's order or approval prior to the administration or self-administration of medication.
- 6316.3 Any prescribed medication brought into a facility by a client shall not be administered or self-administered until the medication is identified and the attending practitioner's written order or approval is documented in the client record.
- 6316.4 Verbal orders may only be given by the attending practitioner to another physician, PA, APRN, RN, or pharmacist. Verbal orders shall be noted in the client's record as such and countersigned and dated by the prescribing practitioner within twenty-four (24) hours.
- 6316.5 Medication, both prescription and over-the-counter, brought into a facility must be packaged and labeled in accordance with Federal and District laws and regulations.
- 6316.6 Medication, both prescription and over-the-counter, brought into a facility by a client that is not approved by the attending practitioner shall be packaged, sealed, stored, and returned to the client upon discharge.
- 6316.7 The administration of medications, excluding self-administration, shall be permitted only by licensed individuals pursuant to applicable District laws and regulations.
- 6316.8 Medications shall be administered only in accordance with the prescribing practitioner's order.
- 6316.9 Only a physician, APRN, RN, or PA shall administer controlled substances or injectable drugs, excluding self-administered drugs.
- 6316.10 Program staff responsible for supervision of the self-administration of medication shall document consultations with a physician, APRN, RN, pharmacist, or referral to appropriate reference material regarding the action and possible side effects or adverse reactions of each medication under their supervision.
- 6316.11 As applicable, a program shall provide training to the staff designated to supervise the self-administration of medication. The training shall include but not be limited to the expected action of and adverse reaction to the self-administered medication.

- 6316.12 Only trained staff shall be responsible for observing the self-administration of medication.
- 6316.13 Medication administration training shall be facilitated by the following Qualified Practitioners, as led by signature and date on the training certificate:
- (a) Physicians;
 - (b) PAs;
 - (c) APRNs; or
 - (d) RNs.
- 6316.14 A program shall ensure that medication is available to clients as prescribed.
- 6316.15 A program shall maintain records that track and account for all medication, ensuring the following:
- (a) That each client receiving medication shall have a medication administration record, which includes the client's name, the name of medication, the type of medication (classification), the amount of medication, the dose and frequency of administration/self-administration, and the name of staff who administered or observed the self-administration of the medication;
 - (b) That documentation shall include omission and refusal of medication administration;
 - (c) That the medication administration record shall note the amount of medication originally present and the amount remaining;
 - (d) That documentation of medication administration shall include over-the-counter ("OTC") drugs administered or self-administered; and
 - (e) That SUD treatment programs administering controlled substances, including but not limited to methadone, shall follow the requirements of applicable Federal and District laws and regulations.
- 6316.16 An attending practitioner shall be notified immediately of any medication error or adverse reaction. The staff responsible for the medication error shall complete an incident report, and the practitioner's recommendations and subsequent actions taken by the program shall be documented in the client record.
- 6316.17 A program shall ensure that all medications, including those that are self-administered, are secured in locked storage areas.

- 6316.18 The locked medication area shall provide for separation of internal and external medications.
- 6316.19 A program shall maintain a list of personnel who have access to the locked medication area and, where applicable, are qualified to administer medication.
- 6316.20 A program shall comply with all Federal and District laws and regulations concerning the acquisition and storage of pharmaceuticals.
- 6316.21 Each client's medication shall be properly labeled as required by Federal and District laws and regulations, shall be stored in its original container, and shall not be transferred to another container or taken by clients other than the client for whom it was originally prescribed.
- 6316.22 Medications requiring refrigeration shall be maintained in a separate and secure refrigerator, labeled "FOR MEDICATION ONLY" and shall be maintained at a temperature between thirty-six degrees Fahrenheit (36°F) and forty-six degrees Fahrenheit (46°F). All refrigerators shall have thermometers, which are easily readable, in proper working condition, and accurate within a range of plus or minus two (2°F) degrees Fahrenheit.
- 6316.23 A program shall conspicuously post in the drug storage area the following information:
- (a) Telephone numbers for the regional Poison Control Center; and
 - (b) Metric-apothecaries weight and conversion measure charts.
- 6316.24 A program shall conduct monthly inspections of all drug storage areas to ensure that medications are stored in compliance with Federal and District laws and regulations. The program shall maintain records of these inspections for verification.
- 6316.25 Where applicable, the program shall implement written policies and procedures for the control of stock pharmaceuticals.
- 6316.26 The receipt and disposition of stock pharmaceuticals must be accurately documented as follows:
- (a) Invoices from companies or pharmacies shall be maintained to document the receipt of stock pharmaceuticals;
 - (b) A log shall be maintained for each stock pharmaceutical that documents receipt and disposition; and
 - (c) At least quarterly, each stock pharmaceutical shall be reconciled as to the

amount received and the amount dispensed.

- 6316.27 A program shall implement written procedures and policies for the disposal of medication.
- 6316.28 Any medication left by a client at discharge shall be destroyed within thirty (30) calendar days after the client has been discharged, with the exception of Methadone and other controlled substances which must be returned to the point of issue or destroyed in accordance with Federal regulations.
- 6316.29 The disposal of all medications shall be witnessed and documented by two (2) staff members.

6317 VEHICLE ENVIRONMENTAL AND SAFETY STANDARDS

- 6317.1 A provider shall implement measures to ensure the safe operation of its transportation service, if applicable. These measures shall include, but are not limited to:
- (a) Automobile insurance with adequate liability coverage;
 - (b) Regular inspection and maintenance of vehicles, as required by law;
 - (c) Adequate first aid supplies and fire suppression equipment secured in the vehicles;
 - (d) Training of vehicle operators in emergency procedures and in the handling of accidents and road emergencies; and
 - (e) Verification to ensure that vehicles are operated by properly licensed drivers with driving records that are absent of serious moving violations, including but not limited to driving under the influence.

6318 FOOD AND NUTRITION STANDARDS

- 6318.1 The provisions of this section apply to any provider that prepares or serves food.
- 6318.2 All programs that prepare food shall have a current Certified Food Protection Manager (“CFPM”) certification from the District of Columbia Department of Health, and the CFPM must be present whenever food is prepared and served.
- 6318.3 The provider shall require each CFPM (or a Certified Food Handler (“CFH”), for providers serving food prepared off-site) to monitor any staff members who are not certified as CFPMs (or CFHs) in the storage, handling, and serving of food and in the cleaning and care of equipment used in food preparation in order to maintain sanitary conditions at all times.

- 6318.4 The kitchen, dining, and food storage areas shall be kept clean, orderly, and protected from contamination.
- 6318.5 A program providing meals shall maintain a fully equipped and supplied code-compliant kitchen area unless meals are catered by an organization licensed by the District to serve food.
- 6318.6 A program may share kitchen space with other programs if the accommodations are adequate to perform required meal preparation for all programs using the kitchen.
- 6318.7 Each food and drink item procured, stored, prepared, or served by the facility shall be clean, free from spoilage, prepared in a manner that is safe for human consumption, and protected from contamination.
- 6318.8 Dishes, cooking utensils, and eating utensils shall be cleaned after each meal and stored to maintain their sanitary condition.
- 6318.9 Hot and cold water, soap, and disposable towels shall be provided for hand washing in or adjacent to food preparation areas.
- 6318.10 Each facility shall maintain adequate dishes, utensils, and cookware in good condition and in sufficient quantity for the facility.

6319 PERSONNEL TRAINING STANDARDS

- 6319.1 Provider staff shall have annual training that meets the Occupational Safety & Health Administration (“OSHA”) regulations that govern behavioral health facilities and any other applicable infection control guidelines, including use of universal precaution and avoiding exposure to hepatitis, tuberculosis, and HIV.
- 6319.2 An SUD treatment program shall have at least two (2) staff persons, trained and certified by a nationally recognized authority that meets OSHA guidelines for basic first aid and cardiopulmonary resuscitation (“CPR”), present at all times during the hours of operation of the program. An SUD recovery program shall have at least one (1) staff person trained and certified by a recognized authority that meets OSHA guidelines in basic first aid and CPR present at all times during the hours of operation of the program. Programs serving parents with children may have additional requirements related to first aid training, pursuant to § 6326.
- 6319.3 A provider shall have a current written plan for staff development and organizational onboarding, approved by the Department which reflects the training and performance improvement needs of all employees. The plan must address the steps the organization will take to ensure the recruitment and retention of highly qualified employees and the reinforcement of staff development through training, supervision, the performance management process, and activities such as shadowing, mentoring, skill testing and coaching. The plan must, at a minimum,

include culturally competent training and onboarding activities in the following core areas:

- (a) The program's approach to addressing treatment or RSS (as appropriate to its certification), including philosophy, goals and methods;
- (b) The staff member's specific job description and role in relationship to other staff;
- (c) The emergency preparedness plan and all safety-related policies and procedures;
- (d) The proper documentation of services in client records, as applicable;
- (e) Policies and procedures governing infection control, protection against exposure to communicable diseases, and the use of universal precautions;
- (f) Laws, regulations, and policies governing confidentiality of client information and release of information, including 42 CFR Part 2;
- (g) Laws, regulations, and policies governing reporting abuse and neglect;
- (h) Client rights; and
- (i) Other trainings directed by the Department.

6320 CLIENT RIGHTS AND PRIVILEGES, INCLUDING GRIEVANCES

6320.1 A program shall protect the following rights and privileges of each client:

- (a) Right to be admitted and receive services in accordance with the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Code §§ 2-1401.01 *et seq.*);
- (b) Right to make choices regarding provider, treatment, medication, and advance directives, when necessary;
- (c) Right to receive prompt evaluation, care, and treatment, in accordance with the highest quality standards;
- (d) Right to receive services and live in healthy, safe, and clean place;
- (e) Right to be evaluated and cared for in the least restrictive and most integrated environment appropriate to a client's needs;
- (f) Right to participate in the treatment planning process, including decisions concerning treatment, care, and other services, and to receive a copy of the Plan of Care;

- (g) Right to have records kept confidential;
- (h) Right to privacy;
- (i) Right to be treated with respect and dignity in a humane treatment environment;
- (j) Right to be safe from harm and from verbal, physical, or psychological abuse;
- (k) Right to be free of discrimination;
- (l) Right to be paid commensurate wages for work performed in compliance with applicable Federal and District laws and regulations;
- (m) Right to own personal belongings;
- (n) Right to refuse treatment and/or medication;
- (o) Right to give, not give, or revoke already-given consent to treatment, supports, and/or release of information;
- (p) Right to give, not give, or revoke informed, voluntary, written consent of the client or a person legally authorized to act on behalf of the client to participate in research; the right to protection associated with such participation; and the right and opportunity to revoke such consent;
- (q) Right to be informed, in advance, of charges for services;
- (r) Right to be afforded the same legal rights and responsibilities as any other citizen, unless otherwise stated by law;
- (s) Right to request and receive documentation on the performance track record of a program with regard to treatment outcomes and success rates;
- (t) Right to provide feedback on treatment and RSS, including evaluation of providers;
- (u) Right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial manner;
- (v) Right to receive written and oral information on client rights, privileges, program rules, and grievance procedures in a language understandable to the client;
- (w) Right to access services that are culturally appropriate, including the use of adaptive equipment, sign language, interpreter, or translation services, as appropriate; and

(x) Right to vote.

- 6320.2 A program shall post conspicuously a statement of client rights, program rules, and grievance procedures. The grievance procedures must inform clients that they may report any violations of their rights to the Department and shall include the telephone numbers of the Department and any other relevant agencies for the purpose of filing complaints.
- 6320.3 At the time of admission to a program, staff shall explain program rules, client rights, and grievance procedures. Program staff shall document this explanation by including a form, signed by the client and witnessed by the staff person, in the client's record.
- 6320.4 A program shall develop and implement written grievance procedures to ensure a prompt, impartial review of any alleged or apparent incident of violation of rights or confidentiality. The procedures shall be consistent with the principles of due process and Department requirements, and shall include but not be limited to:
- (a) Reporting the allegation or incident to the Department within twenty-four (24) hours of it coming to the attention of program staff;
 - (b) Completing the investigation of any allegation or incident within thirty (30) calendar days;
 - (c) Providing a copy of the investigation report to the Department within twenty-four (24) hours of completing the investigation of any complaint; and
 - (d) Cooperating with the Department with any inquiries or investigations related to alleged violations of clients' rights conducted by Department staff.
- 6320.5 Medicaid beneficiaries are entitled to Notice and Appeal rights pursuant to 29 DCMR § 9508 in cases of intended adverse action such as an action to deny, discontinue, terminate, or change the manner or form of Medicaid-funded SUD services. The Department shall provide local-only beneficiaries the same Notice and Appeal rights as those provided to Medicaid beneficiaries in 29 DCMR § 9508.
- 6320.6 The provider shall give the client or legal guardian a written statement concerning client's rights and responsibilities ("Client's Rights Statement") in the program. The client or guardian shall sign the statement attesting to his or her understanding of these rights and responsibilities as explained by the staff person who shall witness the client's or guardian's signature. This document shall be placed in the client's record.

6321 CLIENT CHOICE

- 6321.1 Each provider shall establish and adhere to policies and procedures governing the means by which clients shall be informed of the full choices of providers and how to access these services (“Client Choice Policy”).
- 6321.2 The Department shall review and approve each provider’s Client Choice Policy during the certification process.
- 6321.3 The Client Choice Policy shall comply with applicable Federal and District laws and regulations.
- 6321.4 Each provider shall:
- (a) Make its Client Choice Policy available to consumers and their families; and
 - (b) Establish and adhere to a system for documenting that clients and families receive the Client Choice Policy.
- 6321.5 Each providers’ Client Choice Policy shall ensure that each client requesting SUD services directly from the provider is informed that the client may choose to have SUD services provided by any of the other certified providers that offer the appropriate LOC for that client.

6322 CLIENT RECORDS MANAGEMENT AND CONFIDENTIALITY

- 6322.1 A program shall create and maintain an organized record for each client receiving services.
- 6322.2 All records must be secured in a manner that provides protection from unauthorized disclosure, access, use, or damage in accordance with both Federal and District laws and regulations.
- 6322.3 All client records shall be kept confidential and shall be handled in compliance with 42 CFR Part 2, and Federal and District laws and regulations regarding the confidentiality of client records.
- 6322.4 Each provider shall have a designated privacy officer responsible for ensuring compliance with privacy requirements.
- 6322.5 A program shall ensure that all staff and clients, as part of their orientation, are informed of the privacy requirements.
- 6322.6 A decision to disclose protected health information (“PHI”), under any provisions of Federal or District laws or regulations that permit such disclosure, shall be made only by the Privacy Officer or his/her designee with appropriately administered consent procedures.

- 6322.7 A program shall implement policies and procedures for the release of identifying information consistent with Federal and District laws and regulations regarding the confidentiality of client records including 42 CFR Part 2, the District of Columbia Mental Health Information Act, and the Health Insurance Portability and Accountability Act (“HIPAA”).
- 6322.8 In order to facilitate treatment and care coordination, the program shall encourage all enrolled clients to authorize the release of information to other certified providers, primary health care providers, and other health care organizations engaged in treating the client.
- 6322.9 The program director shall designate a staff member to be responsible for the maintenance and administration of records.
- 6322.10 A program shall arrange and store records according to a uniform system approved by the Department.
- 6322.11 A program shall maintain records such that they are readily accessible for use and review by authorized staff and other authorized parties.
- 6322.12 A program shall organize the content of records so that information can be located easily and so that Department surveys and audits can be conducted with reasonable efficiency.

6323 STORAGE AND RETENTION OF CLIENT RECORDS

- 6323.1 A provider shall retain client records (either original or accurate reproductions) until all litigation, adverse audit findings, or both, are resolved. If no such conditions exist, a provider shall retain client records for at least ten (10) years after discharge.
- 6323.2 Records of minors shall be kept for at least ten (10) years after such minor has reached the age of eighteen (18) years.
- 6323.3 The provider shall establish a Document Retention Schedule with all medical records retained in accordance with Federal and District laws and regulations.
- 6323.4 If the records of a program are maintained on computer systems, the computer system shall:
- (a) Have a backup system to safeguard the records in the event of operator or equipment failure, natural disasters, power outages, and other emergency situations;
 - (b) Identify the name of the person making each entry into the record;

- (c) Be secure from inadvertent or unauthorized access to records in accordance with 42 CFR Part 2 and other Federal and District laws and regulations regarding the confidentiality of client records;
- (d) Limit access to providers who are involved in the care of the client and who have permission from the client to access the record; and
- (e) Create an electronic alert when data is released.

6323.5

A program shall maintain records that safeguard confidentiality in the following manner:

- (a) Records shall be stored with access controlled and limited to authorized staff and authorized agents of the Department;
- (b) Written records that are not in use shall be maintained in either a secured room, locked file cabinet, safe, or other similar container;
- (c) The program shall implement policies and procedures that govern client access to their own records;
- (d) The policies and procedures of a program shall only restrict a client's access to their record or information in the record after an administrative review with documented clinical justification;
- (e) Clients shall receive copies of their records as permitted under 42 CFR Part 2;
- (f) All staff entries into the record shall be clear, complete, accurate, and recorded in a timely fashion;
- (g) All entries shall be dated and authenticated by the recorder with full signature and title;
- (h) All non-electronic entries shall be typewritten or legibly written in indelible ink that will not deteriorate from photocopying;
- (i) Any documentation error shall be marked through with a single line and initialed and dated by the recorder; and
- (j) Limited use of symbols and abbreviations shall be pre-approved by the program and accompanied by an explanatory legend.

6323.6

Any records that are retained off-site must be kept in accordance with this chapter. If an outside vendor is used, the provider must submit the vendor's name, address, and telephone number to the Department.

6324 CLIENT RECORD CONTENTS

6324.1 At a minimum, all client records shall include:

- (a) Documentation of the referral and initial screening interview and its findings;
- (b) The client's consent to SUD services;
- (c) The Client's Rights Statement;
- (d) Documentation that the client received:
 - (1) An orientation to the program's services, rules, confidentiality practices, and client's rights; and
 - (2) Notice of privacy practices.
- (e) Confidentiality forms and releases signed to permit the facility to obtain and/or release information;
- (f) Diagnostic interview and assessment record, including any Department-approved screening and assessment tools;
- (g) Evaluation of medical needs and, as applicable, medication intake sheets and special diets which shall include:
 - (1) Documentation of physician's orders for medication and treatment, change of orders, and/or special treatment evaluation;
 - (2) For drugs prescribed following admissions, any prescribed drug product by name, dosage, and strength, as well as date(s) medication was administered, discontinued, or changed; and
 - (3) For any prescribed "OTC" medications following admissions, any OTCs by product name, dosage, and strength, as well as date(s) medication was administered, discontinued, or changed.
- (h) Assessments and individual treatment plans pursuant to the LOC and the client's needs, including recovery plans, if applicable;
- (i) Encounter notes, which provide sufficient written documentation to support each therapy, service, activity, or session for which billing is made that, at a minimum, consists of:
 - (1) The specific service type rendered;
 - (2) Dated and authenticated entries with their authors identified, that include the duration, and actual time (beginning and ending as well

as a.m. or p.m.), during which the services were rendered. To constitute a valid signature, digital signatures must include a date and time stamp contemporaneous with the signature function and must be recorded and readily retrievable in the electronic system's audit log;

- (3) Name, title, and credentials (if applicable) of the person providing the services;
 - (4) The setting in which the services were rendered;
 - (5) Confirmation that the services delivered are contained in the client's treatment or recovery plan and are identified in the encounter note;
 - (6) A description of each encounter or intervention provided to the client, which is sufficient to document that the service was provided in accordance with this chapter;
 - (7) A description of the client's response to the intervention sufficient to show, particularly in the case of group interventions, their unique participation in the service; and
 - (8) Provider's observations.
- (j) Documentation of all services provided to the client as well as activities directly related to the individual treatment or recovery plan that are not included in encounter notes;
 - (k) Documentation of missed appointments and efforts to contact and reengage the client;
 - (l) Documentation of any personal articles of the client held by the provider for safekeeping and any statements acknowledging receipt of the property;
 - (m) Emergency contact information of individuals to contact in case of a client emergency with appropriate consent to share information;
 - (n) Documentation of all referrals to other agencies and the outcome of such referrals;
 - (o) Documentation establishing all attempts to acquire necessary and relevant information from other sources;
 - (p) Pertinent information reported by the client, family members, or significant others regarding a change in the client's condition and/or an unusual or unexpected occurrence in the client's life;

- (q) Drug test results and incidents of drug use;
- (r) Discharge summary and aftercare plan;
- (s) Outcomes of care and follow-up data concerning outcomes of care;
- (t) Documentation of correspondence including with other medical, community providers, human service, social service, and criminal justice entities as it pertains to a client's treatment and/or recovery; and
- (u) Documentation of a client's representative payee or legal guardian, as applicable.

6325 RESIDENTIAL TREATMENT AND RECOVERY PROGRAMS

- 6325.1 The provisions of this section apply only to residential treatment programs and environmental stability programs, as defined by this chapter.
- 6325.2 Each residential provider, except providers only offering environmental stability, must obtain a Certificate of Need ("CON"), from the District of Columbia State Health Planning and Development Agency ("SHPDA").
- 6325.3 The CON must be submitted as part of the certification application packet.
- 6325.4 Each residential treatment program serving children and youth under eighteen (18) must obtain written approval from the Office of the State Superintendent of Education ("OSSE").
- 6325.5 Residential treatment and environmental stability providers shall comply with all applicable construction codes and housing codes, and zoning requirements applicable to the facility, including all Certificate of Occupancy, Basic Business License ("BBL"), and Construction Permit requirements.
- 6325.6 Each newly established residential treatment and environmental stability provider shall provide proof of a satisfactory pre-certification inspection by DCRA for initial certification, dated not more than forty-five (45) calendar days prior to the date of submission to the Department, for District of Columbia Property Maintenance Code (12-G DCMR) and Housing Code (14 DCMR) compliance, including documentation of the inspection date and findings and proof of abatement certified by DCRA of all deficiencies identified during the inspection. This requirement can be met by submission of a Certificate of Occupancy or a BBL dated within the past six (6) months, provided that that applicant can demonstrate that DCRA performed an onsite inspection of the premises.
- 6325.7 For existing residential treatment and recovery programs that are applying for re-certification, the applicants shall also provide proof of current BBLs.

- 6325.8 Residential facilities' physical design and structure shall be sufficient to accommodate staff, clients, and functions of the program and shall make available an area(s) for indoor social and recreational activities.
- 6325.9 A program that provides overnight accommodations shall not operate more beds than the number for which it is authorized by the Department.
- 6325.10 Other than routine household duties, no client shall be required to perform unpaid work.
- 6325.11 Upon admission to a residential program, each client shall be provided a copy of the program's house rules.
- 6325.12 Each residential program shall have house rules consistent with this chapter and that include, at a minimum, rules concerning:
- (a) The use of tobacco;
 - (b) The use of the telephone;
 - (c) Utilizing, viewing or listening to cell phones, television, radio, computers, CDs, DVDs, or other media such as social media;
 - (d) Movement of clients in and out of the facility, including a requirement for escorted movements by program staff or another agency-approved escort;
 - (e) A policy that addresses search and drug testing upon return to the facility; and
 - (f) The prohibition of sexual relations between staff/volunteers and clients.
- 6325.13 Each residential program shall be equipped, furnished, and maintained to provide a functional, safe, and comfortable home-like setting.
- 6325.14 The dining area shall have a sufficient number of tables and chairs to seat all individuals residing in the facility at the same time. Dining chairs shall be sturdy, non-folding, without rollers unless retractable, and designed to minimize tilting.
- 6325.15 Each residential program shall permit each client to bring reasonable personal possessions, including clothing and personal articles, to the facility unless the provider can demonstrate that it is not practical, feasible or safe.
- 6325.16 Each residential facility shall provide clients with access to reasonable individual storage space for private use.
- 6325.17 Upon each client's discharge from a residential program, the provider shall return to the client, or the client's representative, any personal articles of the client held by the provider for safekeeping. The provider shall also ensure that the client is

permitted to take all of his or her personal possessions from the facility. The provider may require the client or client's representative to sign a statement acknowledging receipt of the property. A copy of that receipt shall be placed in the client's record.

- 6325.18 Each residential program shall maintain a separate and accurate record of all funds that the client or the client's representative or representative payee deposits with the provider for safekeeping. This record shall include the signature of the client for each withdrawal and the signature of facility staff for each deposit and disbursement made on behalf of a client.
- 6325.19 Each residential facility shall be equipped with a functioning landline or mobile telephone for use by clients. The telephone numbers shall be provided to clients and to the Department.
- 6325.20 Staff bedrooms shall be separate from client bedrooms and all common living areas.
- 6325.21 Each facility housing a residential program shall have a functioning doorbell or knocker.
- 6325.22 Each bedroom shall comply with the space and occupancy requirements for habitable rooms in 14 DCMR § 402.
- 6325.23 The provider shall ensure each client has the following items:
- (a) A bed, which shall not be a cot;
 - (b) A mattress that was new when purchased by the provider, has a manufacturer's tag or label attached to it, and is in good, intact condition with unbroken springs and clean surface fabric;
 - (c) A bedside table or cabinet and an individual reading lamp with at least a seventy-five (75) watt, or its LED light bulb equivalent, rate of capacity;
 - (d) Storage space in a stationary cabinet, chest, or closet that provides at least one (1) cubic foot of space for each client for valuables and personal items;
 - (e) Sufficient suitable storage space, including a dresser and closet space, for personal clothing, shoes, accessories, and other personal items; and
 - (f) A waste receptacle and clothes hamper with lid.
- 6325.24 Each bed shall be placed at least three (3) feet from any other bed and from any uncovered radiator.
- 6325.25 Each bedroom shall have direct access to a major corridor and at least one window to the outside, unless the DCRA, or a successor agency responsible for enforcement

of the D.C. Housing Code, has determined that it otherwise meets the lighting and ventilation requirements of the D.C. Housing Code for habitable rooms.

- 6325.26 Each facility housing a residential program shall provide one or more bathrooms for clients that are equipped with the following fixtures, properly installed and maintained in good working condition:
- (a) Toilet (water closet);
 - (b) Sink (lavatory);
 - (c) Shower or bathtub with shower, including a handheld shower; and
 - (d) Grab bars in showers and bathtubs.
- 6325.27 Each residential facility shall provide at least one (1) bathroom for each six (6) occupants in compliance with 14 DCMR § 602.
- 6325.28 Each bathroom shall be adequately equipped with the following:
- (a) Toilet paper holder and toilet paper;
 - (b) Paper towel holder and paper towels or clean hand towels;
 - (c) Soap;
 - (d) Mirror;
 - (e) Adequate lighting;
 - (f) Waste receptacle;
 - (g) Floor mat;
 - (h) Non-skid tub mat or decals; and
 - (i) Shower curtain or shower door.
- 6325.29 Each residential provider shall ensure that properly anchored grab bars or handrails are provided near the toilet or other areas of the bathroom, if needed by any resident in the facility.
- 6325.30 Adequate provision shall be made to ensure each client's privacy and safety in the bathroom.
- 6325.31 Each residential program shall promote each client's participation and skill development in menu planning, shopping, food storage, and kitchen maintenance, if appropriate.

- 6325.32 Each residential program shall provide appropriate equipment (including a washing machine and dryer) and supplies on the premises or through a laundry service to ensure sufficient clean linen and the proper sanitary washing and handling of linen and clients' personal clothing.
- 6325.33 Each program shall ensure that every client has at least three (3) washcloths, two (2) towels, two (2) sheet sets that include pillowcases, a bedspread, a pillow, a blanket, and a mattress cover in good and clean condition.
- 6325.34 Each blanket, bedspread, and mattress cover shall be cleaned regularly, whenever soiled, and before being transferred from one resident to another.
- 6325.35 Each piece of bed linen, towel, and washcloth shall be changed and cleaned as often as necessary to maintain cleanliness, provided that all towels and bed linen shall be changed at least once each week.
- 6325.36 No person who is not a client, staff member, or child of a client (only in the case of programs for parents and children) may reside at a facility that houses a residential treatment program.
- 6325.37 Providers shall ensure that clients can access all scheduled or emergency medical and dental appointments.
- 6325.38 Providers serving parents and children must take precautions to ensure child safety, including but not limited to protection for windows, outlets, and stairways.
- 6325.39 Each facility housing a program that provides services for parents with children shall have extra supplies for babies, including but not limited to diapers, wipes, baby soap, baby food and formula.
- 6325.40 The following provisions apply only to residential treatment programs, except environmental stability programs, as defined by this chapter:
- (a) A program that provides overnight accommodations shall ensure that evening and overnight shifts have at least two (2) staff members on duty.
 - (b) Children and youth under eighteen (18) may not reside at an adult residential treatment facility or visit overnight at a facility not certified to serve parents and children. This information must be included in the house rules.
 - (c) Each provider shall maintain a current inventory of each client's personal property and shall provide a copy of the inventory, signed by the client and staff, to the client.
 - (d) Each provider shall take appropriate measures to safeguard and account for personal property brought into the facility by a client.

- (e) Each provider shall provide the client, or the client's representative, with a receipt for any personal articles to be held by the provider for safekeeping that includes and the date it was deposited with the provider and maintain a record of all articles held for safekeeping.
- (f) Each residential treatment program shall have a licensed dietitian or nutritionist available, a copy of whose current license shall be maintained on file, to provide the following services:
 - (1) Review and approval of menus;
 - (2) Education for clients with nutrition deficiencies or special needs;
 - (3) Coordination with medical personnel, as appropriate; and
 - (4) A nutritional assessment for each client within three (3) calendar days of admission unless the client has a current assessment or doctor's order for dietary guidelines.
- (g) The provider shall provide at least three (3) meals per day and between meal snacks that:
 - (1) Provide a nourishing, well-balanced diet in accordance with dietary guidelines established by the United States Department of Agriculture;
 - (2) Are suited to the special needs of each client; and
 - (3) Are adjusted for seasonal changes, particularly to allow for the use of fresh fruits and vegetables.
- (h) The provider shall ensure that menus are written on a weekly basis, that the menus provide for a variety of foods at each meal, and that menus are varied from week to week. Menus shall be posted for the clients' review.
- (i) The provider shall ensure that a copy of each weekly menu is retained for a period of six (6) months. The menus retained shall include special diets and reflect meals as planned and as actually served, including handwritten notations of any substitutions. The provider shall also retain receipts and invoices for food purchases for six (6) months. The records required to be retained by this subsection are subject to review by the Department.
- (j) Each meal shall be scheduled so that the maximum interval between each meal is no more than six (6) hours, with no more than fourteen (14) hours between a substantial evening meal and breakfast the following day.
- (k) If a client refuses food or misses a scheduled meal, appropriate food substitutions of comparable nutritional value shall be offered.

- (l) If a client will be away from the program during mealtime for necessary medical care, work, or other scheduled appointments, the program shall provide an appropriate meal and in-between-meal snack for the client to carry with him or her and shall ensure that the meal is nutritious as required by these rules and suited to the special needs of the client.
- (m) A residential treatment program providing meals shall implement a written Nutritional Standards Policy that outlines their procedures to meet the dietary needs of its clients, ensuring access to nourishing, well-balanced, and healthy meals. The policy shall identify the methods and parties responsible for food procurement, storage, inventory, and preparation.
- (n) The Nutritional Standards Policy shall include procedures for clients unable to have a regular diet as follows:
 - (1) Providing clinical diets for medical reasons, when necessary;
 - (2) Recording clinical diets in the client's record;
 - (3) Providing special diets for clients' religious needs; and
 - (4) Maintaining menus of special diets or a written plan stating how special diets will be developed or obtained when needed.
- (o) A residential treatment program shall make reasonable efforts to prepare meals that consider the cultural background and personal preferences of the clients.
- (p) Meals shall be served in a pleasant, relaxed dining area that accommodates families and children.
- (q) Under the supervision of a Qualified Practitioner, all Level 3 programs except MMIWM programs shall:
 - (1) Provide training in activities of daily living;
 - (2) Provide therapeutic recreational activities designed to help the client learn ways to use leisure time constructively, develop new personal interests and skills, and increase social adjustment; and
 - (3) Ensure that staff providing activities listed in subparagraphs (1) and (2) have a high school degree or a GED and at least twenty (20) hours of in-service training per year regarding issues of substance abuse.

6326 PROGRAMS SERVING PARENTS AND CHILDREN

- 6326.1 In addition to core requirements and other standards described in this chapter, a program providing SUD treatment services to parents and their children shall comply with the provisions of this section.
- 6326.2 The provider shall specify in its certification application the age range of the children that will be accepted in the program of parents with children, and ensure that it satisfies Federal and District laws and regulations governing care for children including those listed in this section.
- 6326.3 The Department will include in the program certification a designation as a program serving parents with children, and specify the age range of children that may be accepted when the parents are admitted into the program.
- 6326.4 Programs shall ensure that children are supervised at all times. Programs shall ensure that parents designate an alternate caretaker who is not in the program to care for the children in case of emergency.
- 6326.5 Programs serving parents and young children (ages zero [0] to five [5]) shall also serve pregnant women.
- 6326.6 Programs shall ensure all parents and children are connected to a primary care provider and any other needed specialized medical provider and shall facilitate medical appointments and treatment for parents and children in the program.
- 6326.7 Programs shall ensure that childcare/daycare is available for children, provided while the parent participates in treatment services either directly or through contractual or other affiliation.
- 6326.8 A program that directly operates a child development facility shall be licensed in accordance with District laws and regulations.
- 6326.9 Programs that serve parents with children shall ensure that school-age children are in regular attendance at a public, independent, private, or parochial school, or in private instruction in accordance with District laws and regulations, and support the parent's engagement with the child's school.
- 6326.10 Programs that serve parents with school-age children shall ensure that children have access to tutoring programs.
- 6326.11 Before a parent and child can be admitted to a program serving parents and children, the program shall ensure that it has a copy of the child's current immunization records, which must be up to date. A sixty (60) calendar day grace period will be provided to a parent(s) or child experiencing homelessness.

- 6326.12 Programs that serve parents with children shall record information about the children residing in or attending the program who are not formally admitted for treatment, including but not limited to the following, as applicable:
- (a) Individualized education plans (“IEPs”);
 - (b) Report cards;
 - (c) Health records; and
 - (d) Information linking the child to the course of treatment for the parent, as clinically indicated.
- 6326.13 Programs shall develop policies and procedures for determining the need to formally admit or refer a child.
- 6326.14 A program that is also certified to treat children and youth shall establish a separate record for each child when a clinical determination is made to formally admit the child.
- 6326.15 An individualized Plan of Care shall be developed for any child who is formally admitted to the program.
- 6326.16 The program shall obtain informed consent consistent with District law and regulations prior to rendering services.
- 6326.17 Service delivery and program administration staff shall demonstrate experience and training in addressing the needs of parents and children.
- 6326.18 All services delivery staff shall receive periodic training regarding therapeutic issues relevant to parents and children. At least two (2) times per year, the program shall provide or arrange training on each of the following topics:
- (a) Child development; and
 - (b) The appropriate care and stimulation of infants, including drug-affected newborn infants.
- 6326.19 Service delivery staff shall maintain current training in first aid and CPR for infants and children.
- 6326.20 Programs shall ensure that an annual medical evaluation is performed for each parent and child.
- 6326.21 Programs shall ensure that recommendations by a physician or APRN are followed.

6327 PROVIDER REQUIREMENTS FOR OPIOID TREATMENT PROGRAMS

6327.1 In accordance with 42 CFR Part 8, Certification of Opioid Treatment Programs (“OTPs”), all OTPs must be certified by the U.S. Substance Abuse and Mental Health Services Administration (“SAMHSA”), the Drug Enforcement Administration (“DEA”), and accredited by a national accreditation body that has been approved by SAMHSA.

6327.2 OTPs shall comply with Federal requirements for opioid treatment, as specified in 42 CFR Part 8, and shall comply with Federal and District laws and regulations for maintaining controlled substances as specified in Chapter 10, Title 22-B DCMR and 21 CFR Part 1300, respectively.

6327.3 OTPs shall submit to the Department photocopies of all applications, reports, and notifications required by Federal laws and regulations.

6327.4 OTPs shall ensure the following:

- (a) That access to electronic alarm areas where drug stock is maintained shall be limited to a minimum number of authorized, licensed personnel;
- (b) That each employee shall have his or her own individual code to access alarmed stock areas, which shall be erased upon separation from the provider;
- (c) That all stored drugs (liquid, powder, solid, and reconstituted), including controlled substances, shall be clearly labeled with the following information:
 - (1) Name of substance;
 - (2) Strength of substance;
 - (3) Date of reconstitution or preparation;
 - (4) Manufacturer and lot number;
 - (5) Manufacturer’s expiration date, if applicable; and
 - (6) If applicable, reconstituted/prepared drug’s expiration date according to the manufacturer’s expiration date or one (1) year from the date of reconstitution or preparation, whichever is shorter.
- (d) Take-home medications shall be labeled and packaged in accordance with Federal and District laws and regulations and shall include the following information:
 - (1) Treatment program’s name, address, and telephone number;

- (2) Physician's name;
- (3) Client's name;
- (4) Directions for ingestion;
- (5) Name of medication;
- (6) Dosage in milligrams;
- (7) Date issued; and
- (8) Cautionary labels, as appropriate.

6327.5 Containers of drugs shall be kept covered and stored in the appropriate locked safe, with access limited by an electronic alarm system that conforms to the DEA requirements and District laws and regulations.

6327.6 The Department shall be notified of any theft, suspected theft, or any significant loss of controlled substances, including spillage. Copies of DEA forms 106 and 41 shall be submitted to the Department.

6328 LEVELS OF CARE: GENERAL REQUIREMENTS

6328.1 All individuals seeking SUD services must be assessed and referred to a particular LOC in accordance with the Department-approved assessment tool(s) and ASAM criteria.

6328.2 Each provider shall ensure that the client receives treatment in accordance with ASAM criteria and this chapter.

6328.3 Each provider shall ensure that all staff comply with all Federal and District laws and regulations pertaining to scope of practice, licensing requirements, and supervision requirements.

6328.4 All treatment shall be:

- (a) Person-centered;
- (b) Provided only if determined to be medically necessary in accordance with the Plan of Care; and
- (c) Provided as part of organized or structured treatment services.

6328.5 Prior to transitioning to a new LOC, at a minimum, an Ongoing Diagnostic Assessment must be performed to ensure that the client is appropriate for the new LOC.

- 6328.6 The Clinical Care Coordinator shall ensure appropriate client referrals, authorizations, and transitions to new LOCs.
- 6328.7 A certified provider shall not deny admission for services to an otherwise qualified client because that person is receiving Medication-Assisted Treatment (“MAT”) services, even if the MAT services are provided by a different provider.
- 6328.8 All providers shall offer all Food and Drug Administration (“FDA”) approved forms of MAT to any client who meets the criteria for and selects MAT as part of their Plan of Care, in accordance with certification under this chapter or other Federal and District laws and regulations. If a provider is not certified to offer the client’s choice of medication in accordance with this chapter or under any other Federal and District laws and regulations, then the provider shall refer the client to another provider able to offer MAT that meets the client’s needs.

6329 PROVIDER REQUIREMENT: INTAKE AND ASSESSMENT

- 6329.1 Intake and Assessment is a not a LOC but a core responsibility of all certified treatment providers. All certified treatment providers, with the exception of those certified at Level R only, shall provide an initial health screening and intake and assessment in accordance with this chapter. The intake and assessment shall include the following:
- (a) Presenting problem;
 - (b) Substance use history;
 - (c) Immediate risks related to serious intoxication or withdrawal;
 - (d) Immediate risks for self-harm, suicide and violence;
 - (e) Past and present mental disorders, including posttraumatic stress disorder and other anxiety disorders, mood disorders, and eating disorders;
 - (f) Past and present history of violence and trauma, including sexual victimization and interpersonal violence;
 - (g) Legal history, including whether a client is court-ordered to treatment or under the supervision of the Department of Corrections;
 - (h) Employment and housing status;
 - (i) Once assessed, the provider shall refer the client to the appropriate LOC as outlined by ASAM. The client has a choice about which provider will provide services at that LOC. If the client does not select the provider that conducted the initial assessment as the place to receive services, the provider shall make a referral, seek authorization of services, and arrange transportation to the chosen provider if the client selects same day services.

The provider shall have a policy and procedure that clearly outlines an intake process and an emergency intake process, including a procedure to refer individuals who are not clinically appropriate for its program.

- 6329.2 All treatment providers shall provide the following services:
- (a) Initial Assessment (if the client does not remain with assessing provider);
 - (b) SUD Counseling/Therapy;
 - (c) Crisis Intervention;
 - (d) Ongoing or Comprehensive Diagnostic Assessment (if the client remains at assessing provider);
 - (e) Drug Screening;
 - (f) CCC; and
 - (g) RSS.
- 6329.3 Treatment providers shall ensure appropriate staff is on duty to assess clients for acute withdrawal symptoms and to provide medical triage. Providers shall have proper infrastructure to conduct testing and screening and proper storage for testing kits.
- 6329.4 Medical triage is the process of determining the priority of a client's treatment needs via the following activities:
- (a) Obtaining general medical history including co-occurring medical concerns; assessing medical stability and providing clearance for treatment;
 - (b) Checking vital signs including blood pressure, blood glucose, temperature, pulse, etc.;
 - (c) Assessing any urgent or emergent medical concerns and addressing as appropriate including but not limited to calling and engaging 911;
 - (d) Assessing for withdrawal symptoms/need for detox;
 - (e) Conducting medication review to ensure that medications match bottle name and identified medical concern including physical health and psychiatric medications;
 - (f) Screening and assessing for emergent psychiatric concerns; determining current degree of mental health treatment;

- (g) Urine pregnancy testing for all women of childbearing age and referral for pre-natal care if pregnant and has no provider;
- (h) Conducting tuberculosis screens;
- (i) Collecting urine for screening;
- (j) Using ASAM criteria to make recommendations for medically necessary and clinically appropriate treatment;
- (k) Collaborating with counselors regarding appropriate level of care; initiating the Treatment Assignment Protocol;
- (l) Linking all clients that test positive to medical services via a warm transition; and
- (m) Maintaining an updated list of HIV medical providers in the District.

6329.5 Providers shall screen all clients for RSS.

6329.6 Providers shall obtain client's informed consent to treatment consistent with District laws and regulations.

6330 LEVEL OF CARE: OPIOID TREATMENT PROGRAM

6330.1 Opioid Treatment Programs ("OTPs") provide Medication Assisted Treatment ("MAT") for clients that have an SUD that could be appropriately treated in accordance with Federal regulations.

6330.2 MAT is the combination of any FDA-approved medication with behavioral therapies to treat SUD. A client who receives medication to treat SUD must also receive SUD Counseling/Therapy. Use of this service should be in accordance with ASAM criteria and practice guidelines issued by the Department.

6330.3 OTPs shall ensure that clients seeking MAT services are informed that there are multiple medications approved to treat SUD and provide written informed consent to the specific medication selected by the client. If the medication the client chooses is unavailable at that OTP, the provider must refer the client to another provider that offers the selected medication. No client under eighteen (18) years of age may be admitted to an OTP unless a parent or legal guardian consents in writing to such treatment.

6330.4 MAT may be administered on an in-office basis or as take-home regimen. Whether in-office or take-home, MAT administrations include the unit of medication and therapeutic guidance. For clients receiving a take-home regimen, therapeutic guidance must include additional guidance related to storage and self-administration. OTPs must comply with all Federal and District laws and regulations concerning MAT.

- 6330.5 The provision of MAT to treat SUD must be accompanied by a clinically appropriate array of SUD treatment services that include:
- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339;
 - (b) SUD Counseling/Therapy in accordance with § 6342;
 - (c) CCC in accordance with § 6340;
 - (d) Drug Screening in accordance with § 6343 and including at least eight (8) random drug screens per year, per client;
 - (e) Crisis Intervention in accordance with § 6341; and
 - (f) RSS in accordance with § 6344.
- 6330.6 Providers shall have medical staff (physician, PA, APRN, or RN) on duty during all clinic hours. A physician shall be available on-call during all clinic hours, if not present on site.
- 6330.7 An OTP shall provide a mechanism to address a client's medical or psychiatric emergencies occurring outside of program hours of operation, including an emergency system to obtain dosage levels and other pertinent client information, twenty-four (24) hour a day, seven (7) days a week. The OTP shall provide every client an identification card that identifies the pharmacotherapy being administered through the OTP. The card shall include the provider's emergency contact information so that appropriate clinical information and dosing information can be obtained in an emergency.
- 6330.8 A physician shall evaluate the client a minimum of once per month for the first year that a client receives MAT and a minimum of every six (6) months thereafter, in coordination with the Plan of Care and as needed.
- 6330.9 An OTP shall require that each client undergo a complete, fully documented physical evaluation prior to prescribing or renewing a prescription for MAT. If no physical is available within the past twelve (12) months, the provider shall ensure the full medical examination is completed within fourteen (14) days of admission to the OTP.
- 6330.10 An OTP shall provide counseling on preventing exposure to, and the transmission of, HIV for each client admitted or readmitted to the program.

6331 LEVEL OF CARE 1: OUTPATIENT

- 6331.1 Level 1 Outpatient providers shall have the capacity to provide up to eight (8) hours of SUD treatment services per week, per client, in accordance with this section and medical necessity based on ASAM criteria. Level 1 Outpatient is the appropriate

LOC for individuals who are assessed as meeting the ASAM criteria for Level 1 and:

- (a) Recognize their SUD and are committed to recovery;
- (b) Are transitioning from a higher LOC;
- (c) Are in the early stages of change and not yet ready to commit to full recovery;
- (d) Have a co-occurring condition that is stable; or
- (e) Have achieved stability in recovery and can benefit from ongoing monitoring and disease management.

6331.2 Level 1 Outpatient providers may also be certified in the specialty service of Adolescent-Community Reinforcement Approach (“ACRA”) in accordance with § 6347 of this chapter for services to youth and young adults with co-occurring substance use and mental health disorders ages twelve (12) to twenty-one (21) for youth providers and twenty-two (22) to twenty-four (24) for adult providers.

6331.3 Level 1 Outpatient treatment duration varies with the severity of the patient’s SUD and their response to treatment but generally lasts up to one hundred and eighty (180) days for an initial authorization. Level 1 treatment can continue long-term in accordance with the Plan of Care, for clients needing long-term disease management.

6331.4 Level 1 Outpatient services are determined by a Diagnostic Assessment, performed in accordance with § 6339.

6331.5 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the service requirements for this LOC.

6331.6 Level 1 Outpatient shall include the following mix of services in accordance with the client’s Plan of Care and this chapter (unless the client is receiving ACRA services in which case SUD Counseling/Therapy and CCC shall be provided in accordance with § 6347):

- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339.
- (b) SUD Counseling/Therapy in accordance with § 6342;
- (c) CCC in accordance with § 6340;
- (d) Drug Screening in accordance with § 6343;
- (e) Crisis Intervention in accordance with § 6341; and
- (f) RSS in accordance with § 6344.

6332 LEVEL OF CARE 2.1: INTENSIVE OUTPATIENT PROGRAM (IOP)

6332.1 Level 2.1 Intensive Outpatient Program (IOP) providers shall have the capacity to provide between nine (9) and nineteen (19) hours of a mixture of SUD treatment services per week for adults and between six (6) and nineteen (19) hours of treatment services per week for adolescents in accordance with this section and medical necessity based on ASAM criteria. IOP is the appropriate LOC for clients who are assessed as meeting the ASAM criteria for Level 2.1 and:

- (a) Recognize their SUD and are committed to recovery;
- (b) Are transitioning from a different LOC; or
- (c) Have stable medical or psychiatric co-occurring conditions.

6332.2 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the service requirements for this LOC.

6332.3 Level 2.1 IOP includes the following mix of core services, in accordance with the client's Plan of Care:

- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339;
- (b) SUD Counseling/Therapy in accordance with § 6342;
- (c) CCC in accordance with § 6340;
- (d) Drug Screening in accordance with § 6343;
- (e) Crisis Intervention in accordance with § 6341; and
- (f) RSS in accordance with § 6344.

6333 LEVEL OF CARE 2.5: DAY TREATMENT

6333.1 Level 2.5 Day Treatment providers shall have the capacity to provide a minimum of twenty (20) hours of a mixture of SUD treatment services per week, per client, in accordance with this section and medical necessity based on ASAM criteria. Day Treatment is the appropriate LOC for clients who are assessed as meeting the ASAM criteria for Level 2.5 and:

- (a) Have unstable medical or psychiatric co-occurring conditions; or
- (b) Have issues that require daily management or monitoring but can be addressed on an outpatient basis.

6333.2 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the service requirements for this LOC.

6333.3 Level 2.5 Day Treatment includes the following mix of core services as indicated on the Plan of Care and in accordance with this chapter:

- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339;
- (b) SUD Counseling/Therapy in accordance with § 6342;
- (c) CCC in accordance with § 6340;
- (d) Drug Screening in accordance with § 6343; and
- (e) Crisis Intervention in accordance with § 6341; and
- (f) RSS in accordance with § 6344.

6334 LEVEL OF CARE 3.1: CLINICALLY MANAGED LOW-INTENSITY RESIDENTIAL

6334.1 Level 3.1 Clinically Managed Low-Intensity Residential providers shall have the capacity to provide a minimum of five (5) hours of a mixture of SUD treatment services per week, per client, in accordance with this section and medical necessity based on ASAM criteria. Level 3.1 providers must be staffed with independently licensed clinicians who are competent to treat SUD and mental illness. A physician must be available on-site or by telephone twenty-four (24) hours a day, seven (7) days a week. Level 3.1 Clinically Managed Low-Intensity Residential is the appropriate LOC for clients who are assessed as meeting the ASAM criteria for Level 3.1 and:

- (a) Are employed, in school, in pre-vocational programs, actively seeking employment, or involved in a structured day program;
- (b) Recognize their SUD and are committed to recovery or are in the early stages of change and not yet ready to commit to full recovery but need a stable supportive living environment to support their treatment or recovery;
- (c) May have a stable co-occurring physical or mental illness;
- (d) Who meet the ASAM criteria for Level 3.1, or its equivalent, as approved by the Department; and
- (e) Who are capable of self-care but are not ready to return to family or independent living.

6334.2 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the minimum service requirements for this LOC.

- 6334.3 Level 3.1 Clinically Managed Low-Intensity Residential includes the following mix of core and specialty services, as indicated on the Plan of Care and in accordance with this chapter:
- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339;
 - (b) SUD Counseling/Therapy in accordance with § 6342;
 - (c) CCC in accordance with § 6340;
 - (d) Drug Screening in accordance with § 6343;
 - (e) Crisis Intervention in accordance with § 6341;
 - (f) Medication Management in accordance with § 6345; and
 - (g) RSS in accordance with § 6344.
- 6334.4 The provider shall conduct discharge planning shall for all clients discharged from Level 3.1. Discharge planning criteria shall include at least the following activities prior to discharge from a Level 3.1 program:
- (a) A review of the client's behavioral health, social, and physical needs;
 - (b) Completion of referrals to appropriate community services providers, to address the client's identified needs;
 - (c) If the client desires, the provider shall arrange for appointments with community providers which shall be made as soon as possible after discharge; and
 - (d) Each client shall be given the opportunity to participate in the development of his or her discharge plan, including selecting appropriate community providers. With the consent of the client, and when clinically appropriate, reasonable attempts shall be made to contact family members for their participation in the discharge planning process. No client or family member shall be required to agree to a discharge. A provider shall make a notation in the client's record if any objection is raised to the discharge plan.

6335 LEVEL OF CARE 3.3: CLINICALLY MANAGED POPULATION-SPECIFIC HIGH-INTENSITY RESIDENTIAL

- 6335.1 Level 3.3 Clinically Managed Population-Specific High-Intensity Residential providers shall have the capacity to provide a minimum of twenty (20) hours of mixture of SUD treatment services per week, per client, in accordance with this section and medical necessity based on ASAM criteria. Level 3.3 providers must be staffed with physicians, PA or APRN and qualified practitioners able to deliver the necessary mixture of SUD services. One or more clinicians must be available

on-site or by telephone twenty-four (24) hours a day, seven (7) days a week. Level 3.3 Clinically Managed Population-Specific High-Intensity Residential is the appropriate LOC for clients who are assessed as meeting the ASAM criteria for Level 3.3 and:

- (a) Need a stable supportive living environment to support their treatment or recovery;
- (b) Have co-occurring or other issues that have led to temporary or permanent cognitive impairments and would benefit from slower-paced repetitive treatment; or
- (c) Have unstable medical or psychiatric co-occurring conditions.

6335.2 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the minimum service requirements for this LOC.

6335.3 Level 3.3 Clinically Managed Population-Specific High-Intensity Residential includes the following mix of services, as indicated on the Plan of Care and in accordance with this chapter:

- (a) Diagnostic Assessment and Plan of Care in accordance with § 6339;
- (b) SUD Counseling/Therapy in accordance with § 6342;
- (c) CCC in accordance with § 6340;
- (d) Drug Screening in accordance with § 6343;
- (e) Crisis Intervention in accordance with § 6341;
- (f) Medication Management in accordance with § 6345; and
- (g) RSS in accordance with § 6344.

6335.4 The provider shall conduct discharge planning for all clients discharged from Level 3.3. Discharge planning criteria shall include at least the following activities prior to discharge from a Level 3.3 program:

- (a) A review of the client's behavioral health, social, and physical needs;
- (b) Completion of referrals to appropriate community services providers to address the client's identified needs;
- (c) If the client desires, the provider shall arrange for appointments with community providers which shall be made as soon as possible after discharge; and
- (d) Each client shall be given the opportunity to participate in the development

of his or her discharge plan, including selecting appropriate community providers. With the consent of the client, and when clinically appropriate, reasonable attempts shall be made to contact family members for their participation in the discharge planning process. No client or family member shall be required to agree to a discharge. A provider shall make a notation in the client's record if any objection is raised to the discharge plan.

6336 LEVEL OF CARE 3.5: CLINICALLY MANAGED HIGH-INTENSITY RESIDENTIAL (ADULT)/ CLINICALLY MANAGED MEDIUM-INTENSITY RESIDENTIAL (YOUTH)

6336.1 Level 3.5 Clinically Managed High-Intensity Residential/Clinically Managed Medium-Intensity Residential providers shall have the capacity to provide a minimum of twenty-five (25) hours of a mixture of SUD treatment services per week, per client, in accordance with this section and medical necessity based on ASAM criteria. One or more clinicians must be available on-site or by telephone twenty-four (24) hours a day, seven (7) days a week. Level 3.5 is the appropriate LOC for clients who are assessed as meeting the ASAM criteria for Level 3.5, need a twenty-four (24) hour supportive treatment environment to initiate or continue their recovery process, and:

- (a) Have co-occurring or severe social/interpersonal impairments due to substance use; or
- (b) Significant interaction with the criminal justice system due to substance use.

6336.2 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the minimum service requirements for this LOC.

6336.3 Level 3.5 includes the following mix of services, as indicated on the Plan of Care and in accordance with this chapter:

- (a) Assessment and Plan of Care in accordance with § 6339;
- (b) SUD Counseling/Therapy in accordance with § 6342;
- (c) CCC in accordance with § 6340;
- (d) Drug Screening in accordance with § 6343;
- (e) Crisis Intervention in accordance with § 6341;
- (f) Medication Management in accordance with § 6345; and
- (g) RSS in accordance with § 6344.

- 6336.4 Discharge planning shall be conducted for all clients discharged from Level 3.5. Discharge planning criteria shall include at least the following activities prior to discharge from a Level 3.5 program:
- (a) A review of the client's behavioral health, social, and physical needs;
 - (b) Completion of referrals to appropriate community services providers to address the client's identified needs;
 - (c) If the client desires, the provider shall arrange for appointments with community providers which shall be made as soon as possible after discharge; and
 - (d) Each client shall be given the opportunity to participate in the development of his or her discharge plan, including selecting appropriate community providers. With the consent of the client, and when clinically appropriate, reasonable attempts shall be made to contact family members for their participation in the discharge planning process. No client or family member shall be required to agree to a discharge. A provider shall make a notation in the client's record if any objection is raised to the discharge plan.

6337 LEVEL OF CARE 3.7-WM: MEDICALLY MONITORED INPATIENT WITHDRAWAL MANAGEMENT (MMIWM)

6337.1 MMIWM is twenty-four (24) hour, medically directed evaluation and withdrawal management service. This service is for clients with sufficiently severe signs and symptoms of withdrawal from psychoactive substances who require medical monitoring and nursing care, but for whom hospitalization is not indicated.

6337.2 MMIWM shall include the following services in accordance with ASAM criteria, as clinically appropriate:

- (a) Medication Management in accordance with § 6345;
- (b) CCC in accordance with § 6340;
- (c) Medication Assisted Treatment in accordance with § 6346;
- (d) Drug Screening in accordance with § 6343;
- (e) Crisis Intervention in accordance with § 6341;
- (f) RSS, in accordance with § 6344, which must be billed separately;
- (g) SUD Counseling/Therapy, in accordance with § 6342, which must be billed separately; and

- (h) Comprehensive Diagnostic Assessment, in accordance with § 6339, which must be billed separately.
- 6337.3 Discharge planning shall be conducted for all clients discharged from MMIWM. Discharge planning criteria shall include at least the following activities prior to discharge from a MMIWM program:
- (a) A review of the client's behavioral health, social, and physical needs;
 - (b) Completion of referrals to appropriate community services providers, including additional residential treatment, to address the client's identified needs;
 - (c) If the client desires, the provider shall arrange for appointments with community providers which shall be made as soon as possible after discharge; and
 - (d) Each client shall be given the opportunity to participate in the development of his or her discharge plan, including selecting appropriate community providers. With the consent of the client, and when clinically appropriate, reasonable attempts shall be made to contact family members for their participation in the discharge planning process. No client or family member shall be required to agree to a discharge. A provider shall make a notation in the client's record if any objection is raised to the discharge plan.
- 6337.4 MMIWM providers shall have a physician on staff that is able to respond within one (1) hour of notification.
- 6337.5 MMIWM providers shall have medical staff (physician, PA, APRN, or RN) on duty twenty-four (24) hours per day, seven (7) days per week providing directed evaluation, care, and treatment in an inpatient setting. Medical staff shall have a client-to-staff ratio of 12-to-1 during daytime operating hours, a 17-to-1 ratio during evening hours, and a 25-to-1 ratio during the night shift.
- 6337.6 A withdrawal management service Level 3.7 provider shall offer twenty-four (24) hour medically supervised evaluation and withdrawal management.
- 6337.7 MMIWM shall have psychiatric services available on-site, through consultation or referral as medically necessary according the client's needs for treatment and recovery.
- 6337.8 MMIWM shall have psychosocial and medical services delivered by appropriate staff in accordance with § 6337.4, who can administer withdrawal management services to a client by: (1) monitoring the decreasing amount of alcohol and toxic agents in the body; (2) managing the withdrawal symptoms; and (3) motivating the client to participate in an appropriate treatment program for alcohol or other drug dependence.

6337.9 Qualified practitioners of MMIWM are:

- (a) Physicians;
- (b) Psychologists;
- (c) PAs;
- (d) RNs;
- (e) LICSWs;
- (f) LISWs;
- (g) LGSWs;
- (h) APRNs;
- (i) LPCs;
- (j) LMFTs;
- (k) LGPCs; or
- (l) CACs I or II.

6338 LEVEL OF CARE-R: RECOVERY SUPPORT SERVICES

6338.1 RSS covers the provision of non-clinical services for clients in treatment or in need of supportive services to maintain their recovery.

6338.2 RSS providers shall provide the following core RSS:

- (a) Recovery Support Evaluation; and
- (b) RSS.

6338.3 RSS providers may provide the following specialty services, in accordance with their certification:

- (a) Environmental Stability.

6338.4 RSS are for clients who have an identified need for RSS and:

- (a) Are actively participating in the Department treatment system;
- (b) Have completed treatment; or

- (c) Have a self-identified substance use issue that is not assessed as needing active treatment.

- 6338.5 If a client is assessed as needing treatment and is not currently enrolled in treatment, he or she must be referred to an SUD provider for treatment in addition to receiving RSS.
- 6338.6 The duration of Level-R RSS varies but lasts as long as needed, with a reassessment every one hundred and eighty (180) calendar days.
- 6338.7 RSS are determined by a Recovery Support Evaluation, performed in accordance with § 6349 of this chapter.
- 6338.8 Unless clinically inappropriate or a client does not consent, all providers shall adhere to the minimum service requirements for this LOC.
- 6338.9 Each recovery program must have a recovery program manager who is responsible for overseeing all services provided within the recovery program.
- 6338.10 Each recovery program must have a comprehensive curriculum for its RSS that has been approved by the Department.

6339 CORE SERVICE: DIAGNOSTIC ASSESSMENT AND PLAN OF CARE

- 6339.1 Diagnostic Assessment and Plan of Care services include two distinct actions: (1) the assessment and diagnosis of the client, and (2) the development of the Plan of Care. A Diagnostic Assessment and Plan of Care Service may be (1) Comprehensive or (2) Ongoing.
- 6339.2 The Diagnostic Assessment portion of this service includes the evaluation and ongoing collection of relevant information about a client to determine or confirm an SUD diagnosis and the appropriate LOC. The assessment shall serve as the basis for the formation of the Plan of Care, which establishes medical necessity and is designed to help the client achieve and sustain recovery. The assessment instrument shall incorporate ASAM criteria.
- 6339.3 All assessment services must include a Plan of Care, including the development of or an update to a Plan of Care and necessary referrals. Updates to the Plan of Care shall occur, at a minimum:
- (a) Every one hundred and eighty (180) days for all clients in OTP and Level 1 programs;
 - (b) Every sixty (60) days for clients in Level 2.1 programs;
 - (c) Every thirty (30) days for clients in Level 2.5 programs;
 - (d) Every ninety (90) days for clients in Level 3.1 or 3.3 programs;

- (e) Every twenty-eight (28) days for clients in Level 3.5 programs; and
 - (f) Every five (5) days for clients in Level 3.7 programs.
- 6339.4 Providers shall use a tool(s) approved by the Department for both the Diagnostic Assessment and Plan of Care.
- 6339.5 Diagnostic Assessment and Plan of Care services shall be provided in certified SUD treatment programs or community settings.
- 6339.6 The Plan of Care shall be person-centered and include the following elements:
- (a) Overall broad, long-term goal statement(s) that captures the client's and/or family's short- and long-term goals for the future, ideally written in first-person language. This shall include the client's self-identified recovery goals;
 - (b) List or statement of individual or family strengths that support goal(s) accomplishment. These include abilities, talents, accomplishments, and resources;
 - (c) List or statement of barriers that pose obstacles to the client's and/or family's ability to accomplish the stated goal(s). These include symptoms, functional impairments, lack of resources, consequences of behavioral health issues, and other challenges;
 - (d) Statement of objectives that identify the short-term client and/or family changes in behavior, function, or status that can help overcome the identified barriers and are building blocks toward the eventual accomplishment of the long-term goal(s). Objective statements describe outcomes that are measurable and include individualized target dates to be accomplished within the scope of the plan;
 - (e) Intervention statements that describe the treatment and recovery services to be utilized to reduce or eliminate the barriers identified in the plan and support objective and eventual goal(s) accomplishment. Interventions are specific to each objective and the client's and/or family's stage of change. Intervention statements identify who will deliver the service, what will be delivered, when it will be delivered, and the purpose of the intervention. Natural support interventions should also be included in the plan and include those non-billable supports delivered by resources outside of the formal behavioral health service-delivery system. When appropriate and applicable, EBP shall be incorporated into the intervention statement;
 - (f) Provide for the delivery of services in the least restrictive environment that is appropriate for the client;

- (g) The client or legal guardian's signature on the plan (if the client refuses to sign the Plan of Care, the Clinical Care Coordinator shall document the reason(s) in the Plan of Care); and
- (h) Signatures of all interdisciplinary team members participating in the development of the Plan of Care. A Plan of Care is valid when electronically signed and dated by an independently licensed clinician working within the scope of their license.

6339.7 For clients who are determined appropriate for an outpatient level of care (outpatient OTP, Level 1, Level 2.1, and Level 2.5), the outpatient provider delivering such services shall, as a part of the development or updating of the Plan of Care, comply with the requirements set forth in 22-A DCMR Chapter 37 regarding:

- (a) Assessment of the client for interest in, potentially eligibility for, and referral to SUD Supported Employment services, and
- (b) Integration of Employment Specialists into the SUD provider's treatment team.

6339.8 Qualified Practitioners of Comprehensive or Ongoing Diagnostic Assessments are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGPCs;
- (e) LGSWs;
- (f) LISWs;
- (g) LPCs;
- (h) LMFTs;
- (i) APRNs;
- (j) CAC II;
- (k) CAC I;
- (l) PAs; or
- (m) RNs.

- 6339.9 An Initial Assessment/Diagnostic and Plan of Care service (“Initial Assessment”) is a behavioral health assessment that (1) identifies the client’s need for SUD treatment, (2) determines the appropriate LOC of SUD treatment, and (3) initiates the course of treatment. The following provisions apply to an Initial Assessment:
- (a) The provider shall use and complete an assessment tool approved by the Department that meets the ASAM biopsychosocial requirements. The assessment should result in identification of the necessary LOC and an appropriate provider referral, documented in the designated electronic record format.
 - (b) The provider shall record any medications used by the client;
 - (c) Staff must have an in-person encounter with the client to conduct the initial assessment;
 - (d) Providers must obtain and document client's understanding and agreement, evidenced by the client’s signature, for consent to treatment, assessment, provider choice, the client bill of rights, and release of information; and
 - (e) A treatment provider will complete an Initial Assessment and refer the client to the appropriate LOC or treat the client 1) if the client is found appropriate for the LOC available at that provider, and 2) the client chooses to receive services at that provider.
- 6339.10 A Comprehensive Diagnostic Assessment is a behavioral health assessment that collects, compiles, and integrates sufficiently detailed information to successfully guide level of care decisions, the place of care process, and the provision of services.
- 6339.11 Providers shall ensure appropriate staff (physician, PA, APRN, or RN) is available to assess clients for acute withdrawal symptoms and provide medical triage. Providers shall use a Department-approved assessment tool to determine the need for withdrawal management. Providers shall have infrastructure to conduct health testing and screening as appropriate, and storage for testing kits. If the provider does not have the infrastructure or medical personnel on their staff the provider shall enter into an affiliation agreement or contract with a medical provider for these services, or show the Department documentation that they are part of an integrated care setting that offers the services.
- 6339.12 The following provisions apply to the Comprehensive Diagnostic Assessment:
- (a) When a client enters his or her first LOC within a treatment episode, the provider shall perform a Comprehensive Diagnostic Assessment to determine their treatment and recovery needs, unless a Comprehensive Diagnostic Assessment completed within the last sixty (60) days is available to the treating provider; in that case, an ongoing assessment may be completed. A Comprehensive Diagnostic Assessment consists of a

biopsychosocial assessment and the development of a Plan of Care. ASAM biopsychosocial elements include, but are not limited to:

- (1) History of the presenting episode;
 - (2) Family history;
 - (3) Developmental history;
 - (4) Alcohol, tobacco, other drug use, addictive behavior history;
 - (5) Personal/social history;
 - (6) Legal history;
 - (7) Psychiatric history;
 - (8) Medical history;
 - (9) Spiritual history;
 - (10) Review of systems;
 - (11) Mental status examination;
 - (12) Medical triage;
 - (13) Formulation and diagnosis;
 - (14) Survey of assets, vulnerabilities, and supports;
 - (15) Treatment recommendations; and
 - (16) Health screenings/testing including:
 - (A) HIV;
 - (B) Hepatitis;
 - (C) Tuberculosis (if referred for residential and detox); and
 - (D) Pregnancy (If applicable).
- (b) A Comprehensive Diagnostic Assessment shall include the use of a Department-approved assessment tool and a detailed diagnostic formulation. The Comprehensive Diagnostic Assessment will document the client's strengths, resources, mental status, identified problems, current symptoms as outlined in the DSM, and RSS needs. The Comprehensive Diagnostic Assessment will also confirm the client's scores on the ASAM

criteria and confirm that the assigned LOC is most applicable to the client's needs. The diagnostic formulation shall include presenting symptoms for the previous twelve (12) months, including mental and physical health symptoms, degree of severity, functional status, and differential diagnosis. This information forms the basis for the development of the individualized person-centered Plan of Care as defined in § 6339.

- (c) A Comprehensive Diagnostic Assessment must be performed in-person by an interdisciplinary team consisting of the client and at least one Qualified Practitioner allowed to diagnose in accordance with their license.
- (d) The approval of the Plan of Care is demonstrated by the electronic signature and date stamp of an independently licensed Qualified Practitioner. A completed Plan of Care is required to establish medical necessity.
- (e) A Comprehensive Diagnostic Assessment and Plan of Care must be completed within seven (7) calendar days of the client's admission to a provider. Providers at Level 3.7-MMIWM must complete a Comprehensive Diagnostic Assessment within forty-eight (48) hours of the client's admission, or prior to discharge or transfer to another LOC, whichever comes first.
- (f) Within twenty-four (24) hours of the client's admission at a new LOC, during the period prior to the completion of the Comprehensive Diagnostic Assessment, the provider shall review the client's prior Department-approved Diagnostic Assessment to assist with developing a Plan of Care.
- (g) The Plan of Care (valid for seven (7) calendar days) will validate treatment until the Comprehensive Diagnostic Assessment is completed. A Qualified Practitioner as listed in § 6339 shall develop the Plan of Care. A Comprehensive Diagnostic Assessment and Plan of Care shall include client understanding and agreement, documented by the client's signature, for consent to treatment, assessment, provider choice, client bill of rights, and release of information.

6339.13 Ongoing Diagnostic Assessment and Plan of Care occurs at regularly scheduled intervals depending on the LOC. The following provisions apply to ongoing assessments:

- (a) An Ongoing Diagnostic Assessment and Plan of Care, conducted using a tool(s) approved by the Department, provides a review of the client's strengths, resources, mental status, identified problems, and current symptoms as outlined in the most recent DSM.
- (b) An Ongoing Diagnostic Assessment will confirm the appropriateness of the existing diagnosis and revise the diagnosis, as warranted. The Ongoing Diagnostic Assessment will also revise the client's scores on all dimensions

of the ASAM criteria, as appropriate, to determine if a change in LOC is needed and make recommendations for changes to the Plan of Care.

- (c) An Ongoing Diagnostic Assessment includes a review and update of the Plan of Care with the client to reflect the client's progress, growth, and ongoing areas of need.
- (d) The Ongoing Diagnostic Assessment and Plan of Care is also used prior to a planned transfer to a different LOC and for discharge from a course of service.
- (e) The Ongoing Diagnostic Assessment can be used for a review and documentation of a client's physical and mental status for acute changes that require an immediate response, such as a determination of a need for immediate hospitalization.
- (f) The Clinical Care Coordinator shall determine the frequency of Ongoing Diagnostic Assessments and Plan of Care services.
- (g) An Ongoing Diagnostic Assessment and Plan of Care must be completed in-person with the client and at least one Qualified Practitioner with the license and capability to develop a diagnosis.
- (h) The Ongoing Diagnostic Assessment requires documentation of the assessment tools, updated diagnostic formulation, and the Plan of Care update. The diagnostic formulation shall include presenting symptoms since previous assessment (including mental and physical health symptoms), degree of severity, functional status, and differential diagnosis. The Plan of Care update shall address current progress toward goals for all problematic areas identified in the Diagnostic Assessment and adjust interventions and RSS as appropriate.

6340 CORE SERVICE: CLINICAL CARE COORDINATION

6340.1 The CCC service adopts a "whole-person" approach to address the client's needs related to physical health, behavioral health, and social determinants of health. CCC involves coordination of care between the behavioral health clinician and the clinical personnel of an external provider (e.g., primary care, another behavioral health provider, hospital).

6340.2 CCC occurs when the practitioner, through direct face-to-face contact, video-conferencing, or telephone, communicates treatment needs, assessments, and treatment information to external health care providers and facilitates appropriate linkages with other health care professionals, including transitions into or from higher levels of care or institutional settings. CCC also includes treatment planning and plan of care implementation activities that are separate from the diagnostic assessment service, when the clinician and client are meeting face-to-face or through video-conference.

- 6340.3 The Clinical Care Coordinator is responsible for ensuring that the client is at the appropriate LOC. If the client fails to make progress or has met all of their treatment goals, the Clinical Care Coordinator shall ensure timely assessment and transfer to a more appropriate LOC.
- 6340.4 The CCC service must be documented in an encounter note that indicates the intended purpose of that particular service, the actions taken, and the result(s) achieved.
- 6340.5 CCC shall be provided in certified SUD treatment programs or community settings.
- 6340.6 Qualified Practitioners of CCC are:
- (a) Physicians;
 - (b) Psychologists;
 - (c) LICSWs;
 - (d) LGSWs;
 - (e) APRNs;
 - (f) RNs;
 - (g) LISWs;
 - (h) LPCs;
 - (i) PAs;
 - (j) LMFTs; and
 - (k) LGPCs.

6341 CORE SERVICE: CRISIS INTERVENTION

- 6341.1 Crisis Intervention is an immediate short-term treatment intervention, which assists a client to resolve an acute personal crisis that significantly jeopardizes the client's treatment, recovery progress, health, or safety. Crisis Intervention does not necessarily lead to a change in LOC or a change to the Plan of Care; however, if a change is needed, this service may be followed by an Ongoing Diagnostic Assessment.
- 6341.2 Crisis Intervention is a service available at all levels of care and can be provided to any client in treatment, even if the service is not included on the Plan of Care.
- 6341.3 Crisis Intervention services must be documented using an encounter note that explains the crisis and the response.

6341.4 Crisis Intervention services shall be provided in certified SUD treatment programs or community settings.

6341.5 Qualified Practitioners of Crisis Intervention are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;
- (f) RNs;
- (g) PAs;
- (h) LISWs;
- (i) LPCs;
- (j) LGPCs;
- (k) LMFTs; or
- (l) CACs I or II.

6342 CORE SERVICE: SUBSTANCE USE DISORDER COUNSELING/THERAPY

6342.1 SUD Counseling/Therapy includes Individual, Family, and Group, and enhanced with Group-Psychoeducation Counseling.

6342.2 SUD Counseling/Therapy shall be provided in certified SUD treatment programs or community settings.

6342.3 Individual SUD Counseling/Therapy is a face-to-face service for symptom and behavior management, development, restoration, or enhancement of adaptive behaviors and skills, and enhancement or maintenance of daily living skills to facilitate long-term recovery.

6342.4 Individual SUD Counseling/Therapy addresses the specific issues identified in the Plan of Care. Individual counseling/therapy:

- (a) Shall be documented in an encounter note; and

- (b) Shall not be conducted within the same or overlapping time period as Medication Management.

6342.5 Qualified Practitioners of Individual SUD Counseling/Therapy are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;
- (f) LISWs;
- (g) LPCs;
- (h) LGPCs;
- (i) LMFTs; or
- (j) CACs I or II.

6342.6 Group Counseling/Therapy includes Cognitive Behavioral Groups, Support Groups, and Interpersonal Process Groups. Cognitive Behavioral Groups have a trained facilitator utilizing a specific therapeutic model to alter thoughts and actions that lead to substance use. Support Groups uplift members and provide a forum to share pragmatic information about managing day to day life. Interpersonal Process Groups delve into major developmental issues that contribute to SUD or interfere with recovery.

6342.7 The following provisions apply to Group SUD Counseling:

- (a) Group SUD Counseling/Therapy addresses the specific issues identified in the Plan of Care;
- (b) The focus of the group SUD Counseling/Therapy session shall be driven by the participants;
- (c) A maximum of fifteen (15) individuals may participate in a single group SUD counseling/therapy session; and
- (d) Group SUD Counseling/Therapy shall not be billed during recreational activities.

6342.8 Qualified Practitioners of Group SUD/Counseling/Therapy are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;
- (f) LISWs;
- (g) LPCs;
- (h) LGPCs;
- (i) LMFTs; or
- (j) CACs I or II.

6342.9 Group SUD Counseling-Psychoeducation promotes help-seeking and supportive behaviors by working in partnership with clients to impart current information and facilitate group discussion through lecture, audio-visual presentations, handouts, etc. This service assists with developing coping skills that support recovery and encourage problem-solving strategies for managing issues posed by SUDs, and presents structured, group specific content taught by a trained facilitator. This service should also provide education about HIV, STDs, and other infectious diseases, though clients are not required to have one of these diseases to receive this education. Psychoeducational groups provide information designed to have a direct application to clients' lives that include but are not limited to developing self-awareness, suggesting options for growth and change, identifying community resources that can assist clients in recovery, developing an understanding of the process of recovery, and encouraging clients to take action on their own behalf toward recovery.

6342.10 Group Counseling-Psychoeducation requires the following:

- (a) The subject of the counseling must be relevant to the client's needs as identified in his or her Plan of Care;
- (b) This service must include facilitated group discussion of the relevant topic or topics;
- (c) An encounter note for each participant shall be completed, which includes the client's response to the group; and
- (d) A maximum of thirty (30) clients may participate in a single session.

6342.11 Qualified Practitioners of Group Counseling Psychoeducation are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;
- (f) LISWs;
- (g) LPCs;
- (h) LGPCs;
- (i) LMFTs; or
- (j) CAC Is or IIs.

6342.12 Family Counseling/Therapy is a planned, goal-oriented therapeutic interaction between a Qualified Practitioner and the client's family, with or without the client present. The aim of Family Counseling/Therapy is to improve the client's functioning with his or her family and to cultivate the awareness, skills, and supports to facilitate long term recovery. Family Counseling/Therapy must address specific issues identified in the Plan of Care. The following provisions apply to Family Counseling/Therapy:

- (a) Family Counseling/Therapy shall be documented using an encounter note; if the client is not present for the service, the note must explain how the session benefits the client;
- (b) A service encounter note documenting Family Counseling/Therapy shall clearly state the relationship of the participant(s) to the client; and
- (c) Family Counseling/Therapy participants other than the client must meet the definition of "family member" in § 6351.

6342.13 Qualified Practitioners of Family Counseling/Therapy are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;

- (f) LISWs;
- (g) LPCs;
- (h) LGPCs;
- (i) LMFTs; or
- (j) CAC Is and IIs.

6343 CORE SERVICE: DRUG SCREENING

6343.1 Drug Screening consists of toxicology sample collection and breathalyzer and urine testing to determine and detect the use of alcohol and other drugs.

6343.2 Providers must have their own drug screening policy.

6343.3 Toxicology sample collection involves the collection of biological specimens for drug analysis. The following provisions apply to toxicology sample collection:

- (a) The handling of biological specimens requires a chain of custody in accordance with Federal and District laws and regulations from the point of collection throughout the analysis process to ensure the integrity of the specimen;
- (b) Toxicology sample collection shall be conducted to verify abstinence or use of substances to inform treatment;
- (c) Toxicology sample collection shall include an in-person encounter with the client;
- (d) Documentation of the toxicology sample collection service requires an encounter note, laboratory request, and recorded laboratory results from an approved laboratory;
- (e) Chain of custody for the toxicology specimen must be observed and documented in accordance with Federal and District laws and regulations; and
- (f) Individuals collecting the samples must be properly trained to do so.

6343.4 Breathalyzer testing is the collection and documentation of valid breath specimens for alcohol analysis in accordance with Department standards. A Breathalyzer is conducted to test for blood alcohol content to inform treatment for a client. The following provisions apply to Breathalyzer services:

- (a) Breathalyzer testing requires an in-person collection of the sample;

- (b) Breathalyzer testing must be documented with an encounter note and recorded results;
- (c) The chain of custody must be kept in accordance with District guidelines; and
- (d) Individuals collecting the samples must be properly trained.

6344 CORE SERVICE: RECOVERY SUPPORT

- 6344.1 RSS are strength-based supports for those with addictions and those in recovery from SUD. These services are provided to assist clients with implementation of their recovery plan through direct contact interventions provided to an individual or a group of individuals.
- 6344.2 RSS activities facilitate implementation of the Plan of Care and administrative facilitation of the client's service needs, including but not limited to:
- (a) Scheduling and tracking appointments;
 - (b) Facilitating transportation,
 - (c) Collecting information about the client's progress;
 - (d) Goal setting and monitoring;
 - (e) Making referrals;
 - (f) Assisting with linkages;
 - (g) Assisting with the completion of benefits, housing or financial forms;
 - (h) Assisting clients with strategy development and coping skills;
 - (i) Providing clients with encouragement and emotional support; and
 - (j) Providing education around social skill development and drug free social activities, life skills, relapse prevention, employment preparation, money management, health and wellness, and family reunification.
- 6344.3 In addition to the activities listed in § 6344.2, RSS-HIV entails providing clients access to testing and referrals for HIV and infectious diseases and linkage of services with medical care or specialty services related to an infectious disease. A client does not need to be diagnosed with an infectious disease to receive this service.
- 6344.4 Additional key service functions of RSS include:

- (a) Attending interdisciplinary team meetings for Diagnostic Assessment services;
- (b) Following up on service delivery by providers external to the treatment program and ensuring communication and coordination of services;
- (c) Contacting clients who have unexcused absences from program appointments or from other critical off-site service appointments to re-engage them and promote recovery efforts;
- (d) Locating and coordinating services and resources to resolve a client's crisis;
- (e) Providing training in the development of life skills necessary to achieve and maintain recovery; and
- (f) Participating in discharge planning.

6344.5 Each RSS must be documented using an encounter note that is sufficient to justify the time and service provided.

6344.6 RSS shall be provided in certified SUD treatment programs or community settings.

6344.7 The duration of RSS varies but lasts as long as needed, with a reassessment every one hundred and eighty (180) days according to the client's recovery goals.

6344.8 The need for RSS is determined by the completion of a Diagnostic Assessment service or a Recovery Support Evaluation and shall be authorized in the client's Plan of Care.

6344.9 Each RSS program must have a program manager who is responsible for overseeing all services provided within the program.

6344.10 Each RSS program shall have a comprehensive curriculum that has been approved by the Department.

6344.11 Qualified Practitioners of RSS are:

- (a) Recovery Coach;
- (b) Certified Peer Specialist;
- (c) An individual with at least a GED or high school diploma, two (2) years of relevant, qualifying full-time-equivalent experience in human service delivery who demonstrates skills in developing positive and productive community relationship, and the ability to negotiate complex service systems to obtain needed services and resources for individuals; or

- (d) Any practitioner qualified to provide SUD Counseling/Therapy pursuant to § 6342.

6345 SPECIALTY SERVICE: MEDICATION MANAGEMENT

- 6345.1 Medication Management shall include the coordination and evaluation of medications consumed by clients, monitoring potential side effects, drug interactions, compliance with doses, and efficacy of medications.
- 6345.2 Medication Management also includes the evaluation of a client's need for Medication Assisted Treatment ("MAT"), the provision of prescriptions, and ongoing medical monitoring/evaluation related to the use of psychoactive drugs.
- 6345.3 Medication Management is used to inform treatment and to assist with withdrawal management, as clinically appropriate.
- 6345.4 All providers certified as MMIWM or at any of the Level 3 certifications shall also be certified to provide Medication Management.
- 6345.5 Medication Management requires in-person interaction with the client and may not be conducted at the same or overlapping times as any other service.
- 6345.6 The Qualified Practitioner performing the Medication Management service or the Clinical Care Coordinator, if not the same individual, must coordinate with the client's primary care practitioner unless the client's record documents that the client refused to provide consent for the coordination.
- 6345.7 Documentation of Medication Management shall include an encounter note and appropriately completed medication fields in the record, if applicable.
- 6345.8 Medication Management shall be provided in certified SUD treatment programs or community settings.
- 6345.9 Qualified Practitioners of Medication Management are:
 - (a) Physicians;
 - (b) APRN;
 - (c) RNs;
 - (d) LPNs; or
 - (e) PAs.

6346 SPECIALTY SERVICE: MEDICATION ASSISTED TREATMENT

- 6346.1 MAT is the combination of FDA approved medication with behavioral therapies to treat SUD. A client who receives medication to treat SUD must also receive SUD

Counseling/Therapy. Use of this service should be in accordance with ASAM criteria and practice guidelines issued by the Department.

- 6346.2 Clients appropriate for MAT must have an SUD that could be appropriately treated in accordance with Federal regulations.
- 6346.3 OTPs must ensure that individuals receiving MAT understand and provide written informed consent to the specific medication administered. No client under age eighteen (18) may be admitted to an OTP unless a parent or legal guardian consents in writing to such treatment.
- 6346.4 MAT may be administered on an in-office basis or as take-home regimen. Both MAT administrations include the unit of medication and therapeutic guidance. For clients receiving a take-home regimen, therapeutic guidance must include additional guidance related to storage and self-administration. OTPs must comply with all Federal and District laws and regulations concerning MAT.
- 6346.5 Therapeutic guidance provided during MAT shall include:
- (a) Safeguarding medications;
 - (b) Possible side-effects and interaction with other medications;
 - (c) Impact of missing doses;
 - (d) Monitoring for withdrawal symptoms and other adverse reactions; and
 - (e) Appearance of medication and method of ingestion.
- 6346.6 The provision of MAT must be accompanied by a clinically appropriate array of SUD treatment services in accordance with § 6330 that include SUD Counseling/Therapy.
- 6346.7 A physician must evaluate the client a minimum of once per month for the first year that a client receives MAT and a minimum of every six (6) months thereafter, in coordination with the Plan of Care and as needed.
- 6346.8 Documentation for this service must include medication log updates and an encounter note for each visit, which captures the therapeutic guidance provided.
- 6346.9 Qualified Practitioners of MAT are:
- (a) Physicians;
 - (b) APRNs;
 - (c) PAs;
 - (d) RNs; or

(e) LPNs.

6347 SPECIALTY SERVICE: ADOLESCENT — COMMUNITY REINFORCEMENT APPROACH

6347.1 Adolescent – Community Reinforcement Approach (“ACRA”) is a specialty service that is provided in conjunction with Level 1 or Level 2.1 Outpatient treatment as a more targeted approach to treatment for youth and young adults, ages twelve (12) to twenty-four (24) years old with co-occurring mental health and SUD. ACRA services include approximately ten (10) individual sessions with the adolescent, two (2) individualized sessions with the caregiver and two (2) sessions with the adolescent and caregiver together in accordance with the procedures outlined in the ACRA evidence-based practice certification model.

6347.2 The provider must have the following ACRA-certified staff for each ACRA team:

- (a) A clinical supervisor, with ACRA clinical supervisor certification, who is also a Master’s-level qualified practitioner; and
- (b) One (1) to four (4) clinicians with ACRA clinician certification who are either Master’s-level qualified practitioners or Bachelor’s-level qualified practitioners with at least five (5) years’ experience working with behaviorally-challenged youth.

6347.3 ACRA practitioners must comply with the supervision, taping, feedback and coaching requirements of the ACRA certification.

6347.4 A minimum of four units of ACRA services should be provided once per week. Level 1 or 2.1 services shall be provided as clinically appropriate.

6347.5 ACRA generally lasts up to six (6) months with the first three (3) months of services provided in the office setting and the last three (3) months of service provided in the home or community setting, based on the client’s needs and progress.

6347.6 Qualified Practitioners of ACRA are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) LGSWs;
- (e) APRNs;
- (f) RNs;
- (g) LISWs;

- (h) LPCs;
- (i) LGPCs;
- (j) LMFTs; or
- (k) CACs I and II.

6348 SPECIALTY SERVICE: TRAUMA RECOVERY AND EMPOWERMENT MODEL

6348.1 Trauma Recovery and Empowerment Model (“TREM”) is a structured group therapy intervention designed for clients who have survived trauma and have substance use disorders and/or mental health conditions. TREM draws on cognitive restructuring, skills training, and psychoeducational and peer support to address recovery and healing from sexual, physical, and emotional abuse.

6348.2 A curriculum for each model outlines the topic of discussion, a rationale, a set of goals, and a series of questions to be posed to the group in addition to an experiential exercise for each session. The components are:

- (a) Therapy sessions focused on empowerment, self-comfort, and accurate self-monitoring, as well as ways to establish safe physical and emotional boundaries;
- (b) Therapy sessions focused on the trauma experience and its consequences; and
- (c) Therapy sessions focused on skills building, including emphases on communication style, decision-making, regulating overwhelming feelings, and establishing safer, more reciprocal relationships.

6348.3 Each TREM group is population specific and on average consists of eighteen (18) to twenty-four (24) sessions, with each session at least seventy-five (75) minutes in duration. Population-specific groups include:

- (a) TREM for women;
- (b) TREM for men;
- (c) TREM for girls twelve (12) to eighteen (18) years of age;
- (d) TREM for boys twelve (12) to under eighteen (18) years of age; or
- (e) TREM for individuals who are lesbian, gay, bisexual, transgender, or questioning (groups for either individuals under eighteen (18) or individuals eighteen (18) years of age and over).

- 6348.4 Due to the sensitive nature of the discussions, TREM requires at least two (2) facilitators to be assigned to every group to ensure the safety and continuity of the group. At least one (1) facilitator must be a qualified practitioner licensed to practice independently. A team approach is required to: address situations that may arise within the group; decrease burnout; provide continuity if one facilitator is absent; and to lend additional therapeutic support to the group. Qualified practitioners working as facilitators must have completed Department-approved, population-specific TREM training.
- 6348.5 Qualified Practitioners of TREM are:
- (a) Psychiatrists;
 - (b) Psychologists;
 - (c) LICSWs;
 - (d) APRNs;
 - (e) LMFTs;
 - (f) LPCs;
 - (g) LISWs;
 - (h) LGSWs;
 - (i) LGPCs; or
 - (j) Psychology Associates.
- 6348.6 Recovery Coaches, Certified Peer Specialists, and CACs I and II who have successfully completed a TREM group and Department-approved TREM training shall be authorized to support TREM services under the supervision of the two group facilitators.
- 6348.7 TREM shall be provided at the SUD treatment provider's site or in a residential facility of sixteen (16) beds or less unless otherwise stated by the Department.
- 6349 RECOVERY SUPPORT – EVALUATION, ALCOHOL OR DRUG ASSESSMENT**
- 6349.1 A Recovery Support Evaluation is a process used to evaluate and document a client's individual recovery support service needs, develop a comprehensive individual Recovery Support Plan, and monitor client progress on achievement of goals and objectives every one hundred and eighty (180) days.

- 6349.2 The purpose of the Recovery Support Evaluation is to identify domains that require support, using a Department-approved recovery support assessment tool, and to develop a Recovery Support Plan.
- 6349.3 Recovery Support Evaluation requires an in-person encounter with the client and must be performed by staff trained to use the recovery support assessment tool.
- 6349.4 Required elements of a Recovery Support Evaluation include the completion of a Department-approved recovery support assessment tool and Recovery Support Plan.
- 6349.5 Providers must document completion and client signatures for: consents, completion of the recovery support assessment tool and Recovery Support Plan, client bill of rights, and release of information.
- 6349.6 A Recovery Support Evaluation shall take at least forty (40) minutes to complete.
- 6349.7 A maximum of two (2) occurrences of Recovery Support Evaluation are allowed every six (6) months. Additional Recovery Support Evaluations require approval from the Department.
- 6349.8 The Clinical Care Coordinator is responsible for ensuring coordination if a client is receiving treatment and recovery services from different providers. A client receiving treatment and recovery services from different providers may receive Initial, Comprehensive, or Ongoing Assessment and a separate Recovery Support Evaluation as clinically indicated.
- 6349.9 A client receiving treatment and recovery services from the same provider shall not require a separate Recovery Support Evaluation or Recovery Support Plan.
- 6349.10 A Recovery Support Evaluation shall be provided in certified SUD treatment programs or community settings.
- 6349.11 Qualified Practitioners of Recovery Support Evaluation are:
- (a) A Recovery Coach;
 - (b) A Certified Peer Specialist;
 - (c) An individual with at least a bachelor's degree from an accredited college or university in social work, counseling, psychology, or closely related field and training or relevant experience in substance use; or
 - (d) An individual with at least four (4) years of relevant, qualifying full-time-equivalent experience in human service delivery who demonstrates skills in developing positive and productive community relationships and the ability to negotiate complex service systems to obtain needed services and resources for individuals.

6350 ENVIRONMENTAL STABILITY, SUPPORTED HOUSING

6350.1 The Environmental Stability service provides a structured and stable living environment and recovery support system that includes recovery housing for up to six (6) months. The objective of Environmental Stability is to prepare the client for independent living upon completion of the Environmental Stability Service.

6350.2 Eligible clients for this service must:

- (a) Be drug- and alcohol-free (with the exception of prescribed medication) for thirty (30) days prior to admission;
- (b) Maintain sobriety throughout the program;
- (c) Be age eighteen (18) or older and in recovery from a diagnosed SUD;
- (d) Be employed, be receiving alternate income, or be participating in a structured training class or workforce-development program or a combination of both training and employment as deemed clinically appropriate;
- (e) Deposit thirty percent (30%) of net income into the client's escrow account for the purposes of post-environmental-stability independent living;
- (f) Be enrolled and active in other certified RSS; and
- (g) Be prior authorized by the Department.

6350.3 The Environmental Stability provider shall comply with the Department's drug testing policy.

6350.4 Each Environmental Stability facility shall be for a single parent with a child or children.

6350.5 Environmental Stability providers must comply with the applicable of provisions of § 6325 of this chapter governing residential recovery programs.

6350.6 No Environmental Stability program shall use a name on the exterior of the building or display any logo that distinguishes the facility from any other residence in the neighborhood.

6399 DEFINITIONS

6399.1

Admission – Entry into the SUD treatment or recovery support services program after completion of Initial Diagnostic Assessment and a determination that an individual is eligible for the program.

Advanced Practice Registered Nurse (“APRN”) – A person licensed or authorized to practice as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)), and who has demonstrated proficiency in SUD treatment, as evidenced by specialized training or a minimum of 5 years of experience in SUD care delivery.

Affiliation Agreement – A legal agreement between a provider and another entity that describes how they will work together to benefit clients.

Aftercare Plan – A plan developed with a client and their treatment team to identify goals and action steps the client can use to move forward with their recovery once they leave treatment services.

Alternate Income – Supplemental Security Income (SSI), unemployment insurance, child support, non-SSI social security, pensions and retirement income, and veterans’ benefits.

Applicant – A program that has applied to the Department for certification as an SUD treatment or recovery program.

Assessment – A process that gathers information and engages with the client to enable the provider to determine the presence or absence of a co-occurring disorder.

Certification – The process of establishing that the standards described in this chapter are met; or approval from the Department indicating that an applicant has successfully complied with all requirements for the operation of a substance use disorder treatment or recovery program in the District.

Certified Addiction Counselor (“CAC”) – A person certified to provide SUD counseling services in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)). A CAC may be certified as a CAC I or CAC II and is supervised in accordance with Title 17 DCMR § 8715.

Certified Peer Specialist – An individual who has completed the Peer Specialists Certification Program requirements and is approved to deliver Peer Support Services within the District’s public behavioral health network.

Child Development Facility – A center, home, or other structure that provides care, supervision, and guidance for children up to fifteen (15) years of age on a regular basis, regardless of its designated name. A Child Development Facility does not include a public or private elementary or secondary school engaged in legally required educational and related functions.

Client – A person admitted to an SUD treatment or recovery program and is assessed to need SUD treatment services or recovery support services.

Clinical Care Coordination – Coordination of care between the behavioral health clinician and the clinical personnel of an external provider (*e.g.*, primary care, another behavioral health provider, or hospital).

Clinical Care Coordinator – A licensed or certified Qualified Practitioner who has the overall responsibility for the development and implementation of the client’s Plan of Care, is responsible for identification, coordination, and monitoring of non-SUD-treatment clinical services, and is identified in the client’s Plan of Care.

Clinical Staff – Staff who are licensed, certified, or registered by the District Department of Health, Health Regulation and Licensing Administration.

Communicable Disease – Any disease as defined in Title 22-B, § 201 of the District of Columbia Municipal Regulations.

Continuity of Care Plan – A plan that provides for the ongoing care of clients in the event that a certified provider is no longer able to provide adequate care.

Co-Occurring Disorders – The presence of concurrent diagnoses of substance use disorder and a mental illness.

Core Service – All of the following services that shall be provided by all treatment providers under this chapter: Diagnostic Assessment and Plan of Care, Clinical Care Coordination, Crisis Intervention, SUD Counseling/Therapy, Drug Screening, and RSS.

Crisis – An event that significantly jeopardizes the client’s treatment, recovery progress, health, or safety.

Department – The District of Columbia Department of Behavioral Health.

Director – The Director of the District of Columbia Department of Behavioral Health.

Discharge – The time when a client’s active involvement with a provider is terminated.

Discharge Planning – Activities with or on behalf of an individual to arrange for appropriate follow-up care to sustain recovery after being discharged from a program, including educating the individual on how to access or reinstate additional services, as needed.

District – The District of Columbia.

Drug – Substances that have the likelihood or potential to be misused or abused, including alcohol, prescription drugs, and nicotine.

Facility – Any physical premises which houses one or more SUD treatment or recovery programs.

Family Counseling/Therapy – A planned, goal-oriented therapeutic interaction between a Qualified Practitioner and the client’s family, with or without the client present.

Family Member – Individual identified by the client as a person with whom the client has a significant relationship and whose participation is important to the client’s recovery.

Group SUD Counseling/Therapy – A therapeutic service that facilitates disclosure of issues that permit generalization to a larger group; promotes help-seeking and supportive behaviors; encourages productive and positive interpersonal communication; and develops motivation through peer support, structured confrontation, and constructive feedback.

Human Care Agreement (“HCA”) – A written agreement entered into by the provider and the Department which establishes a contractual relationship between the parties.

Individual Substance Use Disorder Counseling/Therapy – A face-to-face service with an authorized Qualified Practitioner for symptom and behavior management, development, restoration, or enhancement of adaptive behaviors and skills, and enhancement or maintenance of daily living skills to facilitate long-term recovery.

In-service Training – Activities undertaken to achieve or improve employees’ competency to perform present jobs or to prepare for other jobs or promotions.

Interdisciplinary Team – Members of the provider staff who provide services to the client, including the client, the client’s CCC, a CAC, and at least one QP with the license and ability to diagnose.

Licensed Graduate Professional Counselor (“LGPC”) – A person licensed as a graduate professional counselor in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)) applicable District laws and regulations.

Licensed Graduate Social Worker (“LGSW”) – A person licensed as a graduate social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Independent Clinical Social Worker (“LICSW”) – A person licensed as an independent clinical social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Independent Social Worker (“LISW”) – A person licensed as a licensed independent social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Marriage and Family Therapist (“LMFT”) – A person licensed as a marriage and family therapist in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Practical Nurse (“LPN”) – A person licensed as practical nurse in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Professional Counselor (“LPC”) – A person licensed as a professional counselor in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Major Unusual Incidents – Adverse events that can compromise the health, safety, and welfare of persons; employee misconduct; fraud; and actions that are violations of law and policy.

Medicaid – The medical assistance program, as approved by the Federal Centers for Medicare and Medicaid Services and administered by the Department of Health Care that enables the District to receive Federal financial assistance for its medical assistance program and other purposes as permitted by law.

Medical Necessity (or Medically Necessary) – Health care services or products that a prudent provider would provide to a client for the purpose of preventing, diagnosing, or treating an illness, injury, disease, or its symptoms in a manner that is: (a) in accordance with generally accepted standards of health care practice; (b) clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the client or treating provider.

Medical Triage – The process of determining the priority of a client’s treatment needs.

Medical Waste – Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or in the testing of biologicals, including but not limited to: soiled or blood-soaked bandages, needles used to give shots or draw blood, and lancets.

Mental Illness – A diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the most recent Diagnostic and Statistical Manual (DSM) or its most recent International Classification of Diseases equivalent.

Notice of Infraction – An action taken by agencies to enforce alleged violations of regulatory provisions.

Opioid – A psychoactive substance in the narcotic class derived from opium, including natural and synthetic compounds. Substances in this class may produce pharmacological effects such as physical withdrawal symptoms.

Organizational onboarding – Mechanism through which new employees acquire the necessary knowledge, skills, and behaviors to become effective performers. It begins with recruitment and includes orientation, which helps new employees understand performance expectations and contribute to the success of the organization.

Organized Treatment Services – Treatment that consists of a scheduled series of structured, face-to-face or group therapeutic sessions organized at various levels of intensity and frequency to assist clients in achieving the goals identified in the person-centered plans of care. Also may be called structured treatment services.

Outcomes of Care – The results of a course of treatment, including abstinence or reduction of abuse of substances, elimination or reduction of criminal activity, reduction of antisocial activity associated with SUD, reduction of need for health care services, reduction of need for SUD treatment, increase in pro-social involvement, and increase in productivity and employment.

Outpatient Services – Therapeutic services that are medically necessary, provided to a client according to an individualized Plan of Care, and do not require the client's admission to a hospital or a non-hospital residential facility. The term "outpatient services" refers to services that may be provided: on an ambulatory basis in a hospital; on an outpatient basis in a non-hospital residential facility; an outpatient treatment facility; or the office of a provider licensed to provide SUD treatment services.

Outreach – Efforts to inform and facilitate access to a program's services.

Parent – A person who has custody of a child as a natural parent, stepparent, adopted parent, or has been appointed as a guardian for the child by a court of competent jurisdiction.

Plan of Care – The individualized Plan of Care that is the result of the Diagnostic Assessment. All services must be guided by a valid Plan of Care. The Plan of Care includes the client’s treatment goals, strengths, challenges, objectives, and interventions. The Plan of Care is based on the client’s identified needs as reflected by the Diagnostic Assessment, the client’s expressed needs, and referral information.

Pharmacist – A person licensed or authorized to practice pharmacy pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Physician – A person licensed or authorized to practice medicine pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Physician Assistant (“PA”) – A person licensed as a Physician Assistant pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Privacy Officer – A person designated by an organization that routinely handles protected health information, to develop, implement, and oversee the organization’s compliance with the U.S. Health Insurance Portability and Accountability Act (HIPAA) privacy rules, 42 CFR Part 2, and the District’s Mental Health Information Act.

Program – An SUD Treatment or Recovery Support Services Program certified by the Department at a specific LOC to provide SUD treatment or recovery support services.

Program Director – An individual having authority and responsibility for the day-to-day operation of an SUD treatment or recovery program.

Protected Health Information (“PHI”) – Any written, recorded, electronic (ePHI), or oral information which either (1) identifies, or could be used to identify, a client; or (2) relates to the physical or mental health or condition of a client, provision of health care to a client, or payment for health care provided to a client. PHI does not include information in the records listed in 45 CFR § 160.103.

Provider – An entity certified by the Department to provide either SUD treatment or recovery support services or both. A single provider may operate multiple programs.

Psychiatrist – A physician who has completed all training in a program in psychiatry accredited by the Accreditation Council for Graduate Medical Education, approved by the American Board of Psychiatry and Neurology, Inc., or is board certified in psychiatry.

Psychologist – A person licensed to practice psychology in accordance with applicable District laws and regulations.

Psychology Associate – A person registered as a Psychology Associate in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Qualified Practitioner – Staff authorized to provide treatment and other services based on the definition of the service.

Recovery Coach – An individual who participated in an educational training for at least 30 hours from a program approved by the Department.

Recovery Support Plan – A document developed during a Recovery Support Evaluation that outlines the client’s needs, goals, and recovery support services to be utilized to achieve those goals. The Recovery Support plan assists a client in recovery to develop goals and objectives to maintain their sobriety in the community with supports from family, community and recovery support programs.

Recovery Support Services (“RSS”) – Non-clinical services provided to a client by a certified RSS provider to assist the client in achieving or sustaining recovery from an SUD.

Registered Nurse (“RN”) – A person licensed as a registered nurse in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Representative Payee – An individual or organization appointed by the Social Security Administration to receive Social Security or Supplemental Security Income (“SSI”) benefits for someone who cannot manage or direct someone else to manage his or her money.

Research – Experiments including new interventions of unknown efficacy applied to clients whether behavioral, psychological, biomedical, or pharmacological.

Residential Program – Any SUD treatment or recovery support services program which houses clients overnight, including Level 3 treatment programs and environmental stability programs.

Screening – A determination of the likelihood that a client has co-occurring substance use and mental disorders or that their presenting signs, symptoms, or behaviors may be influenced by co-occurring issues. The purpose is not to establish the presence or specific type of such a disorder, but to establish the need for an in-depth assessment. Screening is a formal process that typically is brief and occurs soon after the client presents for services.

Specialty Service – Any of the following services that may be provided by SUD providers under this chapter and that require additional certification, specifically, Medication Management, ACRA, MAT, TREM, and Environmental Stability.

Statement of Deficiencies (“SOD”) – A written statement of non-compliance issued by the Department, which describes the areas in which an applicant for certification or the certified provider fails to comply with the certification standards pursuant to this chapter.

Substance Use Disorder (“SUD”) – A chronic relapsing disease characterized by a cluster of cognitive, behavioral, and psychological symptoms indicating that the client continues using a substance despite significant substance-related problems. A diagnosis of SUD requires a client to have had persistent, substance related problem(s) within a twelve (12)-month period in accordance with the most recent version of the DSM.

SUD Services – All of the services described in this chapter, including treatment services, specialty services and Recovery Support Services.

Supported Employment Services – Program services designed for SUD clients for whom competitive employment has been interrupted or is intermittent as a result of a substance use disorder. Services assists consumers in obtaining and maintaining permanent part-time or full-time employment in a competitive setting.

Treatment – A therapeutic effort to improve a client’s cognitive or emotional conditions or the behavior of a client, consistent with generally recognized principles or standards in the SUD treatment field, provided or supervised by a Qualified Practitioner.

Withdrawal Management – A program designed to achieve systematic reduction in the degree of physical dependence on alcohol or drugs.

All persons desiring to comment on the subject matter of this 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.

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF 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, on an emergency basis, a new Chapter 80, “Certification Standards for Behavioral Health Stabilization Providers,” to Subtitle A (Mental Health) of Title 22 (Health) of the District of Columbia Municipal Regulations.

The Department, in partnership with the Department of Health Care Finance, submitted a Section 1115 Behavioral Health Transformation Demonstration Program (“demonstration program”) application to the Centers for Medicare and Medicaid Services on June 3, 2019 and received federal approval on November 6, 2019. Under the demonstration program, the District received authority to provide new behavioral health services reimbursed by the Medicaid program between January 1, 2020 and December 31, 2024, including psychiatric stabilization and behavioral health outreach services. To comply with the demonstration program, the Department must establish certification requirements for crisis service providers. The Department anticipates that these services will become effective under the demonstration program beginning in June 2020. Further information on the demonstration program is available at <https://dhcf.dc.gov/1115-waiver-initiative>.

The new Chapter 80 includes certification requirements for the following stabilization programs: (a) Comprehensive Psychiatric Emergency Program (“CPEP”); (b) Psychiatric Crisis Stabilization Programs; (c) Youth Mobile Crisis; and (d) Adult Mobile Crisis and Behavioral Health Outreach. The following is an overview of the programs and services in the chapter:

Section	Program	Services Provided	Brief Description
8025	CPEP	Brief psychiatric crisis visit Extended psychiatric crisis visit Extended observation visit	A CPEP directly provides or ensures the provision of psychiatric emergency services twenty four (24) hours per day, seven (7) days per week for an individual experiencing a behavioral health crisis. A CPEP shall not operate more than sixteen (16) beds.
8026	Psychiatric Crisis Stabilization	Nursing assessments	Psychiatric crisis stabilization services offer therapeutic, community-based, home-like residential treatment for adults

Section	Program	Services Provided	Brief Description
		Psychiatric assessments Crisis counseling Medication/somatic treatment Discharge planning	living in the community who need support to ameliorate psychiatric symptoms, who are voluntary, and are deemed appropriate for residential services in a structured, closely monitored temporary setting.
8027	Adult Mobile Crisis and Outreach	Mobile crisis intervention Behavioral health outreach	Mobile crisis and outreach providers are dispatched to the community where a crisis is occurring to begin providing assessments and treatment. These services are available on-call twenty-four (24) hours per day, seven (7) days per week, and shall serve all who present for services, regardless of insurance status or ability to pay.
8028	Youth Mobile Crisis	Mobile crisis intervention	Youth mobile crisis providers are dispatched into a home or community setting where youth may be experiencing a behavioral health crisis to begin engagement, assessment, and treatment as appropriate. Services can be provided in the community, schools, or other settings. These services are available twenty-four (24) hours per day, seven (7) days per week, and serve all who present for services, regardless of insurance status or ability to pay.

Emergency action is necessary for the immediate preservation of the health, safety, and welfare of District residents. This demonstration program was conceived, in large part, as a response to the crisis unfolding in the District relating to opioid use and abuse. To meet the deadline required by this demonstration program, to advance the District’s goals in the Opioid Strategic Plan *Live.Long.DC.* and to support a more person-centered system of physical and behavioral health care, the Department requires the emergency and proposed rulemaking to be effective immediately to begin appropriate work.

The emergency rulemaking was adopted and became effective on June 17, 2020. The emergency rules will remain in effect for one hundred twenty (120) days after the date of adoption, until October 15, 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 80 CERTIFICATION STANDARDS FOR BEHAVIORAL HEALTH STABILIZATION PROVIDERS

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8000 GENERAL PROVISIONS

- 8000.1 The Department of Behavioral Health (“Department”) is the Single State Agency responsible for developing and promulgating rules, regulations, and certification standards for mental health and substance use treatment and recovery providers in the District of Columbia (“District”).
- 8000.2 The purpose of this rule is to set forth the requirements for certification as Department-certified behavioral health stabilization providers. Behavioral health stabilization providers are community-based and treat individuals in the District who are experiencing a behavioral health crisis but who do not require hospitalization.
- 8000.3 The provisions of this chapter apply to all behavioral health stabilization programs, as defined by this chapter unless stated otherwise.
- 8000.4 Each provider shall meet and adhere to the terms and conditions of its Medicaid Provider Agreement with the Department of Health Care Finance (“DHCF”).
- 8000.5 No person or entity shall own or operate a behavioral health stabilization program that offers or proposes to offer behavioral health stabilization services unless certified by the Department pursuant to this chapter.
- 8000.6 The Department shall issue one (1) certification for each provider that is valid only for the programs stated on the certificate. The certificate is the property of the Department and must be returned upon request by the Department.
- 8000.7 The Department’s staff, upon presentation of proper identification, shall enter the premises of a behavioral health stabilization program to conduct announced or unannounced inspections and investigations.

8001 ELIGIBILITY FOR BEHAVIORAL HEALTH STABILIZATION SERVICES

- 8001.1 Providers certified under this chapter shall provide behavioral health stabilization services to any individual who presents in a behavioral health crisis, regardless of insurance status or ability to pay.
- 8001.2 An individual shall meet the following eligibility requirements to receive Medicaid-funded services:
- (a) Be bona fide residents of the District, as required in 29 DCMR § 2405.1(a); and
 - (b) Be enrolled in Medicaid, or be eligible for enrollment and have an application pending; or
 - (c) For new enrollees and those enrollees whose Medicaid eligibility has lapsed:

- (1) There is an eligibility grace period of ninety (90) calendar days from the date of first service for new enrollees, or from the date of eligibility expiration for enrollees who have a lapse in coverage, until the date the District's Economic Security Administration ("ESA") makes an eligibility or recertification determination.
- (2) In the event an individual appeals a denial of eligibility or recertification by the ESA, the Director may extend the ninety (90) calendar day eligibility grace period until the appeal has been exhausted. The ninety (90) calendar day eligibility grace period may also be extended at the discretion of the Director for other good cause shown.
- (3) Upon expiration of the eligibility grace period, services provided to the individual are no longer reimbursable by Medicaid. Nothing in this section alters the Department's timely-filing requirements for claim submissions.

8001.3 To qualify for locally-funded services, individuals must not be eligible for Medicaid or Medicare, not be enrolled in any other third-party insurance program except the D.C. HealthCare Alliance, or be enrolled in an insurance program that does not cover medically necessary services. All individuals receiving locally-funded services must also meet the following requirements:

- (a) For individuals eighteen (18) years of age and older, live in households with a countable income of less than two hundred percent (200%) of the Federal poverty level, and for individuals under eighteen (18) years of age, live in households with a countable income of less than three hundred percent (300%) of the Federal poverty level.
- (b) An individual who does not meet the income limits in paragraph (a) above may receive treatment services in accordance with the following requirements:
 - (1) The individual must, within ninety (90) days of enrollment for services, apply to the Department of Human Services Economic Security Administration for certification to verify income; and
 - (2) The individual may receive treatment services in accordance with rates determined by the Department.

8002 PROVIDER CERTIFICATION PROCESS

8002.1 The Department shall utilize the certification process to thoroughly evaluate the applicant's capacity to provide high quality behavioral health stabilization services in accordance with this chapter and the needs of the District's behavioral health system.

- 8002.2 Each applicant seeking certification as a provider shall submit a certification application to the Department. A certified provider seeking renewal of certification shall submit a certification application at least ninety (90) calendar days prior to expiration of its current certification. The certification of a provider that has submitted a timely application for renewal of certification shall continue until the Department renews or denies renewal of the certification application.
- 8002.3 An applicant may apply for certification for one or more of the following program types:
- (a) Comprehensive Psychiatric Emergency Program;
 - (b) Psychiatric Stabilization Program;
 - (c) Adult Mobile Crisis and Outreach Program; or
 - (d) Youth Mobile Crisis Intervention Program.
- 8002.4 Certification shall be considered terminated if the provider:
- (a) Fails to submit a complete certification application ninety (90) calendar days prior to the expiration date of the current certification;
 - (b) Voluntarily relinquishes certification; or
 - (c) Terminates operations.
- 8002.5 Upon receipt of a certification application, the Department shall review the certification application to determine whether it is complete. If a certification application is incomplete, the Department shall return the incomplete application to the applicant. An incomplete certification application shall not be regarded as a certification application. The Department shall not take further action to issue certification unless a complete certification application is submitted within ninety (90) calendar days prior to the expiration of the applicant's current certification.
- 8002.6 At the time of initial certification and certification renewal, the Department shall review each certification application and conduct an on-site survey to determine whether the applicant's services and activities meet the certification standards described in this chapter. The Department shall have access to all records necessary to verify compliance with certification standards and may conduct interviews with staff, others in the community, and individuals served. Nothing in this section shall limit the Department's right to conduct on-site surveys at any other time during the certification period.
- 8002.7 Applicant or provider interference with the on-site survey, or submission of false or misleading information, or lack of candor by the applicant or provider, shall be grounds for an immediate suspension of any prior certification, or denial of a new certification application.

- 8002.8 A Statement of Deficiency (“SOD”) is a written notice to a provider identifying non-compliance with certification standards. The intent of the SOD is to provide existing certified providers with an opportunity to correct minor deficiencies to avoid decertification and disruption of service. The Department will not normally issue an SOD to applicants who fail to demonstrate compliance with certification standards. The Department will consider the applicant’s failure to comply with the initial certification requirements as evidence that the applicant is ill-prepared to assume the responsibilities of providing behavioral health stabilization services to District residents and deny the application.
- 8002.9 When utilized, the SOD shall describe the areas of non-compliance, suggest actions needed to bring operations into compliance with the certification standards, and set forth a timeframe of no more than ten (10) business days for the provider’s submission of a written Corrective Action Plan (“CAP”). The issuance of an SOD is a separate process from the issuance of a Notice of Infraction (“NOI”). NOIs shall be issued promptly upon observation of violations of this chapter, especially when they are recurrent, endanger consumer or staff health or safety or when there is a failure to comply with core requirements of operating a behavioral health stabilization program.
- 8002.10 The Department is not required to utilize the SOD process. The Department may immediately deny certification or re-certification or proceed with decertification.
- 8002.11 An applicant or certified provider’s CAP shall describe the actions to be taken and specify a timeframe for correcting the areas of non-compliance. The CAP shall be submitted to the Department within ten (10) business days after receipt of the SOD from the Department, or sooner if specified in the SOD.
- 8002.12 The Department shall notify the applicant or certified provider whether the provider’s CAP is accepted within ten (10) business days after receipt. The Department shall utilize the SOD process at any time to address an applicant or certified provider’s violation(s) of this chapter.
- 8002.13 The Department may only issue its certification after the Department verifies that the applicant or certified provider has remediated all of the deficiencies identified in the CAP and meets all the certification standards in this chapter.
- 8002.14 The Department may grant full or provisional certification to an applicant after conducting on-site surveys and reviewing application materials, including CAPs. A determination to grant full certification to a provider or program shall be based on the Department’s review and validation of the information provided in the application, as well as facility inspection findings, CAPs, and the provider or program’s compliance with this chapter.
- 8002.15 The Department may grant provisional certification to a new provider or program that can demonstrate substantial compliance with these certification requirements and (a) has not previously held a certification issued by the Department or (b) is in the process of securing a facility within the District at the time of application.

- 8002.16 Provisional certification shall not exceed a period of six (6) months and may be renewed only once for an additional period not to exceed ninety (90) calendar days.
- 8002.17 Full Certification as a behavioral health stabilization provider shall be for one (1) calendar year for new applicants and two (2) calendar years for existing providers seeking renewal of certification. Certification shall start from the date of issuance of certification by the Department, subject to the provider's continuous compliance with these certification standards. Certification shall remain in effect until it expires, is renewed, or is revoked pursuant to this chapter. The certification shall specify the effective date of the certification, the program(s), and services that the provider is certified to provide.
- 8002.18 The provider shall notify the Department within forty-eight (48) hours of any changes in its operation that affect the provider's continued compliance with these certification standards, including changes in ownership or control, changes in service, and changes in its affiliation and referral arrangements.
- 8002.19 Prior to adding a new program during the term of certification, the provider shall submit a certification application describing the program. Upon determination by the Department that the provider is in compliance with certification standards, the Department may certify the provider to provide the new program and its required services.
- 8002.20 A provider that applies for certification during an open application period as published in the District of Columbia Register may appeal the denial of certification under this subsection by utilizing the procedures contained in § 8004. The Department shall not accept any applications for which a notice of moratorium is published in the District of Columbia Register.
- 8002.21 In the event that a certification application is under review while a moratorium is put in place, the Department will continue to process the application for a time period of no more than thirty (30) calendar days. If, after thirty (30) calendar days, the application is deemed incomplete, the provider will be granted ten (10) business days to resolve all items of incompleteness. Any items not resolved or provided by the due date will result in the incomplete application being returned to the applicant. The Department will take no further action to issue certification. The applicant must then wait until the moratorium is lifted to submit any subsequent certification application.
- 8002.22 Nothing in these rules shall be interpreted to mean that certification is a right or an entitlement. New certification as a provider depends upon the Director's assessment of the need for additional providers(s) and availability of funds.
- 8002.23 Certification shall be limited to the applicant granted the certification and shall be limited to the location and programs as indicated on the certificate. Certification is not transferable to any other organization.
- 8002.24 Written notice of any change in the name or ownership of a program owned by an individual, partnership, or association, or in the legal or beneficial ownership of ten

- percent (10%) or more of the stock of a corporation that owns or operates the program, shall be given to the Department at least thirty (30) calendar days prior to the change in ownership.
- 8002.25 The provider shall notify the Department in writing thirty (30) calendar days prior to implementing any of the following operational changes, including all aspects of the operations materially affected by the changes:
- (a) A proposed change in the program's geographic location;
 - (b) The proposed addition or deletion of programs and related services, which is anything that would alter or disrupt services where the individual would be impacted by the change, or any change that would affect compliance with this regulation;
 - (c) A change in the required staff qualifications for employment;
 - (d) A proposed change in organizational structure;
 - (e) A proposed change in the population served; or
 - (f) A proposed change in program capacity and, for residential programs, a proposed change in bed capacity.
- 8002.26 A provider shall forward to the Department within thirty (30) calendar days all inspection reports conducted by an oversight body and all corresponding corrective actions taken regarding cited deficiencies.
- 8002.27 A provider shall immediately report to the Department any criminal allegations involving provider staff.

8003 CERTIFICATION: EXEMPTIONS FROM STANDARDS

- 8003.1 Upon good cause shown, including but not limited to a conflict between a certification standard and a provider's third-party contract or agreement, the Department may exempt a provider from a certification standard if the exemption does not jeopardize the health and safety of consumers or staff, violates an individual's rights, or otherwise conflict with the purpose and intent of these rules.
- 8003.2 If the Department approves an exemption, such exemption shall end on the expiration date of the program certification, or at an earlier date if specified by the Department, unless the provider requests renewal of the exemption prior to expiration of its certificate or the earlier date set by the Department.
- 8003.3 The Department shall revoke an exemption at any time that it determines the exemption is no longer appropriate.

8003.4 All requests for an exemption from certification standards must be submitted in writing to the Department.

8004 DENIAL OR DECERTIFICATION PROCESS

8004.1 The Director may deny initial certification if the applicant fails to comply with any certification standard or the application fails to demonstrate the applicant's capacity to deliver high quality behavioral health stabilization services on a sustained and regular basis. Furthermore, to avoid an over concentration of providers in areas with existing providers and to encourage increased access to underserved areas of the District, the Director may deny certification if the applicant proposes to operate a facility in an area already served by one or more providers. The Department's priority shall be to grant certification to applicants that will address unmet needs of the behavioral health system. While applicants may make minor corrections and substitutions to its application during the certification process, evidence of one or more of the following shall constitute good cause to deny the application for certification when the circumstances demonstrate deliberate misrepresentations, organizational instability, or the lack of preparedness or capacity to meet and sustain compliance with this chapter:

- (a) An incomplete application;
- (b) False information provided by applicant or contained in an application;
- (c) One or more changes to an organizational chart during the application process;
- (d) A facility that is inadequate in health, safety, size or configuration to provide services consistent with high quality care and privacy standards;
- (e) The lack of demonstrated experience providing behavioral health stabilization services by the applicant's clinical leadership, practitioners, or staff;
- (f) An applicant's lack of financial resources to carry out its commitments and obligations under this chapter for the foreseeable future;
- (g) An applicant's failure to timely respond to the Department's requests for information; and
- (h) History of poor performance.

8004.2 Upon written request submitted by the applicant and received by the Department within fifteen (15) business days of the certification denial, the Department shall provide an applicant an impartial administrative review of the decision. The Department shall conduct the administrative review to determine whether the certification denial complied with § 8004.1. Each request for an administrative review shall contain a concise statement of the reason(s) why the certification denial was in error. The Director shall issue a written decision within fifteen (15) business days. The Director's decision is final and not subject to further appeal. An applicant and its principals shall

- not be allowed to reapply for certification for twelve (12) months following the date of denial.
- 8004.3 An applicant and its executive leadership shall not be allowed to reapply for certification for twelve (12) months following the date of the initial denial or, if applicable, the date of the denial pursuant to the Director's administrative review.
- 8004.4 The Department shall decertify existing providers who fail to comply with the certification requirements contained in this chapter. Evidence of one or more of the following shall constitute good cause to decertify:
- (a) An incomplete recertification application;
 - (b) False information provided by provider or contained in a recertification application;
 - (c) High staff turnover during the certification period demonstrating organizational instability;
 - (d) One or more documented violations of the certification standards during the certification period that evidence a provider's lack of capacity to meet and sustain compliance with this chapter;
 - (e) Claims audit error rate in excess of twenty-five percent (25%);
 - (f) Poor quality of care;
 - (g) A provider's lack of financial resources to carry out its commitments and obligations under this chapter for the foreseeable future; or
 - (h) Failure to cooperate with Department investigations or lack of timely response to information requests.
- 8004.5 Nothing in this chapter requires the Director to issue a SOD prior to decertifying a provider. If the Director finds that there are grounds for decertification, the Director shall issue a written notice of decertification setting forth the factual basis for the decertification, the effective date, and the provider's right to request an administrative review.
- 8004.6 The provider may request an administrative review from the Director within fifteen (15) business days of the date on the notice of decertification.
- 8004.7 Each request for an administrative review shall contain a concise statement of the reason(s) why the provider asserts that it should not have had its certification revoked and include any relevant supporting documentation.

- 8004.8 Each administrative review shall be conducted by the Director and shall be completed within fifteen (15) business days of the receipt of the provider's request.
- 8004.9 The Director shall issue a written decision and provide a copy to the provider. If the Director denies the appeal and approves the decertification, the provider may request a hearing under the D.C. Administrative Procedure Act, within fifteen (15) business days of the receipt of the Director's written decision. The administrative hearing shall be limited to the issues raised in the administrative review request. The decertification shall be stayed pending resolution of the hearing.
- 8004.10 Upon decertification, the provider and its executive leadership shall not be allowed to reapply for certification for a period of two (2) years following the date of the order of revocation. If a provider reapplies for certification, the provider must reapply in accordance with the established certification standards for the type of services provided and show evidence that the grounds for the revocation have been corrected.

8005 NOTICES OF INFRACTION

- 8005.1 The Department may issue a Notice of Infraction ("NOI") for any violation of this chapter. The fine amount for any NOI issued under this chapter shall be as follows:
- (a) For the first offense \$500;
 - (b) For the second offense \$1,000;
 - (c) For the third offense \$2,000;
 - (d) For the fourth and subsequent offenses \$4,000.
- 8005.2 The administrative procedure for the appeal of a NOI issued under this chapter shall be governed by 16 DCMR §§ 3100 *et seq.*

8006 CLOSURES AND CONTINUITY OF CARE

- 8006.1 A provider shall provide written notification to the Department at least ninety (90) calendar days before its impending closure, or immediately upon knowledge of an impending closure less than ninety (90) calendar days in the future. This notification shall include plans for continuity of care and preservation of individuals' records.
- 8006.2 The Department shall review the continuity of care plan and make recommendations to the provider. The plan must include provision for the referral and transfer of individuals, and for the provision of relevant treatment information, medications, and information to the new provider. The provider shall incorporate all Department recommendations necessary to ensure a safe and orderly transfer of care.
- 8006.3 Closure of a program does not absolve a provider from its legal responsibilities regarding the preservation and the storage of individual records as described in § 8022, Storage and Retention of Records, of these regulations and all applicable Federal and

- District laws and regulations. A provider must take all necessary and appropriate measures to ensure individuals' records are preserved, maintained, and made available to the individuals upon request after closure of a program.
- 8006.4 A provider shall be responsible for the execution of its continuity of care plan in coordination with the Department.
- 8007 GENERAL MANAGEMENT AND ADMINISTRATION STANDARDS**
- 8007.1 Each provider shall be a recognized legal entity in the District of Columbia and qualified to conduct business in the District. Evidence of qualification to conduct business includes a Basic Business License ("BBL") and Clean Hands Certification issued by the District of Columbia Department of Consumer and Regulatory Affairs ("DCRA"). The provider shall provide evidence of the BBL and Clean Hands Certification to the Department at certification and recertification.
- 8007.2 Each provider shall maintain the clinical operations, policies, and procedures described in this section. These operations, policies, and procedures shall be reviewed and approved by the Department during the certification and recertification process.
- 8007.3 All certified providers shall report to the Department in a form and manner prescribed by the Department's policy on adverse events including abuse or neglect of individuals served or any other event that may compromise the health, safety, or welfare of the individuals served.
- 8007.4 Each provider shall:
- (a) Comply with all applicable Federal and District laws and regulations; and
 - (b) Hire personnel with the necessary qualifications to provide behavioral health stabilization services to meet the needs of individuals in crisis.
- 8007.5 All behavioral health stabilization programs shall operate twenty-four (24) hours per day, seven (7) days per week, year round.
- 8007.6 Each provider shall have a full time program director with authority and responsibility for the administration and day-to-day operation of the program(s).
- 8007.7 Each provider shall have a clinical director responsible for the full-time clinical direction and day-to-day delivery of clinical services provided to individuals of the program(s). The clinical director must be a clinician licensed to practice independently in the District of Columbia. The clinical director must be able to supervise other clinical staff.
- 8007.8 The program director shall devote adequate time and authority to ensure that service delivery complies with all applicable standards set forth in this chapter. The program director and clinical director shall not be the same individual.

- 8007.9 Each provider shall establish and adhere to a Staff Selection Policy for selecting and hiring staff, which shall include but not be limited to:
- (a) Evidence of licensure, certification, or registration, as applicable and as required by the job being performed;
 - (b) Evidence of an appropriate degree, training program, or credentials, such as academic transcripts or a copy of degree;
 - (c) Evidence of all required criminal background checks and child abuse registry checks (for both state of residence and employment). Non-licensed staff shall comply with the criminal background check requirements contained in District Official Code §§ 44-551 *et seq.*;
 - (d) Evidence of quarterly checks to determine whether an individual should be excluded from participation in a Federal health care program as listed on the Department of Health and Human Services List of Excluded Individuals/Entities or the General Services Administration Excluded Parties List System, or any similar succeeding governmental list; and
 - (e) Evidence of a negative result on a tuberculosis test or medical clearance related to a positive result.
- 8007.10 Each provider shall establish and adhere to written job descriptions for all positions, including at a minimum the role, responsibilities, reporting relationships, and minimum qualifications for each position. The minimum qualifications established for each position shall be appropriate for the scope of responsibility and clinical practice (if any) described for each position.
- 8007.11 Each provider shall establish and adhere to a Performance Review Policy, which shall require a periodic evaluation of clinical and administrative staff performance, an assessment of clinical competence (if appropriate), general organizational work requirements, and key functions as described in the job description. The periodic evaluation shall also include an annual individual development plan for each staff member.
- 8007.12 Each provider shall establish and adhere to a supervision policy to ensure that services are provided according to this chapter and Department policies on supervision and service standards as well as District laws and regulations.
- 8007.13 Each provider shall establish and adhere to a training policy in accordance with § 8018 of this chapter.
- 8007.14 Personnel policies and procedures shall apply to all staff and volunteers and shall include:

- (a) Compliance with Federal and District equal opportunity laws, including the Americans with Disabilities Act (42 USC § 12101) and the D.C. Human Rights Act (D.C. Official Code §§ 2-1401.1 *et seq.*);
- (b) A current organizational flow chart reflecting each program position and, where applicable, the relationship to the larger program or provider of which the program is a part;
- (c) Written plans for developing, posting, and maintaining files pertaining to work and leave schedules, time logs, and on-call schedules for each functional unit, to ensure adequate coverage during all hours of operation;
- (d) A written policy requiring that a designated individual be assigned responsibility for management and oversight of the volunteer program, if volunteers are utilized;
- (e) A written policy regarding volunteer recruitment, screening, training, supervision, and dismissal for cause, if volunteers are utilized; and
- (f) Provisions through which the program shall make available to staff a copy of the personnel policies and procedures.

8007.15 Providers shall develop and implement procedures that prohibit the possession, use, and distribution of controlled substances or alcohol by staff during their duty hours, unless medically prescribed and used accordingly. Staff possession, use, or distribution of controlled substances or alcohol during off duty hours that affects job performance shall be prohibited. These policies and procedures shall ensure that the provider:

- (a) Provides information about the adverse effects of the non-medical use and abuse of controlled substances and alcohol to all staff;
- (b) Initiates disciplinary action for the possession, use or distribution of controlled substances or alcohol, which occurs during duty hours or which affects job performance; and
- (c) Provides information and assistance to any impaired staff member to facilitate his or her recovery.

8007.16 The provider shall maintain individual personnel records for each person employed by the provider including, at a minimum, the following:

- (a) A current job description for each person, that is revised as needed;
- (b) Evidence of a negative result on a tuberculosis test or medical clearance related to a positive result;

- (c) Evidence of the education, training, and experience of the individual, and a copy of the current appropriate license, registration, or certification credentials (if any);
- (d) Documentation that written personnel policies were distributed to the employee;
- (e) Notices of official tour of duty: day, evening, night, or rotating shifts; payroll information; and disciplinary records;
- (f) Documentation that the employee has received all health care worker immunizations recommended by the District of Columbia Department of Health; and
- (g) Criminal background checks as required in Title 22-B, District of Columbia Municipal Regulation, §§ 4700 *et seq.*

8007.17 The provider shall maintain all personnel records during the course of an individual's employment with the provider and for three (3) years following the individual's separation from the provider.

8008 EMPLOYEE CONDUCT

8008.1 All staff shall adhere to ethical standards of behavior in their relationships with individuals as follows:

- (a) Staff shall maintain an ethical and professional relationship with individuals at all times;
- (b) Licensed or certified staff shall adhere to their professional codes of conduct, as required by District licensing laws and regulations;
- (c) Staff shall not enter into dual or conflicting relationships with individuals that might affect professional judgment, therapeutic relationships, or increase the risk of exploitation; and
- (d) The provider shall establish written policies and procedures regarding staff relationships with both current and former individuals that are consistent with this section.

8008.2 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with individuals in the program.

8008.3 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with individuals formerly served by the program.

- 8008.4 No staff, including licensed professionals, support personnel, and volunteers, shall engage in sexual activities or sexual contact with individuals' relatives or other individuals with whom individuals maintain a close personal relationship.
- 8008.5 No staff, including licensed professionals, support personnel, and volunteers, shall provide services to individuals with whom they have had a prior sexual or other significant relationship.
- 8008.6 Staff, including licensed professionals, support personnel, and volunteers, shall only engage in appropriate physical contact with individuals in the program and are responsible for setting clear, appropriate, and culturally sensitive boundaries that govern such physical contact.
- 8008.7 No staff, including licensed professionals, support personnel, and volunteers, shall sexually harass any individual. Sexual harassment includes, but is not limited to, sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

8009 QUALITY IMPROVEMENT

- 8009.1 Each provider shall establish and adhere to policies and procedures governing quality improvement ("Quality Improvement Policy").
- 8009.2 The Quality Improvement Policy shall require the provider to adopt a written quality improvement ("QI") plan describing the objectives and scope of its QI program and require provider staff, individual, and family involvement in the QI program.
- 8009.3 The Department shall review and approve each provider's QI program at a minimum as part of the certification and recertification process. The QI program shall submit data to the Department upon request.
- 8009.4 The QI program shall be directed by a coordinator ("QI Coordinator") who has direct access to the Program Director. In addition to directing the QI program's activities as detailed in § 8009.5, the QI Coordinator shall also review unusual incidents, deaths, and other sentinel events; monitor and review utilization patterns; and track individuals' complaints and grievances. The QI Coordinator shall be:
- (a) A Physician;
 - (b) A Psychologist;
 - (c) A Licensed Independent Clinical Social Worker ("LICSW");
 - (d) An Advanced Practice Registered Nurse ("APRN");
 - (e) A Licensed Professional Counselor ("LPC");
 - (f) A Licensed Marriage and Family Therapist ("LMFT");

- (g) A Registered Nurse (“RN”);
- (h) A Licensed Independent Social Worker (“LISW”);
- (i) A Licensed Graduate Professional Counselor (“LGPC”);
- (j) A Licensed Graduate Social Worker (“LGSW”);
- (k) A Certified Addiction Counselor (“CAC”) I or II;
- (l) A Physician Assistant (“PA”); or
- (m) An individual with a Bachelors’ Degree and a minimum of two (2) years of relevant, qualifying experience, such as experience in behavioral health care delivery or health care quality improvement initiatives.

8009.5 The QI program shall be operational and shall measure and ensure at least the following:

- (a) Easy and timely access and availability of services;
- (b) Close monitoring and review of high volume or repeat utilizers of behavioral health stabilization services;
- (c) Coordination of care with Core Service Agencies (“CSAs”);
- (d) Compliance with all certification standards;
- (e) Adequacy, appropriateness, and quality of care for individuals in the program;
- (f) Efficient utilization of resources;
- (g) Individual and family satisfaction with services; and
- (h) Any other indicators that are part of the Department QI program for the larger system.

8009.6 When the provider identifies a significant problem or quality of service issue, the provider shall notify the Department, act to correct the problem or improve the effectiveness of service delivery, or both, and shall assess corrective or supportive actions through continued monitoring.

8010 FISCAL MANAGEMENT STANDARDS

8010.1 Applicants or providers that are in financial distress and at risk of imminent closure represent a risk both to individuals served by the Department and the behavioral health system. The Department shall not certify any applicant or re-certify any provider without evidence that the applicant or provider has sufficient financial resources to carry out its commitments and obligations under this chapter for the foreseeable future.

The provider shall have adequate financial resources to deliver all required services and shall provide documented evidence at the time of certification and recertification that it has adequate resources to operate behavioral health stabilization program. Documented evidence shall include Federal and District tax returns, including Form 990s for non-profit organizations, for the three (3) most recent tax reporting years, and a current financial statement.

- 8010.2 A provider shall have fiscal management policies and procedures and keep financial records in accordance with generally accepted accounting principles.
- 8010.3 A provider shall include adequate internal controls for safeguarding or avoiding misuse of individual or organizational funds.
- 8010.4 A provider shall have a uniform budget of expected revenue and expenses as required by the Department. The budget shall:
- (a) Categorize revenue by source;
 - (b) Categorize expenses by type of service; and
 - (c) Estimate costs by unit of service.
- 8010.5 A provider shall have the capacity to determine direct and indirect costs for each type of service provided.
- 8010.6 The provider shall conspicuously post and make available to all a written schedule of rates and charges.
- 8010.7 Fiscal reports shall provide information on the relationship of the budget to actual spending, including revenues and expenses by category and an explanation of the reasons for any substantial variance.
- 8010.8 Providers shall correct or resolve all adverse audit findings prior to recertification.
- 8010.9 A provider shall have policies and procedures regarding:
- (a) Purchase authority, product selection and evaluation, property control and supply, storage, and distribution;
 - (b) Billing;
 - (c) Controlling accounts receivable;
 - (d) Handling cash;
 - (e) Management of individual fund accounts;
 - (f) Arranging credit; and

(g) Applying discounts and write-offs.

8010.10 All business records pertaining to costs, payments received and made, and services provided to individuals shall be maintained for a period of six (6) years or until all audits and ongoing litigations are complete, whichever is longer.

8010.11 All providers must maintain proof of liability insurance coverage, which must include malpractice insurance of at least three million dollars (\$3,000,000.00) aggregate and one million dollars (\$1,000,000.00) per incident and comprehensive general coverage of at least three million dollars (\$3,000,000.00) per incident that covers general liability, vehicular liability, and property damage. The insurance shall include coverage of all personnel, consultants, or volunteers working for the provider.

8011 ADMINISTRATIVE PRACTICE ETHICS

8011.1 All providers shall operate in an ethical manner, including but not limited to complying with the provisions of this section.

8011.2 A provider shall not offer or imply to offer services not authorized on the certification issued by the Department.

8011.3 A provider shall not use any advertising that contains false, misleading, or deceptive statements or claims or that contains false or misleading information about fees.

8011.4 A provider shall comply with all Federal and District laws and regulations, including but not limited to the False Claims Act, 31 USC §§ 3729-3733, the Anti-Kickback Statute, 42 USC § 1320a-7b, the Physician Self-Referral Law (Stark law), 42 USC § 1395nn, and the Exclusion Statute, 42 USC § 1320a-7.

8011.5 All employees shall be informed of any policy change that affects performance of duties.

8011.6 All allegations of ethical violations must be treated as major unusual incidents.

8011.7 Any research must be conducted in accordance with Federal law.

8012 PROGRAM POLICIES AND PROCEDURES

8012.1 Each program must document the following:

- (a) Organization and program mission statement, philosophy, purpose, and values;
- (b) Organizational and leadership structure;
- (c) Staffing;
- (d) Relationships with parent organizations, affiliated organizations, and organizational partners;

- (e) Treatment philosophy and approach;
- (f) Services provided;
- (g) Characteristics and needs of the population served;
- (h) Performance metrics, including intended outcomes and process methods;
- (i) Contract services, if any;
- (j) Affiliation agreements, if any;
- (k) The scope of volunteer activities and rules governing the use of volunteers, if any;
- (l) Location of service sites and specific designation of the geographic area to be served; and
- (m) Hours and days of operation of each site.

8012.2 Each program shall establish written policies and procedures to ensure each of the following:

- (a) Service provision based on the individual's needs;
- (b) Consideration of special needs of the individual served and the program's population of focus;
- (c) Placement of individuals in the least restrictive setting necessary to address the acuity of the individual's presenting illness and circumstances; and
- (d) Facilitation of access to other more appropriate services for individuals who do not meet the criteria for admission into a program offered by the provider.

8012.3 Each program shall develop and document policies and procedures subject to review by the Department related to each of the following:

- (a) Program admission and exclusion criteria;
- (b) Termination of treatment and discharge or transition criteria;
- (c) Infection control procedures and use of universal precautions, addressing at least those infections that may be spread through contact with bodily fluids;
- (d) Volunteer utilization, recruitment, and oversight;
- (e) Crisis intervention and medical emergency procedures;

- (f) Safety precautions and procedures for participant volunteers, employees, and others;
- (g) Record management procedures in accordance with "Confidentiality of Substance Use Disorder Patient Records" ("42 CFR Part 2"), as applicable, the Health Insurance Portability and Accountability Act ("HIPAA"), the D.C. Mental Health Information Act, this chapter, and any other Federal and District laws and regulations regarding the confidentiality of individuals' records;
- (h) The on-site limitations on use of tobacco, alcohol, and other substances;
- (i) Individuals' rules of conduct and commitment to treatment regimen, including restrictions on carrying weapons and specifics of appropriate behavior while in or around the program;
- (j) Individuals' rights;
- (k) Addressing and investigating major unusual incidents;
- (l) Addressing individuals' grievances;
- (m) Addressing issues of an individual's non-compliance with established treatment regimen and/or violation of program policies and requirements;
- (n) The purchasing, receipt, storage, distribution, return, and destruction of medication, including accountability for and security of medications located at any of its service site(s) ("Medication Policy");
- (o) Selecting and hiring staff; and
- (p) Quality improvement.

8012.4 Gender-specific programs shall ensure that staff of that specific gender is in attendance at all times when individuals are present in the program.

8013 EMERGENCY PREPAREDNESS PLAN

8013.1 Each provider shall establish and adhere to a written disaster evacuation and continuity of operations plan in accordance with the Department policy on Disaster Evacuation/Continuity of Operations Plans.

8013.2 A provider shall immediately notify the Department and implement its continuity of operations plan if an imminent health hazard exists because of an emergency such as a fire, flood, extended interruption of electrical or water service, sewage backup, gross unsanitary conditions, or other circumstances that may endanger the health, safety, or welfare of the individuals served.

8014 FACILITIES MANAGEMENT

- 8014.1 A provider shall establish and maintain a safe environment for its operation, including adhering to the following provisions:
- (a) Each provider's service site(s) shall be located and designed to provide adequate and appropriate facilities for private, confidential individual and group counseling/therapy sessions;
 - (b) Each provider's service site(s) shall have appropriate space for group activities and educational programs;
 - (c) Each provider shall comply with applicable provisions of the Americans with Disabilities Act (42 USC § 12101) in all business locations;
 - (d) Each service site shall be located within reasonable walking distance of public transportation;
 - (e) Providers shall maintain fire safety equipment and establish practices to protect all occupants. This shall include clearly visible fire extinguishers with a charge that are inspected annually by a qualified service company or trained staff member; and
 - (f) Each provider shall annually obtain a written certificate of compliance from the District of Columbia Department of Fire and Emergency Medical Services indicating that all applicable fire and safety code requirements have been satisfied for each facility.
- 8014.2 Each window that opens shall have a screen.
- 8014.3 Each rug or carpet in a facility shall be securely fastened to the floor or shall have a non-skid pad.
- 8014.4 Each hallway, porch, stairway, stairwell, and basement shall be kept free from any obstruction at all times.
- 8014.5 Each ramp or stairway used by individuals in the program shall be equipped with a firmly secured handrail or banister.
- 8014.6 Each provider shall maintain a clean environment free of infestation and in good physical condition.
- 8014.7 Each facility shall be appropriately equipped and furnished for the services delivered.
- 8014.8 Each provider shall properly maintain the outside and yard areas of the premises in a clean and safe condition.
- 8014.9 Each exterior stairway, landing, and sidewalk shall be kept free of snow and ice.

- 8014.10 Each facility shall be located in an area reasonably free from noxious odors, hazardous smoke and fumes, and where interior sounds may be maintained at reasonably comfortable levels.
- 8014.11 A provider shall take necessary measures to ensure pest control, including:
- (a) Refuse shall be stored in covered containers that do not create a nuisance or health hazard; and
 - (b) Recycling, composting, and garbage disposal shall not create a nuisance, permit transmission of disease, or create a breeding place for insects or rodents.
- 8014.12 A provider shall ensure that medical waste is stored, collected, transported, and disposed of in accordance with applicable Federal and District laws and guidelines from the CDC.
- 8014.13 Each provider shall ensure that its facilities have comfortable lighting, proper ventilation, and moisture and temperature control. Rooms, including bedrooms and activity rooms below ground level, shall be dry and the temperature shall be maintained within a normal comfort range.
- 8014.14 Each facility shall have potable water available for each individual.
- 8014.15 Smoking shall be prohibited inside a program's facility.
- 8014.16 The physical design of the provider's structure shall be sufficient to accommodate staff, individuals receiving services and the program(s). Each location shall make available the following:
- (a) A reception area;
 - (b) Private areas for individual treatment services;
 - (c) An area(s) for dining, if applicable; and
 - (d) Separate bathrooms and/or toilet facilities in accordance with District law where the:
 - (1) Required path of travel to the bathroom shall not be through another bedroom;
 - (2) Windows and doors provide privacy; and
 - (3) Showers and toilets not intended for individual use provide privacy.
- 8014.17 If activity space is used for purposes not related to the program's mission, the provider shall ensure that:

- (a) The quality of services is not reduced;
 - (b) Activity space in use by other programs shall not be counted as part of the required activity space; and
 - (c) Individual confidentiality is protected, as required by HIPAA, the D.C. Mental Health Information Act, 42 CFR Part 2, and all other applicable Federal and District laws and regulations.
- 8014.18 The use of appliances such as cell phones, computers, televisions, radios, CD players, recorders, and other electronic devices shall not interfere with the therapeutic program.
- 8014.19 Each facility shall maintain an adequately supplied first-aid kit which:
- (a) Shall be maintained in a place known and readily accessible to individuals in the program and employees; and
 - (b) Shall be adequate for the number of persons in the facility.
- 8014.20 Each provider shall post emergency numbers near its telephones for fire, police, and poison control, along with contact information and directions to the nearest hospital.
- 8014.21 Each provider shall have on site at each facility a fully functioning automatic external defibrillator (“AED”) and shall ensure that all staff are trained in how to use the AED.
- 8014.22 Each provider shall have on-site at each facility at least two (2) unexpired doses of naloxone and shall ensure that all staff are trained in how to administer the naloxone.
- 8014.23 A provider shall have an interim plan addressing safety and continued service delivery during construction.
- 8014.24 As part of each certification and re-certification application, the provider shall present the Department permits (including a DCRA building permit) and post-work inspections for all plumbing and electrical work completed at the program facility during the last twelve (12) months.

8015 MEDICATION STORAGE AND ADMINISTRATION STANDARDS

- 8015.1 Controlled substances shall be maintained in accordance with applicable Federal and District laws and regulations.
- 8015.2 Providers shall implement written policies and procedures to govern the acquisition, safe storage, prescribing, dispensing, labeling, administration and self-administration of medication. This section shall include medications individuals bring to the program.
- 8015.3 Any prescription medication that an individual brings to the program shall have a record of the prescribing physician’s order, including the prescribing physician’s approval to self-administer the medication, if applicable.

- 8015.4 No medication brought into the facility may be administered or self-administered until the medication is identified and the attending practitioner's written order or approval is documented in the individual's record.
- 8015.5 Verbal orders may only be given by the attending practitioner to another physician, PA, APRN, RN, or pharmacist. Verbal orders shall be noted in the individual's record as such and countersigned and dated by the prescribing practitioner within twenty-four (24) hours. However, pursuant to District law and regulations, orders for seclusion or restraint shall always be made as written orders.
- 8015.6 Medication, both prescription and over-the-counter, brought into a facility must be packaged and labeled in accordance with Federal and District laws and regulations.
- 8015.7 Medication, both prescription and over-the-counter, brought into a facility by an individual that is not approved by the attending practitioner shall be packaged, sealed, stored, and returned to the individual upon discharge.
- 8015.8 The administration of medications, excluding self-administration, shall be permitted only by licensed individuals pursuant to applicable Federal and District laws and regulations.
- 8015.9 Medications shall be administered only in accordance with the prescribing practitioner's order.
- 8015.10 Only a physician, APRN, RN, or PA shall administer controlled substances or injectable drugs, excluding self-administered drugs.
- 8015.11 Program staff responsible for supervising the self-administration of medication shall document consultations with a physician, APRN, RN, or pharmacist, or referral to appropriate reference material regarding the action and possible side effects or adverse reactions of each medication.
- 8015.12 A program shall provide training to the staff designated to supervise the self-administration of medication. The training shall include but not be limited to the expected action of and adverse reaction to self-administered medications.
- 8015.13 Medication administration training shall be facilitated by the following Qualified Practitioners, as led by signature and date on the training certificate:
- (a) Physicians;
 - (b) PAs;
 - (c) APRNs; or
 - (d) RNs.
- 8015.14 Only staff trained pursuant to the requirements of this chapter shall be responsible for

observing the self-administration of medication.

- 8015.15 A program shall ensure that medication is available to individuals as prescribed.
- 8015.16 A program shall maintain records that track and account for all medication, ensuring the following:
- (a) That each individual receiving medication shall have a medication administration record, which includes the individual's name, the name of medication, the type of medication (including classification), the amount of medication, the dose and frequency of administration/self-administration, and the name of staff who administered or observed the self-administration of the medication;
 - (b) That documentation shall include each omission and refusal of medication administration;
 - (c) That the medication administration record shall note the amount of medication originally present and the amount remaining after each dose;
 - (d) That documentation of medication administration shall include all over-the-counter drugs administered or self-administered; and
 - (e) That behavioral health stabilization providers who are administering controlled substances, including but not limited to initiating medication assisted treatment (MAT), shall follow the requirements of all applicable Federal and District laws and regulations.
- 8015.17 An attending practitioner shall be notified immediately of any medication error or adverse reaction. The staff responsible for the medication error shall complete a major unusual incident report ("MUI"). The provider shall document the practitioner's recommendations and the program's subsequent actions in response to the medication error or adverse reaction in the individual's record.
- 8015.18 A program shall ensure that all medications, including those that are self-administered, are secured in locked storage areas.
- 8015.19 The locked medication area shall provide for separation of internal and external medications.
- 8015.20 A program shall maintain lists of personnel with access to the locked medication area and personnel qualified to administer medication.
- 8015.21 A program shall comply with all Federal and District laws and regulations concerning the acquisition and storage of pharmaceuticals.
- 8015.22 Each individual's medication shall be properly labeled as required by Federal and District laws and regulations, shall be stored in its original container, and shall not be

transferred to another container or taken by anyone other than the individual for whom it was originally prescribed.

- 8015.23 Medications requiring refrigeration shall be maintained in a separate and secure refrigerator, labeled "FOR MEDICATION ONLY" and shall be maintained at a temperature between thirty-six degrees Fahrenheit (36°F) and forty-six degrees Fahrenheit (46°F). All refrigerators shall have thermometers, which are easily readable, in proper working condition, and accurate within a range of plus or minus two (2) degrees Fahrenheit.
- 8015.24 A program shall conspicuously post in the drug storage area the following information:
- (a) Telephone numbers for the regional Poison Control Center; and
 - (b) Metric-apothecaries weight and conversion measure charts.
- 8015.25 A program shall conduct monthly inspections of all drug storage areas to ensure that medications are stored in compliance with Federal and District laws and regulations. The program shall maintain records of these inspections for verification.
- 8015.26 Where applicable, the program shall implement written policies and procedures for the control of stock pharmaceuticals.
- 8015.27 The receipt and disposition of stock pharmaceuticals must be accurately documented as follows:
- (a) Invoices from companies or pharmacies shall be maintained to document the receipt of stock pharmaceuticals;
 - (b) A log shall be maintained for each stock pharmaceutical that documents receipt and disposition; and
 - (c) At least quarterly, each stock pharmaceutical shall be reconciled as to the amount received and the amount dispensed.
- 8015.28 A program shall implement written procedures and policies for the disposal of medication.
- 8015.29 Any medication left by the individual at discharge shall be destroyed within thirty (30) calendar days after the individual has been discharged, with the exception of methadone and other controlled substances which must be returned to the point of issue or destroyed in accordance with Federal regulations.
- 8015.30 The disposal of all medications shall be witnessed and documented by two (2) staff members.

8016 VEHICLE ENVIRONMENTAL AND SAFETY STANDARDS

- 8016.1 A provider shall implement measures to ensure the safe operation of its transportation service, if applicable. These measures shall include, but are not limited to:
- (a) Automobile insurance with adequate liability coverage;
 - (b) Regular inspection and maintenance of vehicles, as required by law;
 - (c) Adequate first aid supplies and fire suppression equipment secured in the vehicles;
 - (d) Training of vehicle operators in emergency procedures and in the handling of accidents and road emergencies; and
 - (e) Annual verification that all authorized motor vehicle operators have valid, unexpired and unrestricted motor vehicle license to operate assigned vehicles.

8017 FOOD AND NUTRITION STANDARDS

- 8017.1 The provisions of this section apply to any provider that prepares or serves food.
- 8017.2 All programs that prepare food shall have a current Certified Food Protection Manager (“CFPM”) certification from the Department of Health. The CFPM must be present whenever food is prepared and served.
- 8017.3 The provider shall require each CFPM to monitor any staff members who are not certified as CFPMs in the storage, handling, and serving of food and in the cleaning and care of equipment used in food preparation to maintain sanitary conditions at all times.
- 8017.4 The kitchen, dining, and food storage areas shall be kept clean, orderly, and protected from contamination.
- 8017.5 A program providing meals shall maintain a fully equipped and supplied code-compliant kitchen area unless meals are catered by an organization licensed by the District to serve food.
- 8017.6 A program may share kitchen space with other programs if the accommodations are adequate to perform required meal preparation for all programs using the kitchen.
- 8017.7 Each food and drink item procured, stored, prepared, or served by the facility shall be clean, free from spoilage, prepared in a manner that is safe for human consumption, and protected from contamination.
- 8017.8 A program providing meals shall clean dishes, cooking utensils, and eating utensils after each meal and store them to maintain to maintain their sanitary condition.
- 8017.9 Each facility shall provide hot and cold water, soap, and disposable towels for hand

washing in or adjacent to food preparation areas.

- 8017.10 Each facility shall maintain adequate dishes, utensils, and cookware in good condition and in sufficient quantity for the facility.

8018 PERSONNEL TRAINING STANDARDS

- 8018.1 Behavioral health stabilization staff shall have annual training that meets the Occupational Safety & Health Administration (“OSHA”) regulations that govern behavioral health facilities and any other applicable infection control guidelines, including use of universal precaution and avoiding exposure to hepatitis, tuberculosis, and HIV.

- 8018.2 A behavioral health stabilization provider shall have at least two (2) staff persons trained and certified by a nationally recognized authority that meets OSHA guidelines for basic first aid and cardiopulmonary resuscitation (“CPR”) present at all times during the hours of operation of the program.

- 8018.3 A behavioral health stabilization provider shall have a current written plan for staff development and organizational onboarding, approved by the Department, which reflects the training and performance improvement needs of all employees working in that program. The plan should address the steps the provider will take to ensure the recruitment and retention of highly qualified employees and the reinforcement of staff development through training, supervision, the performance management process, and activities such as shadowing, mentoring, skill testing, and coaching. The plan shall include culturally competent training and onboarding activities in the following core areas:

- (a) The program’s approach to addressing behavioral health stabilization services, including philosophy, goals and methods;
- (b) The staff member’s specific job description and role in relationship to other staff;
- (c) The emergency preparedness plan and all safety-related policies and procedures;
- (d) The proper documentation of services in individuals’ records, as applicable;
- (e) Policies and procedures governing infection control, protection against exposure to communicable diseases, and the use of universal precautions;
- (f) Laws, regulations, and policies governing confidentiality of individual information and release of information, including HIPAA, the D.C. Mental Health Information Act, and 42 CFR Part 2 (as applicable);
- (g) Laws, regulations, and policies governing reporting abuse and neglect;

- (h) Individual rights; and
- (i) Other trainings as directed by the Department.

8019 INDIVIDUALS' RIGHTS AND PRIVILEGES, INCLUDING GRIEVANCES

8019.1 A program shall protect the following rights and privileges of each individual:

- (a) Right to be admitted and receive services in accordance with the District of Columbia Human Rights Act;
- (b) Right to make choices regarding provider, treatment, medication, and advance directives;
- (c) Right to receive prompt evaluation, care, and treatment, in accordance with the highest quality standards;
- (d) Right to receive services and live in a healthy, safe, and clean place;
- (e) Right to be evaluated and cared for in the least restrictive and most integrated environment appropriate to an individual's needs;
- (f) Right to participate in the treatment planning process, including decisions concerning treatment, care, and other services, and to receive a copy of the Plan of Care;
- (g) Right to have records kept confidential;
- (h) Right to privacy;
- (i) Right to be treated with respect and dignity in a humane treatment environment;
- (j) Right to be safe from harm and from verbal, physical, or psychological abuse;
- (k) Right to be free of discrimination;
- (l) Right to own personal belongings;
- (m) Right to refuse treatment and/or medication;
- (n) Right to give, not give, or revoke already-given consent to treatment, supports, and/or release of information;
- (o) Right to give, not give, or revoke informed, voluntary, written consent of the individual or a person legally authorized to act on behalf of the individual to participate in research; the right to protection associated with such participation; and the right and opportunity to revoke such consent;

- (p) Right to be informed in advance of charges for services;
- (q) Right to be afforded the same legal rights and responsibilities as any other citizen, unless otherwise stated by law;
- (r) Right to request and receive documentation on the performance track record of a program with regard to treatment outcomes and success rates;
- (s) Right to provide feedback on services and supports, including evaluation of providers;
- (t) Right to assert grievances with respect to infringement of these rights, including the right to have such grievances considered in a fair, timely, and impartial manner;
- (u) Right to receive written and oral information on individual rights, privileges, program rules, and grievance procedures in a language understandable to the individual;
- (v) Right to access services that are culturally appropriate, including the use of adaptive equipment, sign language, interpreter, or translation services, as appropriate; and
- (w) Right to vote.

8019.2 A provider shall post conspicuously a statement of individual rights, program rules, and grievance procedures. The grievance procedures must inform individuals that they may report any violations of their rights to the Department and shall include the telephone numbers of the Department and any other relevant agencies for the purpose of filing complaints.

8019.3 At the time of admission, staff shall explain program rules, individual's rights, and grievance procedures. Program staff shall document this explanation by including a form, signed by the individual and witnessed by the staff person, within the individual's record.

8019.4 A program shall develop and implement written grievance procedures to ensure a prompt, impartial review of any alleged or apparent incident of violation of rights or confidentiality. The procedures shall be consistent with the principles of due process and Department requirements and shall include but not be limited to:

- (a) Reporting the allegation or incident to the Department within twenty-four (24) hours of it coming to the attention of program staff;
- (b) The completion of the investigation of any allegation or incident within thirty (30) calendar days;

- (c) Providing a copy of the investigation report to the Department within twenty-four (24) hours of completing the investigation of any complaint; and
- (d) Cooperating with the Department in completion of any inquiries related to individuals' rights conducted by Department staff.

8019.5 Medicaid beneficiaries are entitled to Notice and Appeal rights pursuant to § 9508 of Title 29 DCMR in cases of intended adverse action such as an action to deny, discontinue, terminate, or change the manner or form of Medicaid-funded services.

8020 INDIVIDUALS' CHOICE

8020.1 Each provider shall establish and adhere to policies and procedures governing the means by which individuals receiving services shall be informed of the full choices of providers and how to access these services ("Choice Policy").

8020.2 The Department shall review and approve each provider's Choice Policy during the certification and recertification process.

8020.3 The Choice Policy shall comply with applicable Federal and District laws and regulations.

8020.4 Each provider shall:

- (a) Make its Choice Policy available to individuals and their families; and
- (b) Establish and adhere to a system for documenting that individuals and families receive the Choice Policy.

8020.5 The providers' Choice Policy shall ensure that each individual presenting for services is informed that they may choose to have services provided by any certified providers that offer appropriate services for that individual.

8021 RECORDS MANAGEMENT AND CONFIDENTIALITY

8021.1 A program shall create and maintain an organized record for each individual receiving services.

8021.2 All records must be secured in a manner that provides protection from unauthorized disclosure, access, use, or damage in accordance with Federal and District laws and regulations.

8021.3 Each individual's records shall be kept confidential and shall be handled in compliance with HIPAA, the D.C. Mental Health Information Act, and 42 CFR Part 2 (if applicable), and all other Federal and District laws and regulations regarding the confidentiality of an individual's records.

8021.4 Each provider shall have a designated privacy officer responsible for ensuring

compliance with privacy requirements.

- 8021.5 A program shall inform staff and individuals receiving services of this chapter's privacy requirements during orientation.
- 8021.6 A decision to disclose protected health information ("PHI") must comply with Federal and District laws and regulations and shall be made only by the Privacy Officer or his/her designee with appropriately administered consent procedures.
- 8021.7 A program shall ensure its policies and procedures comply with the Department's Privacy Policy and shall implement policies and procedures governing the release of PHI consistent with Federal and District laws and regulations regarding the confidentiality of individual records, including 42 CFR Part 2, the D.C. Mental Health Information Act, and HIPAA.
- 8021.8 A provider shall participate through a formal agreement with a registered Health Information Exchange ("HIE") entity of the DC Health Information Exchange ("DC HIE"), defined in Chapter 87 of Title 29 DCMR.
- 8021.9 For non-SUD programs, the program shall develop policies and procedures to disclose protected behavioral health information to other certified providers, primary health care providers, and other health care organizations when necessary to coordinate the care and treatment of its consumers. These procedures may include entering into an agreement with a health information exchange. The program shall advise each prospective consumer of the program's notice of privacy practices that authorizes this disclosure to other providers and shall afford the consumer the opportunity to opt-out of that disclosure in accord with the District of Columbia Mental Health Information Act, D.C. Official Code §§ 7-1203.01 *et seq.* The program shall document the individual's decision.
- 8021.10 The program director shall designate a staff member to be responsible for the maintenance and administration of records.
- 8021.11 A program shall arrange and store records according to a uniform system approved by the Department.
- 8021.12 A program shall maintain records such that they are readily accessible for use and review by authorized staff and other authorized parties.
- 8021.13 A program shall organize the content of records so that information can be located easily and so that Department surveys and audits can be conducted with reasonable efficiency.

8022 STORAGE AND RETENTION OF RECORDS

- 8022.1 A program shall retain individuals' records (either original or accurate reproductions) until all litigation, adverse audit findings, or both, are resolved. If no such conditions exist, a program shall retain individuals' records for at least ten (10) years after the

individual's discharge.

- 8022.2 Records of minors shall be kept for at least ten (10) years after the minor has reached the age of eighteen (18) years.
- 8022.3 The provider shall establish a Document Retention Schedule with all medical records retained in accordance with Federal and District laws and regulations.
- 8022.4 The provider shall give the individual or legal guardian a written statement concerning individual's rights and responsibilities ("Rights Statement") in the program during orientation. The individual or guardian shall sign the statement attesting that they understand their rights and responsibilities. A provider staff member shall be available to answer an individual or legal guardian's questions about the Rights Statement and to witness the individual's or guardian's signature. This document shall be placed in the individual's record.
- 8022.5 If program records are maintained on computer systems, the system shall:
- (a) Have a backup system to safeguard the records in the event of operator or equipment failure, natural disasters, power outages, and other emergency situations;
 - (b) Identify the name of the person making each entry into the record;
 - (c) Be secure from inadvertent or unauthorized access to records in accordance with HIPAA, the D.C. Mental Health Information Act, 42 CFR Part 2 (if applicable), and all Federal and District laws and regulations regarding the confidentiality of individual records;
 - (d) Limit access to providers who are involved in the care of the individual and who have permission from the individual to access the record; and
 - (e) Create an electronic alert when data is released.
- 8022.6 A program shall maintain records that safeguard confidentiality in the following manner:
- (a) Records shall be stored with access controlled and limited to authorized staff and authorized agents of the Department;
 - (b) Written records that are not in use shall be maintained in either a secured room, locked file cabinet, safe, or other similar container;
 - (c) The program shall implement policies and procedures that govern individual access to their own records;

- (d) The provider's policies and procedures shall only restrict an individual's access to their record or information in the record after an administrative review with clinical justification has been made and documented;
- (e) Individuals shall receive copies of their records as permitted under HIPAA, the D.C. Mental Health Information Act, and 42 CFR Part 2;
- (f) All staff entries into the record shall be clear, complete, accurate, and recorded in a timely fashion;
- (g) All entries shall be dated and authenticated by the recorder with full signature and title;
- (h) All non-electronic entries shall be typewritten or legibly written in indelible ink that will not deteriorate from photocopying;
- (i) Any documentation error shall be marked through with a single line and initialed and dated by the recorder; and
- (j) Limited use of symbols and abbreviations shall be pre-approved by the program and accompanied by an explanatory legend.

8022.7 Any records that are retained off-site must be kept in accordance with this chapter. If an outside vendor is used, the provider must submit the vendor's name, address, and telephone number to the Department.

8023 RECORD CONTENTS

8023.1 As applicable, all records shall include:

- (a) Documentation of the referral and initial screening and its findings;
- (b) The individual's consent to services (if applicable);
- (c) A copy of the FD-12 (if applicable);
- (d) The Rights Statement;
- (e) Documentation that the individual received:
 - (1) An orientation to the program's services, rules, confidentiality practices, and individual's rights; and
 - (2) Notice of privacy practices and opt-out form.
- (f) Confidentiality forms and releases signed to permit the facility to obtain and/or release information;

- (g) Diagnostic interview and assessment record, including any Department-approved screening and assessment tools;
- (h) Evaluation of medical needs and, as applicable, medication intake sheets and special diets which shall include:
 - (1) Documentation of physician's orders for medication and treatment, change of orders, and/or special treatment evaluation;
 - (2) For drugs prescribed following admissions, any prescribed drug product by name, dosage, and strength, as well as date(s) medication was administered, discontinued, or changed; and
 - (3) For any prescribed over-the-counter ("OTC") medications following admissions, any OTCs by product name, dosage, and strength, as well as date(s) medication was administered, discontinued, or changed.
- (i) Assessments and individual treatment plans pursuant to the presenting behavioral health situation and the individual's needs, including crisis diversion or safety plans, if applicable;
- (j) Encounter notes, which provide sufficient written documentation to support each therapy, service, activity, or session for which billing is made that, at a minimum, consists of:
 - (1) The specific service type rendered;
 - (2) Dated and authenticated entries with their authors identified, that include the duration, and actual time (beginning and ending as well as a.m. or p.m.), during which the services were rendered. To constitute a valid signature, digital signatures must include a date and time stamp contemporaneous with the signature function and must be recorded and readily retrievable in the electronic system's audit log;
 - (3) Name, title, and credentials of the person providing the services;
 - (4) The setting in which the services were rendered;
 - (5) Confirmation that the services delivered are contained in the individual's record and are identified in the encounter note;
 - (6) A description of each encounter or intervention provided to the individual, which is sufficient to document that the service was provided in accordance with this chapter;
 - (7) A description of the individual's response to the intervention sufficient to show, particularly in the case of group interventions, the individual's unique participation in the service; and

- (8) Provider's observations.
- (k) Documentation of all services provided to the individual as well as activities directly related to the individual's care that are not included in encounter notes;
- (l) Documentation of missed appointments and efforts to contact and reengage the individual;
- (m) Documentation of any personal articles of the consumer held by the provider for safekeeping and any statements acknowledging receipt of the property;
- (n) Documentation of all referrals to other agencies and the outcome of such referrals if known;
- (o) Documentation establishing all attempts to acquire necessary and relevant information from other sources;
- (p) Pertinent information reported by the individual, family members, or significant others regarding a change in the individual's condition and/or an unusual or unexpected occurrence in the individual's life;
- (q) Drug test results and incidents of drug use;
- (r) Discharge summary and aftercare plan;
- (s) Outcomes of care and follow-up data concerning outcomes of care;
- (t) Documentation of correspondence including with other medical providers, community providers, human services, social service, and criminal justice entities pertaining to an individual's treatment and follow-up services; and
- (u) Documentation of an individual's legal guardian, as applicable.

8024 BEHAVIORAL HEALTH STABILIZATION PROGRAMS: GENERAL REQUIREMENTS

- 8024.1 All behavioral health stabilization programs shall, at a minimum, assess individuals during intake to determine if the person may suffer from a mental illness or SUD. Assessment shall provide an initial health screening that includes the following, as applicable:
- (a) Presenting problem, including source of distress, precipitating events, associated problems or symptoms, and recent progression;
 - (b) Immediate risks for self-harm, suicide and violence;
 - (c) Substance use history;

- (d) Immediate risks related to serious intoxication or withdrawal;
- (e) Past and present mental disorders, including posttraumatic stress disorder (“PTSD”) and other anxiety disorders, mood disorders, and eating disorders;
- (f) Past and present history of violence and trauma, including sexual victimization and interpersonal violence;
- (g) Legal history, including whether an individual is court-ordered to treatment or under the supervision of the Department of Corrections; and
- (h) Employment and housing status.

8024.2 If an individual screens positive for SUD, the provider shall do the following:

- (a) Offer the opportunity for the individual to receive SUD treatment in addition to behavioral health stabilization services, if the provider also offers the applicable services. If the individual declines, the provider shall make referrals for the individual to receive SUD treatment at another qualified provider; or
- (b) If the provider does not offer treatment for SUD, the provider shall ensure the individual is referred to an appropriate SUD provider.

8024.3 A certified provider shall not deny admission for services to an individual because that person is receiving MAT services.

8024.4 Each provider shall ensure that all staff comply with all Federal and District laws and regulations pertaining to scope of practice, licensing requirements, and supervision requirements.

8024.5 Behavioral health stabilization facilities’ physical design and structure shall have sufficient area(s) for indoor social and recreational activities.

8024.6 Behavioral health stabilization providers shall comply with all applicable construction codes and housing codes and zoning requirements applicable to the facility, including all Certificate of Occupancy, BBL, and Construction Permit requirements.

8024.7 Each newly established behavioral health stabilization provider shall provide proof of a satisfactory pre-certification inspection by DCRA for initial certification, dated not more than forty-five (45) calendar days prior to the date of submission to the Department. This inspection shall include for District of Columbia Property Maintenance Code (12-G DCMR) and Housing Code (14 DCMR) compliance, documentation of the inspection date and findings and proof of abatement certified by DCRA of all deficiencies identified during the inspection. This requirement can be met by submission of a Certificate of Occupancy or a BBL dated within the past six (6) months, provided that the applicant can demonstrate that DCRA performed an onsite inspection of the premises.

- 8024.8 For existing residential behavioral health stabilization programs that are applying for re-certification, the applicants shall also provide proof of current BBLs.
- 8024.9 A provider that offers overnight accommodations shall not operate more beds than the number for which it is authorized by the Department.
- 8024.10 Other than routine household duties, no individual shall be required to perform unpaid work.
- 8024.11 Each residential behavioral health stabilization program shall have house rules consistent with this chapter and that include, at a minimum, rules concerning:
- (a) The use of tobacco and alcohol;
 - (b) The use of the telephone;
 - (c) Utilizing, viewing, or listening to cell phones, television, radio, computers, CDs, DVDs, or other media such as social media;
 - (d) Movement of individuals in and out of the facility, including a requirement for escorted movements by program staff or another agency-approved escort;
 - (e) A policy that addresses search and drug testing upon return to the facility; and
 - (f) The prohibition of sexual relations between staff or volunteers and individuals served.
- 8024.12 The provider shall give each individual a copy of the program's house rules upon admission.
- 8024.13 Each residential program shall be equipped, furnished, and maintained to provide a functional, safe, and comfortable home-like setting.
- 8024.14 The dining area shall have a sufficient number of tables and chairs to seat all individuals residing in the facility at the same time. Dining chairs shall be sturdy, non-folding, without rollers unless retractable, and designed to minimize tilting.
- 8024.15 Each residential program shall permit each individual served to bring reasonable personal possessions, including clothing and personal articles, to the facility unless the provider can demonstrate that it is not practical, feasible, or safe.
- 8024.16 Each residential facility shall provide individuals with access to reasonable individual storage space for private use.
- 8024.17 Upon an individual's discharge from a residential program, the provider shall return to the individual or their representative any personal articles held by the provider for safekeeping. The provider shall also ensure that the individual is permitted to take all of their personal possessions from the facility. The provider may require the individual

or their representative to sign a statement acknowledging receipt of the property. A copy of that receipt shall be placed in the individual's record.

- 8024.18 Each behavioral health stabilization program shall maintain a separate and accurate record of all funds that the individual's representative or representative payee deposits with the provider for safekeeping. This record shall include the signature of the individual for each withdrawal and the signature of facility staff for each deposit and disbursement made on behalf of an individual served.
- 8024.19 Each residential facility shall be equipped with a functioning landline or mobile telephone for use by individuals served. The telephone numbers shall be provided to residents and to the Department.
- 8024.20 Staff bedrooms shall be separate from resident bedrooms and all common living areas.
- 8024.21 Each facility housing a residential program shall have a functioning doorbell or knocker.
- 8024.22 Each bedroom shall comply with the space and occupancy requirements for habitable rooms in 14 DCMR § 402.
- 8024.23 The provider shall ensure each individual has the following items:
- (a) A bed, which shall not be a cot;
 - (b) A mattress that was new when purchased by the provider, has a manufacturer's tag or label attached to it, and is in good, intact condition with unbroken springs and clean surface fabric;
 - (c) A bedside table or cabinet and an individual reading lamp with at least a seventy-five (75) watt, or its LED light bulb equivalent, rate of capacity;
 - (d) Storage space in a stationary cabinet, chest, or closet that provides at least one (1) cubic foot of space for each individual served for valuables and personal items;
 - (e) Sufficient suitable storage space, including a dresser and closet space, for personal clothing, shoes, accessories, and other personal items; and
 - (f) A waste receptacle and clothes hamper with lid.
- 8024.24 Each bed shall be placed at least three (3) feet from any other bed and from any uncovered radiator.
- 8024.25 Each bedroom shall have direct access to a major corridor and at least one window to the outside, unless the Department of Consumer and Regulatory Affairs, or a successor agency responsible for enforcement of the D.C. Housing Code, has determined that it otherwise meets the lighting and ventilation requirements of the D.C. Housing Code

for habitable rooms.

- 8024.26 Each facility housing a residential program shall provide one or more bathrooms for individuals that are equipped with the following fixtures, properly installed and maintained in good working condition:
- (a) Toilet (water closet);
 - (b) Sink (lavatory);
 - (c) Shower or bathtub with shower, including a handheld shower; and
 - (d) Grab bars in showers, bathtubs, and by the toilets.
- 8024.27 Each residential facility shall provide at least one (1) bathroom for each six (6) occupants in compliance with 14 DCMR § 602.
- 8024.28 Each bathroom shall be adequately equipped with the following:
- (a) Toilet paper holder and toilet paper;
 - (b) Paper towel holder and paper towels or clean hand towels;
 - (c) Soap;
 - (d) Mirror;
 - (e) Adequate lighting;
 - (f) Waste receptacle;
 - (g) Floor mat;
 - (h) Non-skid tub mat or decals; and
 - (i) Shower curtain or shower door.
- 8024.29 The provider shall ensure each individual's privacy and safety in the bathroom.
- 8024.30 Each residential program shall promote each individual's participation and skill development in menu planning, shopping, food storage, and kitchen maintenance, if appropriate.
- 8024.31 Each residential program shall provide appropriate equipment (including a washing machine and dryer) and supplies on the premises or through a laundry service to ensure sufficient clean linen and the proper sanitary washing and handling of linen and the individual's personal clothing.
- 8024.32 Each program shall ensure that every individual has at least three (3) washcloths, two

(2) towels, two (2) sheet sets that include pillow cases, a bedspread, a pillow, a blanket, and a mattress cover in good and clean condition.

- 8024.33 Each blanket, bedspread, and mattress cover shall be cleaned regularly, whenever soiled, and before being transferred from one resident to another.
- 8024.34 Each piece of bed linen, towel, and washcloth shall be changed and cleaned as often as necessary to maintain cleanliness, provided that all towels and bed linen shall be changed at least once each week.
- 8024.35 Only individuals and staff members may reside at a facility that houses a residential treatment program.
- 8024.36 Providers shall ensure that individuals can access all scheduled or emergency medical and dental appointments.
- 8024.37 The following provisions apply only to programs with overnight accommodations:
- (a) A program that provides overnight accommodations shall ensure that evening and overnight shifts have at least two (2) staff members on duty. A clinician shall be on-call or on-site at all times.
 - (b) Children and youth under eighteen (18) years of age may not reside at an adult residential treatment facility or visit overnight at a facility not certified to serve parents and children. This information shall be included in the house rules.
 - (c) Each provider shall maintain a current inventory of each individual's personal property and shall provide a copy of the inventory, signed by the individual and staff, to the individual.
 - (d) Each provider shall take appropriate measures to safeguard and account for personal property brought into the facility by a resident.
 - (e) Each provider shall provide the individual, or the individual's representative, with a receipt for any personal articles to be held by the provider for safekeeping that includes and the date it was deposited with the provider and maintain a record of all articles held for safekeeping.
 - (f) Each piece of bed linen, towel, and washcloth shall be changed and cleaned as often as necessary to maintain cleanliness, provided that all towels and bed linen shall be changed at least once each week.
 - (g) No person who is not an individual served by the program, staff member, or child of an individual served by the program (only in the case of programs for parents and children) may reside at a facility that houses a residential treatment program.

- (h) Each residential treatment program shall have a licensed dietitian or nutritionist available, a copy of whose current license shall be maintained on file, to provide the following services:
 - (1) Review and approval of menus;
 - (2) Education for individuals with nutrition deficiencies or special needs;
 - (3) Coordination with medical personnel, as appropriate; and
 - (4) A nutritional assessment for each individual within three (3) calendar days of admission unless the individual has a current assessment or doctor's order for dietary guidelines.
- (i) The provider shall offer at least three (3) meals per day and between meal snacks that:
 - (1) Are nourishing and well-balanced in accordance with dietary guidelines established by the United States Department of Agriculture;
 - (2) Are suited to the special needs of each individual; and
 - (3) Are adjusted for seasonal changes and allow for the use of fresh fruits and vegetables.
- (j) The provider shall ensure that menus are written on a weekly basis, that the menus provide for a variety of foods at each meal, and that menus are varied from week to week. Menus shall be posted for the individuals' review.
- (k) The provider shall retain a copy of each weekly menu for a period of six (6) months. The menus retained shall include special diets and reflect meals as planned and as actually served, including handwritten notations of any substitutions. The provider shall also retain receipts and invoices for food purchases for six (6) months. The records required to be retained by this subsection are subject to review by the Department.
- (l) Each meal shall be scheduled so that the maximum interval between each meal is no more than six (6) hours, with no more than fourteen (14) hours between a substantial evening meal and breakfast the following day.
- (m) If an individual refuses food or misses a scheduled meal, the provider shall offer appropriate food substitutions of comparable nutritional value.
- (n) If an individual will be away from the program during mealtime for necessary medical care, work, or other scheduled appointments, the program shall provide an appropriate meal and in-between-meal snack for the individual to

carry with him or her and shall ensure that the meal is nutritious as required by these rules and suited to the special needs of the individual.

- (o) A residential treatment program providing meals shall implement a written Nutritional Standards Policy that outlines their procedures to meet the dietary needs of the individuals in its program, ensuring access to nourishing, well-balanced, and healthy meals. The policy shall identify the methods and parties responsible for food procurement, storage, inventory, and preparation.
- (p) The Nutritional Standards Policy shall include procedures for individuals unable to have a regular diet as follows:
 - (1) Providing clinical diets for medical reasons, when necessary;
 - (2) Recording clinical diets in the individual's record;
 - (3) Providing special diets for individuals' religious needs; and
 - (4) Maintaining menus of special diets or a written plan stating how special diets will be developed or obtained when needed.
- (q) A residential treatment program shall make reasonable efforts to prepare meals that consider the cultural background and personal preferences of the individuals; and
- (r) Meals shall be served in a pleasant, relaxed dining area that accommodates families and children.

8025 COMPREHENSIVE PSYCHIATRIC EMERGENCY PROGRAM (CPEP) REQUIREMENTS

- 8025.1 A comprehensive psychiatric emergency program ("CPEP") shall directly provide or ensure the provision of psychiatric emergency services, which shall include assessments, brief and extended stabilization visits, and extended observation visits for individuals eighteen (18) years of age and older experiencing a behavioral health crisis.
- 8025.2 Psychiatric emergency services shall be provided by the CPEP twenty-four (24) hours per day, seven (7) days per week. Services shall include psychiatric and medical evaluations and assessments which are used to determine the appropriateness of admission to and retention in the CPEP.
- 8025.3 A CPEP shall not operate more than sixteen (16) beds.

- 8025.4 Any person with a need for medical or surgical care or treatment which cannot be provided in the CPEP shall be transported to a hospital for appropriate observation and treatment.
- 8025.5 Each CPEP shall have a full-time program director (“CPEP director”) with authority and responsibility for the direction and day-to-day operation of the program. The CPEP director shall be a board-certified psychiatrist who is licensed to practice independently in the District.
- 8025.6 Each CPEP shall have a full-time clinical director responsible for the clinical direction and day-to-day delivery of clinical services provided to individuals served by the program. The clinical director shall be a clinician licensed to practice independently in the District of Columbia and supervise other clinical staff.
- 8025.7 The CPEP director and clinical director shall devote adequate time and authority to ensure that service delivery is in compliance with applicable standards set forth in this chapter and in applicable policies issued by the Department. The CPEP director and clinical director shall not be the same individual.
- 8025.8 Any CPEP certified pursuant to this chapter shall receive and retain voluntary and involuntarily admissions for any person experiencing a behavioral health crisis that is likely to result in serious harm to the person or others and for whom immediate observation, care, and treatment in the CPEP is appropriate. No person may be involuntarily retained in a CPEP for more than twenty-four (24) hours unless the person is admitted to an extended observation bed in accordance with § 8025.16(c).
- 8025.9 The CPEP shall develop a contingency plan with other local affiliated hospitals, emergency medical services, and law enforcement for the diversion of admissions during periods of high demand and overcrowding.
- 8025.10 The CPEP director or their designee may prevent new admissions to the CPEP emanating from emergency medical services, ambulance services, and law enforcement if the program’s ability to deliver quality service would be jeopardized. The CPEP director or their designee shall review the continued necessity for such prevention at least once every twenty-four (24) hours.
- 8025.11 The CPEP shall ensure individuals have access to and receive language access services that meet their individual needs, including written and oral translation appropriate to their specific language, in accordance with Department policies and procedures.
- 8025.12 In order to assure that individuals admitted to the CPEP are adequately supervised and are cared for in a safe and therapeutic manner, the CPEP shall meet each of the following requirements:
- (a) Appropriate professional staff shall be available to assist in emergencies on at least an on-call basis at all times; and
 - (b) A psychiatrist shall be available on-site at all times.

- 8025.13 A CPEP shall continuously employ an adequate number of staff and an appropriate staff composition to carry out its goals and objectives as well as to ensure the continuous provision of sufficient ongoing and emergency supervision. A CPEP shall submit a staffing plan to the Department as part of its certification and recertification process which includes the qualifications and duties of each staff position by title. The staffing plan and its rationale shall be subject to approval by the Department.
- 8025.14 The CPEP shall have on site at all times the following types and numbers of staff:
- (a) At least two (2) board-certified or board-eligible psychiatrists;
 - (b) At least two (2) internists or equivalent physicians;
 - (c) At least three (3) registered nurses;
 - (d) At least two (2) social workers;
 - (e) At least five (5) mental health counselors;
 - (f) A sufficient number of security personnel shall be on duty and available at all times; and
 - (g) The Director may waive the requirements above, if:
 - (1) The CPEP can demonstrate that the volume of service does not require such level of staff coverage; and
 - (2) The CPEP can demonstrate that it can provide adequate coverage by other professional disciplines.
- 8025.15 A CPEP shall only use restraint and seclusion in compliance with all governing Federal and District laws and regulations.
- 8025.16 A CPEP shall provide the following array of visits in accordance with the individual's needs:
- (a) Brief psychiatric crisis visit:
 - (1) A brief psychiatric crisis visit includes a face-to-face interaction between an individual experiencing a behavioral health crisis and CPEP staff operating within the scope of their licensure to determine the services required. It shall include a mental health diagnostic examination, and, as appropriate, treatment interventions on the individual's behalf and a discharge plan. Other activities include medication monitoring, observation, and care coordination with other providers.

- (2) A brief psychiatric crisis visit requires documentation using at least one encounter note explaining the array of services provided during the visit.
 - (3) A brief psychiatric crisis visit may last up to four (4) hours. If an individual cannot be reasonably treated and discharged in less than four (4) hours, the individual shall be admitted to an extended psychiatric crisis visit in accordance with § 8025.16(b).
- (b) Extended psychiatric crisis visit:
- (1) An extended psychiatric crisis visit includes a face-to-face interaction between an individual experiencing a behavioral health crisis and CPEP staff operating within the scope of their licensure to determine the services required. It shall include a psychiatric or mental health diagnostic examination; psychosocial assessment; and medical examination; which results in a comprehensive psychiatric emergency treatment plan and a discharge plan. Other activities include any clinically indicated examinations and assessments as appropriate for the individual's presenting problems, medication monitoring, observation, and care coordination with other providers.
 - (2) An extended psychiatric crisis visit requires documentation using at least one encounter note explaining the array of services provided during the visit.
 - (3) An extended psychiatric crisis visit may last up to twenty-four (24) hours. If an individual cannot be reasonably treated and discharged in that time, the individual shall be admitted to an extended observation visit in accordance with § 8025.16(c).
- (c) Extended observation visit:
- (1) An extended observation visit includes a face-to-face interaction between an individual experiencing a behavioral health crisis and CPEP staff operating within the scope of their licensure to determine the services required. This shall include a psychiatric or mental health diagnostic examination; psychosocial assessment; and medical examination; which results in a comprehensive psychiatric emergency treatment plan and a discharge plan. Other activities include any clinically indicated examinations and assessments as appropriate for the individual's presenting problems, medication monitoring, observation, and care coordination with other providers.
 - (2) An extended observation visit requires documentation using at least one encounter note explaining the array of services provided during the visit.

- (3) An extended observation visit is used for individuals retained in a CPEP for more than 24 hours but not to exceed 72 hours, voluntarily or involuntarily. If an individual cannot be reasonably treated and discharged in that time, the individual shall be transferred to a hospital for inpatient treatment.
- 8025.17 Brief psychiatric visits, extended psychiatric visits, and extended observation visits shall not be billed on the same day as one another.
- 8025.18 The duration of psychiatric emergency services varies with the severity of the individual's symptoms and their response to treatment but shall not last more than seventy-two (72) hours in total at a CPEP.
- 8025.19 Qualified Practitioners of services delivered in accordance with brief psychiatric visits, extended psychiatric visits, and extended observation visits and within their scope of practice are:
- (a) Psychiatrists;
 - (b) Physicians;
 - (c) Psychologists;
 - (d) LICSWs;
 - (e) APRNs;
 - (f) RNs;
 - (g) PAs;
 - (h) LISWs;
 - (i) LPCs;
 - (j) LGSWs;
 - (k) LGPCs;
 - (l) Psychology Associates;
 - (m) Certified Peer Specialists; and
 - (n) Certified Recovery Coaches.
- 8025.20 Credentialed staff shall be permitted to provide CPEP services under the supervision of an independently licensed practitioner.
- 8025.21 Discharge planning shall be conducted for all individuals discharged from a CPEP who

have been determined to require additional mental health services after a brief or extended psychiatric visit and for those persons admitted to extended observation beds who require additional mental health services. Discharge planning criteria shall include at least the following activities prior to discharge from the CPEP:

- (a) A review of the person's psychiatric, social, and physical needs;
- (b) Completion of referrals to appropriate community services providers, where the individual so desires, to address the individual's identified needs;
- (c) If the individual so desires, the CPEP shall arrange for appointments with community providers which shall be made as soon as possible after release from the CPEP; and
- (d) Each individual shall be given the opportunity to participate in the development of his or her discharge plan, including development of a crisis plan. With the consent of the individual and when clinically appropriate, reasonable attempts shall be made to contact family members for their participation in the discharge planning process. However, no individual or family member shall be required to agree to a discharge. A notation shall be made in the individual's record if any objection is raised to the discharge plan.

8026 PSYCHIATRIC CRISIS STABILIZATION PROGRAM REQUIREMENTS

- 8026.1 Psychiatric crisis stabilization services offer therapeutic, community-based, home-like residential treatment for persons age eighteen (18) or older living in the community; who are in need of support to ameliorate psychiatric symptoms; who are voluntary; and, based upon a psychiatric assessment conducted on-site, are deemed appropriate for residential services within a structured, closely monitored temporary setting.
- 8026.2 Psychiatric crisis stabilization services shall provide an opportunity for individuals to move out of a stressful situation into a safe and secure therapeutic environment as a diversion from acute psychiatric hospitalization or to maintain stabilization following a hospital stay.
- 8026.3 The programs shall ensure that all referrals are screened by a psychiatrist upon admission and that there is documented evidence of the need for psychiatric crisis stabilization services.
- 8026.4 Upon admission, a program shall submit new or revised Plan of Care, along with a Discharge Plan, to the Department with the authorization request.
- 8026.5 Psychiatric crisis stabilization programs shall provide the following psychiatric stabilization services necessary to assess, treat, medicate, and stabilize residents:
 - (a) Comprehensive Nursing Assessment and Plan of Care:

- (1) Programs shall provide a comprehensive nursing assessment within twenty-four (24) hours of admission in order to determine medical necessity for primary health care and coordinate care with the health care provider;
 - (2) A nurse shall perform a daily assessment of all individuals. A nurse shall coordinate development of a new or revised Plan of Care, and monitor that care is rendered as outlined in the Plan. A nurse shall perform medication evaluations, including the administration and monitoring of medications; including obtaining consent to accept medications and educating individuals as to the benefits, risks, and side effects of the medications prescribed;
 - (3) CSAs certified pursuant to Chapter 34 are responsible for coordinating the Plan of Care for individuals enrolled in MHRS. Services provided at a psychiatric crisis stabilization program shall be coordinated with the individual's assigned CSA to ensure continuity of care; and
 - (4) If the individual is not yet enrolled with a CSA, the psychiatric stabilization provider shall work with the Department to get an assigned CSA for the individual and work with the CSA on a new Plan of Care.
- (b) Psychiatric Consultation and Assessment:
- (1) A psychiatrist shall be available for consult by telephone twenty-four (24) hours per day, seven (7) days per week. A psychiatrist shall be available on-site at least part-time (twenty [20] hours per week);
 - (2) A psychiatric assessment shall be performed within twenty-four (24) hours of admission;
 - (3) A psychiatrist shall provide daily psychiatric management for the duration of an individual's stay. A psychiatrist shall conduct a review of an individual's status every forty-eight (48) hours, at a minimum, unless there is a change of status that requires more frequent visits;
 - (4) A psychiatrist shall perform medication evaluations, including the prescribing, monitoring, and titration of medications; including obtaining consent to accept medications and educating individuals as to the benefits, risks, and side effects of the medications prescribed;
 - (5) A psychiatrist shall facilitate admission of individuals to inpatient settings as required; and
 - (6) A psychiatrist shall oversee the clinical care of all individuals served in a psychiatric stabilization program.

- (c) Crisis Counseling: Crisis counseling is immediate and short-term psychological care designed to assist individuals in a behavioral health crisis situation. Crisis counseling focuses on minimizing the stress of the precipitating event, providing emotional support, and improving the individual's coping strategies.
- (d) Medication/Somatic Treatment:
 - (1) Medication/Somatic Treatment services are medical services and interventions including physical examinations; prescription, supervision, or administration of medications; monitoring and interpreting results of laboratory diagnostic procedures related to medications; and medical interventions needed for effective mental health treatment interventions;
 - (2) This includes monitoring the side effects and interactions of medication and the adverse reactions which an individual may experience, and providing education and direction for symptom and medication self-management;
 - (3) Services shall be therapeutic, educational, and interactive with a strong emphasis on group member selection and facilitate therapeutic peer interaction and support as specified in the Plan of Care; and
 - (4) Individuals receiving Medication/Somatic Treatment shall participate in a psychoeducational session to discuss medication side effects, adverse reactions to medications, and medication self-monitoring and management.
- (e) Discharge planning shall be conducted for all individuals discharged from a psychiatric crisis stabilization program. Discharge planning criteria shall include at least the following activities prior to discharge from the program:
 - (1) A review of the person's psychiatric, social, and physical needs;
 - (2) Completion of referrals to appropriate community services providers, where the individual so desires, to address the individual's identified needs;
 - (3) If the individual so desires, the provider shall arrange for appointments with community providers which shall be made as soon as possible after leaving the psychiatric crisis stabilization program. When an appointment for behavioral health services cannot be made within a reasonable period of time, crisis outreach teams or other available stabilization program staff shall continue to provide crisis stabilization services until the initial appointment occurs; and
 - (4) Each individual shall be given the opportunity to participate in the

development of his or her discharge plan. If clinically appropriate, the provider shall immediately and intensely engage the consumer's family and community supports in post-discharge planning. However, no person or family member shall be required to agree to an individual's discharge. The provider shall note any person who objects to the consumer's discharge plan or any part thereof in the consumer's record.

8026.6 Qualified practitioners of psychiatric crisis stabilization services in accordance with this chapter and with their scope of practice are:

- (a) Psychiatrists;
- (b) Psychologists;
- (c) LICSWs;
- (d) APRNs;
- (e) RNs;
- (f) PAs;
- (g) LISWs;
- (h) LPCs;
- (i) Psychology Associates;
- (j) LGSWs; and
- (k) LGPCs.

8026.7 Credentialed staff shall be permitted to provide psychiatric crisis stabilization services under the supervision of an independently licensed practitioner.

8027 ADULT MOBILE CRISIS AND OUTREACH PROGRAMS

8027.1 Mobile crisis and outreach providers, or community response teams ("teams"), shall be dispatched into a home or community setting where a crisis may be occurring to begin the process of assessment and treatment. Teams shall provide acute behavioral health crisis interventions and behavioral health outreach services to individuals in the community while minimizing the individual's involvement as appropriate with law enforcement, emergency room use, or hospitalizations.

8027.2 Crisis intervention services provide rapid response, assessment, and resolution of behavioral health crisis situations that involve children or adults.

- 8027.3 Behavioral health outreach services identify individuals in the community who need behavioral health and other social services. Providers make repeated visits to individuals to build relationships and connect them to needed services.
- 8027.4 Teams shall identify individuals in need of behavioral health services and begin the process of engaging them in treatment, including screening for mental health and substance use service needs, developing rapport, support while assisting with immediate needs, and referrals to appropriate resources. Teams shall assist with connections to treatment, care coordination, and other social services as required. Teams shall also administer First Aid, CPR, and naloxone as appropriate.
- 8027.5 Teams shall be available on-call twenty-four (24) hours per day, seven (7) days per week and shall be staffed with two (2) individuals per team pursuant to § 8027.12. One independently licensed practitioner shall be a member of each team. A psychiatrist shall be available by phone or for in-person assessment as needed and as clinically indicated.
- 8027.6 Teams shall serve all who present for services, regardless of insurance status or ability to pay.
- 8027.7 Teams shall offer services in a community setting, including the individual's home, on the streets, residential facilities, hospitals, and nursing homes, for assessing the individual's immediate behavioral health needs.
- 8027.8 Teams shall include co-response with local law enforcement as appropriate.
- 8027.9 An Officer Agent shall complete an Application for Emergency Hospitalization (FD-12) and follow all FD-12 protocol for individuals who appear to be in imminent danger of harming themselves or others due to mental illness.
- 8027.10 Adult mobile crisis and outreach providers shall ensure all team members participate in the Department's Officer Agent training.
- 8027.11 Adult mobile crisis and outreach programs shall provide the following services:
- (a) Mobile crisis interventions, subject to the following provisions:
- (1) Provide rapid response, assessment, and resolution of behavioral health crisis situations involving adults. Services shall optimize clinical interventions by meeting individuals in home or community settings.
 - (2) Face-to-face or telephonic service provided to individuals involved in an active behavioral health crisis. The provider shall rapidly respond to evaluate and screen the presenting situation, assist in immediate stabilization and resolution, reduce the risk of immediate danger to the individual or others, and ensure necessary referrals for the individual's access to care at the appropriate level.

- (3) Mobile crisis interventions are short-term and provide follow-up stabilization services, including additional therapeutic responses as needed, psychiatric consultation, and referrals and linkages to all medically necessary behavioral health services and supports.
 - (4) Mobile crisis intervention activities shall also include, as appropriate:
 - (A) Screening for eligibility and referral for SUD services;
 - (B) Pre-arrest diversion;
 - (C) Development of a safety plan or crisis diversion plan;
 - (D) Linkage to additional stabilization services;
 - (E) Secure access to higher levels of care; and
 - (F) Assistance identifying natural supports and community supports during a crisis.
 - (5) Mobile crisis intervention services require documentation using at least one encounter note explaining the array of services provided during the service.
- (b) Behavioral health outreach services, subject to the following provisions:
- (1) The behavioral health outreach service shall include an initial evaluation and assessment for individuals in the community who are unable or unwilling to use clinic- or hospital-based services, or for individuals for whom hospitalization is not clinically appropriate. Other activities include linkages to other services or providers; providing emotional support; life skills education; and therapeutic interventions as appropriate.
 - (2) Teams shall offer these services in a community setting, including the individual's home and on the streets.
 - (3) Behavioral health outreach encounters shall also include, as appropriate:
 - (A) Linkage to relevant insurance and public assistance programs;
 - (B) Counseling;
 - (C) Recovery coaching; and/or
 - (D) Screening for eligibility and referral for SUD services.

- (4) Behavioral health outreach services require documentation using at least one encounter note explaining the array of services provided during the service.

8027.12 Qualified practitioners of adult mobile crisis and behavioral health outreach services in accordance with this chapter and with their scope of practice are:

- (a) Physicians;
- (b) Psychologists;
- (c) LICSWs;
- (d) APRNs;
- (e) PAs;
- (f) RNs;
- (g) LISWs;
- (h) LPCs;
- (i) LMFTs;
- (j) LGPCs;
- (k) LGSWs;
- (l) Psychology Associates;
- (m) CACs I and II;
- (n) Certified Peer Specialists;
- (o) Certified Recovery Coaches;
- (p) An individual with at least a bachelor's degree from an accredited college or university in social work, counseling, psychology, or closely related field, *and* training or relevant experience in substance use or mental health; or
- (q) An individual with at least four (4) years of relevant, qualifying full-time-equivalent experience in behavioral health service delivery who demonstrates skills in developing positive and productive community relationships and the ability to negotiate complex service systems to obtain needed services and resources for individuals.

8028 YOUTH MOBILE CRISIS INTERVENTION PROGRAMS

- 8028.1 Youth mobile crisis providers are dispatched into a home or community setting where children or youth may be experiencing a behavioral health crisis to begin assessment and treatment. Providers shall administer acute behavioral health crisis stabilization and psychiatric assessments to children, youth, and their families as necessary. Services shall be provided in the community, schools, or other settings as necessary, while avoiding unnecessary law enforcement involvement, emergency room use, or hospitalizations.
- 8028.2 Providers shall engage children and youth in treatment, including screening for mental health and SUD service needs, developing rapport, support while assisting with immediate needs, and referral to appropriate resources, including longer-term mental health or SUD rehabilitative services. Providers shall assist with connections to treatment, care coordination, and other social services as required.
- 8028.3 Youth mobile crisis provider teams shall be available on-call twenty-four (24) hours per day seven (7) days per week year round. The youth mobile crisis provider teams shall be staffed with two (2) individuals per team in accordance with § 8028.15. Youth mobile crisis provider teams shall maintain sufficient resources and supports for communication and mobile capabilities. One (1) independently licensed practitioner must be available twenty-four (24) hours per day, seven days per week. A psychiatrist shall be available by phone or for in-person assessment as needed and as clinically indicated.
- 8028.4 Youth mobile crisis provider teams shall administer First Aid, CPR, and naloxone as appropriate.
- 8028.5 Youth mobile crisis provider teams shall facilitate linkages to other social services, medical care, and any additional behavioral health services. Youth mobile crisis provider teams shall assist families in enrolling children and youth in any other relevant services in their community.
- 8028.6 Youth mobile crisis provider teams shall serve all who present or are referred for services, regardless of insurance status or ability to pay.
- 8028.7 Youth mobile crisis provider teams shall offer services in a community setting, including the individual's home, on the streets, schools, residential facilities, hospitals, and nursing homes.
- 8028.8 No youth mobile crisis provider team shall transport children or youth. If a parent or caregiver is not available to provide transportation, a youth mobile crisis provider team member shall request emergency medical services transportation.
- 8028.9 An Officer Agent shall complete an Application for Emergency Hospitalization (FD-12) and follow all FD-12 protocol for individuals who appear to be in imminent danger of harming themselves or others due to mental illness.

- 8028.10 In addition to the provider and service requirements in this chapter, youth mobile crisis providers are also responsible to:
- (a) Provide and maintain a crisis hotline to receive crisis calls directly by a live person, twenty-four (24) hours per day, seven (7) days per week;
 - (b) Provide systematic response for crisis call intake, triage, and deployment determinations;
 - (c) Provide and fully document phone support, crisis consultation, information sharing, and follow-up to all calls that are not deployed;
 - (d) Maximize parent and caregiver in crisis intervention and any follow-up;
 - (e) Respond to calls for District youth placed in foster care homes in Virginia and Maryland that are within a fifty (50) mile radius of the District;
 - (f) Provide and document a follow-up contact with the individual within 24 hours of the initial call or deployment;
 - (g) Provide population-appropriate approaches for evaluation and assessment of children and youth experiencing a behavioral health crisis;
 - (h) Implement a standardized crisis assessment tool;
 - (i) Provide specialized clinical training in Crisis Theory, Risk Assessment, and Intervention for staff;
 - (j) Provide a minimum of two (2) Certified Peer Specialists;
 - (k) Attend all trainings the Department determines are relevant to the nature and scope of service;
 - (l) Minimize placement disruption;
 - (m) Provide children, youth, and their families with education on conflict resolution, triggers, coping skills, and problem-solving techniques;
 - (n) Develop a crisis, safety, and continuity of operations plan for deploying teams;
 - (o) Ensure all team members participate in the Department's Officer Agent training;
 - (p) Partner with mental health, substance use, and other community-based providers in the District;
 - (q) Provide access to psychiatric consultation by phone or in-person as needed;

- (r) If the youth is enrolled with a CSA the youth crisis intervention program shall notify the CSA within twenty four (24) hours of the initial call or deployment and collaborate with the CSA thereafter; and
- (s) If the youth is not currently enrolled with a CSA, the program shall facilitate enrollment with a new CSA and initiate further assessment and corresponding treatment as clinically appropriate.

8028.11 Youth mobile crisis intervention programs shall provide the following services:

- (a) Mobile crisis interventions, subject to the following provisions:
 - (1) Mobile crisis interventions provide rapid response, assessment, and resolution of behavioral health crisis situations that involve children, youth, and their families. Services shall optimize clinical interventions by meeting individuals in home or community settings and reducing the risk of immediate danger to the individual or others.
 - (2) A mobile crisis intervention is a short-term, face-to-face, or telephonic service provided to individuals involved in an active behavioral health crisis and consists of any or all of the following activities:
 - (A) Rapid response to evaluate and screen the presenting situation;
 - (B) Therapeutic responses to de-escalate and stabilize the immediate behavioral health crisis;
 - (C) Referrals for the individual's access to appropriate care;
 - (D) Facilitate community tenure while the individual is waiting for a first visit with another provider;
 - (E) Crisis support in schools;
 - (F) Screening for eligibility and referral for SUD services;
 - (G) Psychiatric consultation;
 - (H) Development of a safety plan or crisis diversion plan;
 - (I) Linkage to additional stabilization services; and
 - (J) Assistance identifying natural supports and community supports during a crisis.

8028.12 Youth mobile crisis provider teams shall provide consultation, information, and ongoing follow-up to ensure individuals are provided the supports that best meet their needs. For calls that do not require deployment, the youth mobile crisis provider team

will continue to monitor whether deployment is necessary to prevent further disruption or crisis.

- 8028.13 Youth mobile crisis provider teams shall provide clear information to the caller on deployment availability and status, including estimated time for deployment. Teams shall respond to the scene of a crisis within one hour of the time of the call for sites within the District and up to one hour and forty-five (45) minutes of calls outside of the District.
- 8028.14 For children and youth in CFSA custody, teams shall coordinate with the assigned CFSA social worker, including but not limited to youth in the following situations:
- (a) Children and youth at risk of a placement disruption; and
 - (b) Children and youth at risk of acute care hospitalization.
- 8028.15 Qualified practitioners of adult mobile crisis and behavioral health outreach services in accordance with this chapter and with their scope of practice are:
- (a) Physicians;
 - (b) Psychologists;
 - (c) LICSWs;
 - (d) APRNs;
 - (e) PAs;
 - (f) RNs;
 - (g) LISWs;
 - (h) LPCs;
 - (i) LMFTs;
 - (j) LGPCs;
 - (k) LGSWs;
 - (l) Psychology Associates;
 - (m) CACs I and II;
 - (n) Certified Peer Specialists;
 - (o) Certified Recovery Coaches;

- (p) An individual with at least a bachelor's degree from an accredited college or university in social work, counseling, psychology, or closely related field, *and* training or relevant experience in substance use or mental health; or
- (q) An individual with at least four (4) years of relevant, qualifying full-time-equivalent experience in behavioral health service delivery who demonstrates skills in developing positive and productive community relationships and the ability to negotiate complex service systems to obtain needed services and resources for individuals.

8029 REIMBURSEMENT

- 8029.1 Reimbursement rates using non-Medicaid local funds are equivalent to the reimbursement rates for equivalent services that may be reimbursable by Medicaid, pursuant to rates as established by the Department of Health Care Finance.

8099 DEFINITIONS

8099.1

Adult Substance Abuse Rehabilitative Services (“ASARS”) – The Department’s rehabilitative services for SUD as covered by the District’s Medicaid State Plan.

Advanced Practice Registered Nurse (“APRN”) – A person licensed or authorized to practice as an advanced practice registered nurse pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Affiliation Agreement – A legal agreement between a provider and another entity that describes how they will work together to benefit individuals served.

Aftercare Plan – A plan developed with an individual and their treatment team to identify goals and action steps the individual can use to move forward once they leave treatment services.

Applicant – A program that has applied to the Department for certification as a behavioral health stabilization provider.

Assessment – Gathers information and engages in a process with an individual that enables the provider to determine the presence or absence of mental health or substance use condition. Determines the individual’s readiness for change, identifies individual strengths or problem areas that may affect treatment and recovery, and engages the individual in appropriate treatment.

Behavioral Health Crisis – Unplanned event requiring a response when an individual struggles to manage their psychiatric or substance use related

symptoms without de-escalation or other intervention. Also includes situations in which daily life challenges result in or put at risk of an escalation in symptoms.

Certification – The process of establishing that the standards described in this chapter are met; or approval from the Department indicating that an applicant has successfully complied with all requirements for the operation of a behavioral health stabilization program in the District.

Certified Addiction Counselor (“CAC”) – A person certified to provide SUD counseling services in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Certified Peer Specialist – An individual who has completed the Peer Specialists Certification Program requirements and is approved to deliver Peer Support Services within the District’s public behavioral health network.

Certified Recovery Coach – A Certified Recovery Coach is an individual with any Department-approved recovery coach certification.

Child and Family Services Agency (“CFSA”) – The District agency responsible for the coordination of foster care, adoption, and child welfare services and services to protect children against abuse or neglect.

Clinical Care Coordination – Coordination of care between the behavioral health clinician and the clinical personnel of an external provider (e.g. primary care, another behavioral health provider, or hospital).

Clinical Care Coordinator – A licensed or certified Qualified Practitioner who has the overall responsibility for the development and implementation of the individual’s Plan of Care, is responsible for identification, coordination, and monitoring of non-SUD-treatment clinical services, and is identified in the individual’s Plan of Care.

Clinician – Individuals licensed by the District Department of Health, Health Regulation and Licensing Administration (“HRLA”) to provide clinical services.

Communicable Disease – Any disease as defined in Title 22-B, § 201 of the District of Columbia Municipal Regulations (“DCMR”).

Continuity of Care Plan – A plan that provides for the ongoing care of individuals in the event that a certified provider is no longer able to provide adequate care.

Co-Occurring Disorders – The presence of concurrent diagnoses of SUD and mental illness.

Core Services Agency (“CSA”) – A Department-certified community-based MHRS provider that has entered into a Human Care Agreement with the Department to provide MHRS.

Credentialed Staff – Non-licensed staff who are permitted to provide behavioral health stabilization services or components of behavioral health stabilization services if under the supervision of an independently licensed practitioner in accordance with applicable laws and regulations.

Crisis – An event that significantly jeopardizes an individual’s treatment, recovery, health, or safety.

Department – The District of Columbia Department of Behavioral Health.

Director – The Director of the District of Columbia Department of Behavioral Health.

Discharge – The time when an individual’s active involvement with a program is terminated.

Discharge Planning – Activities with or on behalf of an individual to arrange for appropriate follow-up care to sustain recovery after being discharged from a program, including educating the individual on how to access or reinstate additional services, as needed.

District – The District of Columbia.

Drug – Substances that have the likelihood or potential to be misused or abused, including alcohol, prescription drugs, and nicotine.

Episode – A qualifying episode begins with the provider’s initial contact with an individual, either via referral or via outreach. The episode ends with amelioration of the individual’s presenting symptoms or, if clinically appropriate, the transfer of the individual to the recommended level of care.

Facility – Any physical premises which houses one or more behavioral health stabilization programs.

Family Member – Individual identified by the individual as a person with whom the individual has a significant relationship and whose participation is important to the individual’s recovery.

Human Care Agreement (“HCA”) – A written agreement entered into by the certified behavioral health stabilization provider and the Department which establishes a contractual relationship between the parties.

In-service Training – Activities undertaken to achieve or improve employees’ competency to perform present jobs or to prepare for other jobs or promotions.

Interdisciplinary Team – Members of the provider staff who provide services to the individual, including the individual, the individual’s CCC, a CAC, the individual’s case manager, and at least one QP with the license and ability to diagnose.

Licensed Graduate Professional Counselor (“LGPC”) – A person licensed as a graduate professional counselor in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Graduate Social Worker (“LGSW”) – A person licensed as a graduate social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Independent Clinical Social Worker (“LICSW”) – A person licensed as an independent clinical social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Independent Social Worker (“LISW”) – A person licensed as a licensed independent social worker in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Marriage and Family Therapist (“LMFT”) – A person licensed as a marriage and family therapist in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Practical Nurse (“LPN”) – A person licensed as practical nurse in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Licensed Professional Counselor (“LPC”) – A professional counselor licensed in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Major Unusual Incidents (“MUI”) – Adverse events that can compromise the health, safety, and welfare of persons; employee misconduct; fraud; and actions that are violations of law and policy.

Medicaid – The medical assistance program, as approved by the Federal Centers for Medicare and Medicaid Services (“CMS”) and administered by DHCF, that enables the District to receive Federal financial assistance for its medical assistance program and other purposes as permitted by law.

Medical Necessity (or Medically Necessary) – Health care services or products that a prudent provider would provide to an individual to prevent, diagnose, or treat an illness, injury, disease, or its symptoms in a manner that is: (a) in accordance with generally accepted standards of health care practice; (b) clinically appropriate in terms of type, frequency, extent, site, and duration; and (c) not primarily for the economic benefit of the health plans and purchasers or for the convenience of the individual or treating provider.

Medical Waste – Any solid waste that is generated in the diagnosis, treatment, or immunization of human beings or in the testing of biologicals, including but not limited to: soiled or blood-soaked bandages, needles used to give shots or draw blood, and lancets.

Mental Health Rehabilitative Services (“MHRS”) – The Department’s rehabilitative services for serious mental illness (“SMI”) as covered by the District’s Medicaid State Plan.

Mental Illness – A diagnosable mental, behavioral, or emotional disorder (including those of biological etiology) which substantially impairs the mental health of the person or is of sufficient duration to meet diagnostic criteria specified within the most recent Diagnostic and Statistical Manual (“DSM”) or its most recent International Classification of Diseases equivalent.

Mobile Crisis Intervention – A home- or community-based service that addresses a behavioral health crisis by using therapeutic communication, interactions, and supporting resources to interrupt and/or ameliorate acute behavioral health distress and associated behaviors.

Notice of Infraction (“NOI”) – An action taken by agencies to enforce alleged violations of regulatory provisions.

Organizational Onboarding – Mechanism through which new employees acquire the necessary knowledge, skills, and behaviors to become effective performers. It begins with recruitment and includes a series of events, one of which is employee orientation, which helps new employees understand performance expectations and contribute to the success of the organization.

Parent – A person who has custody of a child as a natural parent, stepparent, adopted parent, or has been appointed as a guardian for the child by a court of competent jurisdiction.

Pharmacist – A person licensed or authorized to practice pharmacy pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Physician – A person licensed or authorized to practice medicine pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Physician Assistant – A person licensed or authorized to practice as a physician assistant pursuant to Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Privacy Officer – A person designated by an organization that routinely handles protected health information, to develop, implement, and oversee the organization’s compliance with the U.S. Health Insurance Portability and Accountability Act (“HIPAA”) privacy rules, 42 CFR Part 2, and the District’s Mental Health Information Act.

Program – An entity that provides behavioral health stabilization services as certified by the Department.

Program Director – An individual having authority and responsibility for the day-to-day operation of a behavioral health stabilization program.

Protected Health Information (“PHI”) – Any written, recorded, electronic (“ePHI”), or oral information which either (1) identifies, or could be used to identify, an individual; or (2) relates to the physical or mental health or condition of an individual, provision of health care to an individual, or payment for health care provided to an individual. PHI does not include information in the records listed in 45 CFR § 160.103.

Provider – An entity certified by the Department to administer behavioral health stabilization programs.

Psychiatrist – A person licensed as a psychiatrist in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Psychologist – A person licensed to practice psychology in accordance with applicable District laws and regulations.

Psychology Associate – A person registered as a psychology associate in accordance with applicable laws and regulations.

Qualified Practitioner – Staff authorized to provide treatment and other services based on the definition of the service.

Registered Nurse (“RN”) – A person licensed as a registered nurse in accordance with Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl. & 2019 Supp.)).

Representative Payee – An individual or organization appointed by the Social Security Administration to receive Social Security or Supplemental Security Income (“SSI”) benefits for someone who cannot manage or direct someone else to manage his or her money.

Residential Program – Any behavioral health stabilization program which houses individuals overnight; this includes CPEPs and psychiatric crisis stabilization programs.

Screening – A determination of the likelihood that an individual has co-occurring substance use and mental disorders or that their presenting signs, symptoms, or behaviors may be influenced by co-occurring issues. Screening is a formal process that typically is brief and occurs soon after the individual presents for services.

Statement of Deficiencies (“SOD”) – A written statement of non-compliance issued by the Department, which describes the areas in which an applicant for certification or the certified provider fails to comply with the certification standards pursuant to this chapter.

Substance Use Disorder (“SUD”) – A chronic relapsing disease characterized by a cluster of cognitive, behavioral, and psychological symptoms indicating that the individual continues using a substance despite significant substance-related problems. A diagnosis of SUD requires an individual to have had persistent, substance related problem(s) within a twelve (12)-month period in accordance with the most recent version of the DSM.

Treatment – A therapeutic effort to improve an individual’s cognitive or emotional conditions or the behavior of an individual, consistent with generally recognized principles or standards in the behavioral health stabilization field, provided or supervised by a Qualified Practitioner.

All persons desiring to comment on the subject matter of this 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.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in An Act to enable the District of Columbia (District) to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2019 Supp.)) and Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption, on an emergency basis, of an amendment to Chapter 8 (Free Standing Mental Health Clinics) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The original Free Standing Mental Health Clinic (FSMHC) rulemaking was published in 1982, thereafter the responsibility for development and promulgation of inspection, monitoring, and certification standards of all mental health treatment providers in the District was statutorily granted to the Department of Behavioral Health (DBH) pursuant to the Department of Behavioral Health Establishment Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 7-1141.06 (2018 Repl.)). These emergency and proposed rules amend Chapter 8 to require FSMHCs to comply with certification requirements set forth by DBH. This rule also establishes that FSMHC providers are subject to Medicaid administrative requirements set forth under Chapter 13 of Title 29 DCMR, screening and enrollment requirements under Chapter 94 of Title 29 DCMR, and reimbursement and recordkeeping requirements under Chapter 30 of Title 22-A DCMR.

This emergency rulemaking is necessary for the immediate preservation of the health, safety and welfare of District residents. Emergency action is necessary to ensure the delivery of quality behavioral health care services to District Medicaid beneficiaries by aligning oversight and monitoring standards of FSMHCs with those of other District behavioral health providers; and improving District Medicaid beneficiaries' access to vital behavioral health services provided by FSMHCs. DHCF does not anticipate any change in aggregate Medicaid expenditures as a result of this proposed change.

This rule was adopted on June 23, 2020, and shall become effective on the date of publication of this notice in the *D.C. Register*. The emergency and proposed rules shall remain in effect for not longer than one hundred and twenty (120) days from the adoption date or until October 21, 2020, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

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

Chapter 8, FREE STANDING MENTAL HEALTH CLINICS, of Title 29 DCMR, PUBLIC WELFARE, is deleted in its entirety, and a new Chapter 8 is added to read as follows:

CHAPTER 8 FREE STANDING MENTAL HEALTH CLINICS

- 800 GENERAL PROVISIONS**
- 801 CERTIFICATION**
- 802 SCREENING AND ENROLLMENT**
- 803 ADMINISTRATIVE ACTIONS**
- 804 REIMBURSEMENT**
- 805 RECORDS**
- 806 AUDITS AND REVIEWS**
- 899 DEFINITIONS**

800 GENERAL PROVISIONS

800.1 The purpose of this chapter is to establish requirements governing Medicaid reimbursement for Free Standing Mental Health Clinic (FSMHC) services.

800.2 In order to be eligible for Medicaid reimbursable FSMHC services, beneficiaries shall comply with the following:

- (a) The Medicaid eligibility requirements set forth in Chapter 95 of Title 29 of the District of Columbia Municipal Regulations (DCMR); and
- (b) The eligibility factors set forth in § 3001 of Chapter 30 of Title 22-A DCMR.

800.3 Pursuant to the requirements set forth in Chapter 30 of Title 22-A DCMR, the Department of Behavioral Health (DBH) shall be responsible for establishing the criteria for determining which Medicaid beneficiaries are eligible for FSMHC services.

800.4 An entity that is certified in accordance with the requirements set forth in Chapter 30 of Title 22-A DCMR is eligible to apply for certification as a Health Home in accordance with the requirements set forth in Chapter 25 of Title 22-A DCMR.

800.5 An FSMHC that is certified as a Health Home is eligible to receive reimbursement for the provision of Health Home services in accordance with the requirements set forth in Chapter 69 of Title 29 DCMR.

801 CERTIFICATION

801.1 Each FSMHC shall be certified and comply with the certification requirements set forth by DBH pursuant to Chapter 30 of Title 22-A DCMR.

802 SCREENING AND ENROLLMENT

- 802.1 Each FSMHC shall be certified by DBH in accordance with § 801.1 of this chapter before enrolling in Medicaid. After receiving certification, each FSMHC shall:
- (a) Be screened and enrolled in Medicaid pursuant to Chapter 94 of Title 29 DCMR in order to be eligible for reimbursement under the Medicaid program; and
 - (b) Include proof of certification by DBH in the application for enrollment in Medicaid.

803 ADMINISTRATIVE ACTIONS

- 803.1 Each Medicaid-enrolled FSMHC shall be subject to the administrative actions set forth under Chapter 13 of Title 29 DCMR.

804 REIMBURSEMENT

- 804.1 FSMHC services shall be reimbursed according to a fee schedule rate for FSMHC services included in an approved treatment plan, as described in Chapter 30 of Title 22-A DCMR. The Medicaid fee schedule shall be published on the Department of Health Care Finance's (DHCF) provider website at www.dc-medicaid.com.
- 804.2 Updates to the reimbursement rates for FSMHC services shall comply with the public notice and comment requirements set forth under § 988 of Chapter 9 of Title 29 DCMR.
- 804.3 A public notice of rate changes shall be published in the *D.C. Register* at least thirty (30) calendar days in advance of the change and shall include a link to the Medicaid fee schedule.

805 RECORDS

- 805.1 Each Medicaid-enrolled FSMHC shall maintain beneficiary records and individual treatment plans in a manner that will render them amenable to audit and review by the U.S. Department of Health and Human Services, DHCF, DBH, and their authorized designees or agents.
- 805.2 Each Medicaid-enrolled FSMHC shall maintain, and make available complete financial records covering its operations upon request by the U.S. Department of Health and Human Services, DHCF, DBH and their authorized designees or agents.

805.3 All required financial and treatment records and information shall be maintained in accordance with requirements set forth under Chapter 30 of Title 22-A DCMR.

806 AUDITS AND REVIEWS

806.1 This section sets forth the requirements for audits and reviews of FSMHC services. DHCF, or its designee, shall perform regular audits of FSMHCs to ensure that Medicaid payments are consistent with efficiency, economy and quality of care, and made in accordance with federal and District conditions of payment. The audits shall be conducted periodically and at least annually and to investigate and maintain program integrity.

806.2 DHCF, or its designee, shall perform routine audits of claims, by statistically valid scientific sampling, to determine the appropriateness of FSMHC services rendered and billed to Medicaid to ensure that Medicaid payments can be substantiated by documentation that meets the requirements set forth in this rule, and made in accordance with federal and District rules governing Medicaid.

806.3 The audit process shall utilize statistically valid sampling methods to ensure that a statistically valid sample is drawn when the audit is based on claims sampling. The audit process may review all claims based on factors established by DHCF or other entities, which may include but not be limited to claim type and time-period. Statistically valid and commonly accepted standards methods for calculating overpayments will be followed.

806.4 If DHCF denies a claim during an audit, DHCF shall recoup those monies erroneously paid to the FSMHC for denied claims, following the process for administrative review as outlined below:

- (a) DHCF shall issue a Notice of Proposed Medicaid Overpayment Recovery (NPMOR), which sets forth the reasons for the recoupment, including the specific reference to the particular sections of the statute, rules, or provider agreement, the amount to be recouped, and the procedures for requesting an administrative review;
- (b) The FSMHC shall have thirty (30) days from the date of the NPMOR to submit documentary evidence and written argument to DHCF against the proposed action;
- (c) The documentary evidence and written argument shall include a specific description of the item to be reviewed, the reason for the request for review, the relief requested, and documentation in support of the relief requested;

- (d) Based on review of the documentary evidence and written argument, DHCF shall issue a Final Notice of Medicaid Overpayment Recovery (FNMOR);
- (e) Within fifteen (15) days of receipt of the FNMOR, the FSMHC may appeal the written determination by filing a written notice of appeal with the Office of Administrative Hearings (OAH), 441 4th Street, N.W., Suite 450 North, Washington, D.C. 20001; and
- (f) Filing an appeal with the OAH shall not stay any action to recover any overpayment.

806.5 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested. DHCF shall retain the right to conduct audits or reviews at any time and audits or reviews may be announced or unannounced.

806.6 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter, reasonable time, if specified, upon the request of the auditing official.

806.7 The failure of a FSMHC to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by DHCF to the FSMHC to produce the same, shall constitute grounds to terminate the Medicaid Provider Agreement. This provision does not limit DHCF's ability to terminate any Medicaid Provider Agreement for any other reason.

806.8 As part of the audit process, documents FSMHCs shall grant access to include, but are not limited to the following:

- (a) Relevant financial records;
- (b) Statistical data to verify costs previously reported;
- (c) Program documentation;
- (d) A record of all service authorization and prior authorizations for services;
- (e) A record for all request for change in services;
- (f) Any records listed in § 3008 and § 3009 in addition to any other records relating to the adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and

dates of service, and the name, signature, and credentials of the service provider(s); and

- (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of FSMHC services.

806.9 Nothing in this rule affects a FSMHC's independent legal obligation under this Chapter and federal and District law to self-identify overpayments and repay them within sixty (60) days of discovery.

899 DEFINITIONS

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

Free Standing Mental Health Clinic - a formally organized psychiatric clinic furnishing psychiatric services, under the direction of a physician (psychiatrist), in a facility not administered by a hospital, but organized and operated to provide mental health services on an outpatient basis, and which is certified as such by the Department of Behavioral Health in accordance with existing laws and regulations.

Comments on these rules should be submitted in writing to Melisa Byrd, Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street, N.W., Suite 900, Washington D.C. 20001, via telephone on (202) 442-8742, via email at DHCFPubliccomments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules are available from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

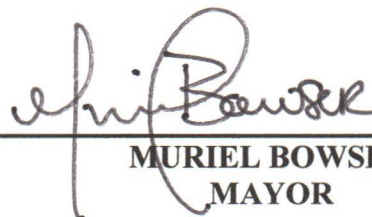
Mayor's Order 2020-076
June 25, 2020

SUBJECT: Appointment – District of Columbia Educational Opportunity for Military Children State Council

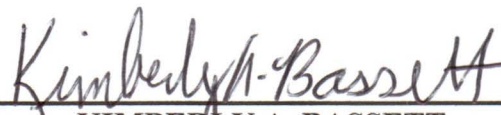
ORIGINATING AGENCY: Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to section 21 of the Interstate Compact on Educational Opportunity for Military Children Establishment Act of 2012, effective May 1, 2013, D.C. Law 19-304, D.C Official Code § 49-1101.20, it is hereby **ORDERED** that:

1. **LAKEESHIA FOX**, is appointed as the Mayor's designee to the District of Columbia Educational Opportunity for Military Children State Council, replacing Taneka Miller, to serve at the pleasure of the Mayor.
2. **EFFECTIVE DATE:** This Order shall become effective immediately.



**MURIEL BOWSER
MAYOR**

ATTEST: 

KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

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

**WEDNESDAY, JULY 1, 2020 AT 10:00 AM
TELEPHONIC MEETING**

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

The D.C. Criminal Code Reform Commission (CCRC) held a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, July 1, 2020 at 10am. The meeting was telephonic and members of the public could hear the meeting by calling:

Dial-in number: 1-650-479-3208

Access code: 160 852 3887.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at (202) 442-8715 or ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Advisory Group Written Comments On:
 - (A) Third Draft of Report #41 - Ordinal Ranking of Maximum Imprisonment Penalties;
 - (B) Second Draft of Report #19 - Homicide Offenses;
 - (C) Second Draft of Report #27 – Human Trafficking and Related Statutes;
 - (D) Second Draft of Report #35 – Cumulative Update to Sections 201-213 of the RCC;
 - (E) Advisory Group Memo #33 - Supplemental Materials to the First Draft of Report #53 and the Second Draft of Report # 19;
 - (F) Advisory Group Memo #34 - Supplemental Materials to the Second Draft of Report #27;
 - (G) Advisory Group Memo #35 - Supplemental Materials to the Second Draft of Report #35;
 - (H) First Draft of Report #53 – Pinkerton Liability;
 - (I) First Draft of Report #54 – Prostitution and Related Statutes;
 - (J) Advisory Group Memo #36 – Supplemental Materials to the First Draft of Report #54;
 - (K) First Draft of Report #55 – Failure to Appear and Violation of Conditions of Release Offenses;

- (L) First Draft of Report #56 – Panhandling;
- (M) First Draft of Report #57 – Second Look;
- (N) First Draft of Report #58 – Developmental Incapacity Defense;
- (O) Advisory Group Memo #37 – Supplemental Materials to the First Draft of Report #58; and
- (P) First Draft of Report #59 – Endangerment with a Firearm.

III. Discussion of Draft Reports and Memoranda Currently Under Advisory Group Review:

- (A) First Draft of Report #60 – Execution of Public Duty, Lesser Harm, and Temporary Possession Defenses;
- (B) First Draft of Report #61 – Abuse of Government Power General Enhancement;
- (C) First Draft of Report #62 – Impersonation of a District Official.

IV. Adjournment.

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

EAGLE ACADEMY PUBLIC CHARTER SCHOOL**NOTICE OF INTENT TO AWARD SOLE SOURCE CONTRACT**

Eagle Academy Public Charter School intends to award a sole source contract to Ginger.io app. Ginger app provides virtual mental health care for employees through a secure, proprietary portal. Ginger is an app-based behavioral health coaching and content where members receive care through an on-demand mental health system 24/7, 365 days a year.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be directed to Jai Mallory at jmallory@eagleacademypcs.org, via email only. Please indicate in the subject of your email: Notice of Intent Question

EAGLE ACADEMY PUBLIC CHARTER SCHOOL**NOTICE OF REQUEST FOR PROPOSALS****THERMAL TEMPERATURE CAMERA**

Eagle Academy Public Charter School, in accordance with Section 2204(c)(XV)(A) of the District of Columbia School Reform Act of 1995, hereby requests proposals to provide products for use to detect if a person's temperature is above the norm (thermal temperature camera). Must be able to scan groups of people; have an immediate-read video monitor; be a plug and play system; and include technical support.

Submittal is Due: Wednesday, July 15, 2020, by 5:00 p.m.

Submittal Terms

1. Submittal Requirements – **Submittals should be directed to the attention of etrigueros@eagleacademypcs.org**. No late submittals will be accepted.
2. All bidders will be deemed to have agreed to EAPCS Standard Terms and Conditions, which may be viewed at www.eagleacademypcs.org/terms.
3. Eagle Academy PCS reserves the right to reject any and all bids at its sole discretion.

D.C. GREEN FINANCE AUTHORITY
NOTICE OF PUBLIC MEETING OF THE
BOARD

The D.C. Green Finance Authority will conduct a public meeting of the Board, pursuant to the Open Meetings Act, (DC Official Code §2-574(1)).

The date, time and location of the Public Meeting shall be as follows:

Date: **Thursday June 25th**

Time: **1:30 PM – 2:30 PM**

Location: **- Microsoft Teams Call -**
 Pre-registration required, email info@dcgreenbank.org for
 more information

Contact: **Christina Chen**

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Physical Therapy (“Board”) hereby gives notice of its upcoming meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2016 Repl.).

The Board meets monthly on the second Wednesday of each month from 3:30 PM to 5:30 PM. The next meeting will be held on Wednesday, July 8, 2020. The meeting will be open to the public from 3:30 PM until 4:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 4:30 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

Due to the COVID-19 public health emergency, the meeting will be conducted via videoconference. The public may attend the open session in the following ways:

By videoconference:

Meeting number: 479 403 336

Password: YTkx7yAnb49

<https://dcnet.webex.com/dcnet/j.php?MTID=md5048bc65bb56b7a3ace46084f3742b9>

By phone:

1-650-479-3208 Call-in toll number (US/Canada)

Access code: 479 403 336

The agenda is available at <https://dchealth.dc.gov/node/1169761>. For additional information, contact the Health Licensing Specialist at ashley.balma@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Professional Counseling (“Board”) hereby gives notice of its upcoming meeting, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2016 Repl.).

The Board meets monthly on the second Friday of each month from 10:00 AM to 1:00 PM. The next meeting will be held on Friday, July 10, 2020. The meeting will be open to the public from 10:00 AM until 10:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 10:30 AM to 1:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

Due to the COVID-19 public health emergency, the meeting will be conducted via videoconference. The public may attend the open session in the following ways:

By videoconference:

Meeting number: 475 199 633

Password: b5aXwWhTi49

<https://dcnet.webex.com/dcnet/j.php?MTID=m0d5d7c16ea055f3350294ef4e11c3f95>

By phone:

1-650-479-3208 Call-in toll number (US/Canada)

Access code: 475 199 633

The agenda is available at <https://dchealth.dc.gov/page/board-professional-counseling-open-session-agendas>. For additional information, contact the Health Licensing Specialist at david.walker2@dc.gov or (202) 727-1611.

**HEALTH, DEPARTMENT OF (DC HEALTH)
COMMUNITY HEALTH ADMINISTRATION (CHA)
NOTICE OF FUNDING AVAILABILITY (NOFA)**

CHA_TCLS_07.17.20 (RFA)

TOBACCO CESSATION & HEALTH SYSTEMS CHANGE

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

General Information:

Funding Opportunity Title:	Tobacco Cessation & Health Systems Change
Funding Opportunity Number:	FO-CHA-PG-00179-006
Program RFA ID#:	CHA_TCLS_07.17.20
Opportunity Category:	Competitive
DC Health Administrative Unit:	Community Health Administration
DC Health Program Bureau	Cancer and Chronic Disease Prevention Bureau
Program Contact:	Carrie Dahlquist Manager, Tobacco Control Program 202.442.9176 or 202.641.8542 carrie.dahlquist@dc.gov
Program Description:	DC Health seeks to ensure that tobacco use is recognized as a chronic, relapsing condition and that dependence treatment and lung cancer screening are fully integrated into the continuum of healthcare, similar to the diagnosis and management of other chronic, relapsing conditions such as hypertension. Funding under this RFA will support the integration of evidence-based tobacco dependence assessment and management into the continuum of care. Applicants must demonstrate how their proposed strategies will change health care systems processes, leading to a seamless, integrated approach to addressing tobacco use dependence and improving lung cancer screening rates, particularly patients living in Wards with high tobacco use prevalence (Wards 5,7 and 8).
Eligible Applicants	Hospitals, health centers, including federally qualified health centers (FQHCs) and private medical practices serving residents of the District of Columbia.

Anticipated # of Awards:	1 – 2
Anticipated Amount Available:	\$300,000
Floor Award Amount:	\$100,000
Ceiling Award Amount:	\$150,000

Funding Authorization

Legislative Authorization	Local funds
Associated CFDA#	Not Applicable
Associated Federal Award ID#	Not Applicable
Cost Sharing / Match Required?	No
RFA Release Date:	July 17, 2020
Pre-Application Meeting (Date)	July 30, 2020 or August 4, 2020
Pre-Application Meeting (Time)	10:00am – 11:30am; 1:00pm – 2:30pm
Pre-Application Meeting Location	Pre-Application Meetings will be held virtually. Registration is required.
Conference Call Access	<p>Thursday, July 30: 10:00am – 11:30am To register go to: https://dcnet.webex.com/dcnet/j.php?MTID=mb71fe696976efc79c03fa5adc6be493d</p> <p>Tuesday, August 4: 1:00pm – 2:30pm To register go to: https://dcnet.webex.com/dcnet/j.php?MTID=mdd60c49a71c6469f3c86267bc0b81079</p>
Letter of Intent Due date:	Not applicable
Application Deadline Date:	August 31, 2020
Application Deadline Time:	6:00 PM
Links to Additional Information about this Funding Opportunity	<p>DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse.</p> <p>DC Health EGMS https://dcDCHealth.force.com/GO_ApplicantLogin2</p>

**DEPARTMENT OF HEALTH (DC Health)
COMMUNITY HEALTH ADMINISTRATION (CHA)
NOTICE OF FUNDING AVAILABILITY (NOFA)**

**RFA# CHA.5SBHC.07.17.20
SCHOOL-BASED HEALTH CENTER PROGRAM**

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

General Information:

Funding Opportunity Title:	School Based Health Centers Program
Funding Opportunity Number:	FO-CHA-PG-00010-000
Program RFA ID#:	CHA.5SBHC.07.17.20
Opportunity Category:	Competitive
DC Health Administrative Unit:	Community Health Administration
DC Health Program Bureau	Family Health Bureau
Program Contact:	Dr. Kafui Doe Child, Adolescent and School Health Division Chief DC.SBHC@dc.gov
Program Description:	The Government of the District of Columbia Department of Health (DC Health) Community Health Administration (CHA) is soliciting applications from qualified applicants to improve access to primary health services for high school students by operating School Based Health Centers (SBHC) in District of Columbia Public Schools (DCPS).
Eligible Applicants	Non-profit, public, and private organizations with demonstrated experience providing primary health care services for adolescents in the District of Columbia.
Anticipated # of Awards:	Up to Seven (7) Awards

Anticipated Amount Available:	\$2,200,000.00
Floor Award Amount:	\$250,000
Ceiling Award Amount:	Up to \$314,000

Funding Authorization

Legislative Authorization	DC appropriated local funds
Associated CFDA#	Not Applicable
Associated Federal Award ID#	Not Applicable
Cost Sharing / Match Required?	No
RFA Release Date:	Friday, July 17, 2020
Pre-Application Meeting (Date)	Thursday, July 30, 2020
Pre-Application Meeting (Time)	2:30pm – 3:30pm
Pre-Application Meeting (Location/Conference Call Access)	Virtual Link will be provided for organizations that RSVP and submit questions to DC.SBHC@dc.gov with (organization name, point of contact, title, and e-mail address) by Monday, July 27, 2020.
Letter of Intent Due date:	Not applicable
Application Deadline Date:	Tuesday, August 18, 2020
Application Deadline Time:	6:00 PM
Links to Additional Information about this Funding Opportunity	DC Grants Clearinghouse http://opgs.dc.gov/page/opgs-district-grants-clearinghouse . DC Health EGMS https://dcdoh.force.com/GO__ApplicantLogin2

Notes:

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

DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**NOTICE OF FUNDING AVAILABILITY (NOFA)****Nonprofit Capacity Support Grant****Background**

The Department of Housing and Community Development (DHCD) is soliciting grant applications for \$2 million from the U.S. Department of Housing and Urban Development's (HUD) Community Development Block Grant-COVID 19 (CDBG-CV) funds to support housing and community development nonprofits who have experienced an increase in administrative costs, constituent requests or other disruptions to normal operations due to COVID-19.

Eligible nonprofit organizations may receive up to \$50,000 in assistance based on eligible reimbursable expenses.

Eligible Organization

Applicants must meet all the following conditions:

- be a housing and community development focused nonprofit organization with a Federal 501(c)(3) tax-exempt status or evidence of fiscal agent relationship with a 501 (c)(3) organization;
- the organization serves the District's residents or business owners by providing affordable housing services, community development services or other public services or activities;
- the organization's principal place of business is located in the District of Columbia;
- all services and programming expenses to receive reimbursable funds must be provided in the District of Columbia; and
- the organization is currently registered and is in good standing with the DC Department of Consumer & Regulatory Affairs, Corporations Division, and the Office of Tax and Revenue.

Virtual Information Session Meeting

- Held on Tuesday, July 7, 2020 at 12:30 pm via WebEx.
- RSVP <https://dcnet.webex.com/dcnet/onstage/g.php?MTID=efcc84334a093650d5787e4da3d3908ff>
- Applicants who have questions regarding the RFA are encouraged to attend the WebEx orientation.

How to Apply: This Request for Applications (RFA) will be available on the DHCD website at www.dhcd.dc.gov on or about July 3, 2020. This RFA will be available only on the DHCD website via [ZoomGrants](#). Applications submitted through [ZoomGrants](#) require access to a computer, internet access, and a valid email address (free email addresses can be obtained from services such as Gmail and Yahoo). Deadline for Submission: **Monday, July 20, 2020 at 5:00 PM**. The **ONLY** method to submit application is through the ZoomGrants online portal available on the DHCD website www.dhcd.dc.gov. For questions contact: nba.rfa@dc.gov.

D.C. DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT**NOTICE OF LEVEL OF ASSISTANCE FOR THE
HOME PURCHASE ASSISTANCE PROGRAM**

The D.C. Department of Housing and Community Development, pursuant to the authority in Chapter 25, Title 14, DCMR, Section 2503 and Section 2510 of the rules for the Home Purchase Assistance Program (HPAP), hereby gives notice that it has established the income limits and homebuyer assistance for participation of very low income, low income and moderate income households in the HPAP.

The income limits have been determined based on the area median income of \$126,000 established by the Secretary of the U.S. Department of Housing and Urban Development (HUD) for FY 2020, for the Washington, DC Fair Market Rent Area. The amounts have been calculated based on Section 2510 of the HPAP Program rules. The first time Homebuyer Assistance Table reflects the amount of assistance for home purchases through gap financing for first time homebuyers in an amount up to \$80,000 plus \$4,000 for closing cost assistance. The assistance provided is based on household income and size.

The Assistance Table shall be effective for HPAP loans closed after July 3, 2020. All new applications and applicants that currently hold an active Notice of Eligibility, also known as NOE, are eligible for the new assistance for loans that close after the effective date. To share concerns and questions, contact a Community Based Organization. Contact information can be found on www.dhcd.dc.gov

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
HOME PURCHASE ASSISTANCE PROGRAM (HPAP)
Effective for HPAP Loans Closed after July 3, 2020**

Below is the HPAP Homebuyer Assistance Table. Please note that closing cost assistance for all eligible households will be up to \$4,000.

**The per client gap financing assistance will cap at \$80,000.
The closing cost assistance is distinct from, and in addition to, gap financing assistance which is shown below.**

Assistance (dollars)	1	2	3	4	5	6	7	8
	Per household income less than or equal to (dollars):							
	Up to 50% Median Family Income (MFI) Households							
80,000	44,100	50,400	56,700	63,000	68,050	73,100	78,100	83,150
	51% - 80% Median Family Income (MFI) Households							
64,000	56,500	64,600	72,700	80,750	85,800	90,850	95,900	100,950
56,000	60,600	69,250	77,900	86,550	91,950	97,350	102,800	108,200
40,000	70,550	80,650	90,700	100,800	107,100	113,400	119,700	126,000
	81% - 110% Median Family Income (MFI) Households							
32,000	86,400	98,750	111,100	123,450	131,150	131,150	131,150	131,150
16,000	97,000	110,900	124,750	138,600	147,250	147,250	147,250	147,250

The amount of financial assistance provided to households earning up to 110% of the Median Family Income (MFI) shall be the combined total of gap financing assistance and closing cost assistance.

The income limits established shall be reviewed and revised as needed by the Department of Housing and Community Development to stay current with the incomes of households in the Washington, DC area. The review and revisions will be done periodically, provided that the current median income established by the Secretary of the U.S. Department of Housing and Urban Development for the Washington, DC Metropolitan Statistical Area is available.

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL
NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT**

Occupational Therapy Services

Latin American Montessori Bilingual Public Charter School (LAMB) intends to enter into a sole source contract with Dynamic Kid LLC for contracted Occupational Therapy services in school year 2020-21. LAMB anticipates that the services agreement will exceed \$25,000.00 during its fiscal year 2021.

Dynamic Kid LLC has worked with LAMB previously. The owner of Dynamic Kid LLC, has provided direct services to our students, teachers and families. Dynamic Kid LLC, already has a supportive relationship with our students, families and teachers. The organization has proven success in integrating within LAMB's processes by collaborating with our special education and general education environments.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be sent via email accounting@lambpcs.org, no later than COB Friday, July 10, 2020.

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL
REQUEST FOR PROPOSALS**

Special Education Services

Latin American Montessori Bilingual Public Charter School (LAMB) is seeking Special Education services for school year 2020-21 from qualified vendors licensed and insured to conduct operation in the District of Columbia. Services to include Speech/Language Therapy, Occupational Therapy, and Physical Therapy services, and evaluations and screenings by therapists in the areas listed above.

RFP details may be requested at accounting@lambpcs.org. Proposals should be submitted no later than July 15, 2020.

MUNDO VERDE PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Food Items and Substitutes/Dedicated Aides**

- 1. Food Items.** MVPCS is advertising the opportunity to bid on food items (perishable and non-perishable) for the 2020-2021 school year with a possible extension of (2) one year renewals. All food items must meet at a minimum, but are not restricted to, the USDA holding and processing standards and, where applicable, National School Breakfast and Lunch labelling requirements. Additional specifications outlined in the Request for Proposal (RFP) such as; sourcing, delivery, farm to school, etc. may be obtained beginning on July 6 from Danielle Revers at (202) 750-7060 or drevers@mundoverdepcs.org. Proposals will be accepted at 30 P St. NW, Washington, DC on July 27, not later than 5pm. **All bids not addressing all areas as outlined in the RFP will not be considered.**
- 2. Substitutes and Dedicated Aides.** MVPCS is seeking proposals for dedicated aides, short-term and long-term substitutes for SPED and general education for SY21 and possible yearly extensions. Please contact Elle Carne at ecarne@mundoverdepcs.org for full RFP details. **All bids are due via email on July 17 at 3pm. Any bids not addressing all areas as outlined in the RFP will not be considered.**

Note that the contract may not be effective until reviewed and approved by the District of Columbia Public Charter School Board.

OFFICE OF THE DEPUTY MAYOR FOR PLANNING AND ECONOMIC
DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

FY20 Neighborhood Prosperity Fund (NPF)

Request for Application (RFA) Release Date: July 24, 2020

The Deputy Mayor for Planning and Economic Development (DMPED) invites the submission of proposals for the FY20 Neighborhood Prosperity Fund (NPF). DMPED will award up to maximum of \$3 million in FY20 to grantees under this program. The application deadline is **Friday, August 21, 2020 at 12:00 noon EST.**

As the impacts of the coronavirus (COVID-19) pandemic continue to expand, businesses are struggling to adapt to new ways of life along with the ability to continue normal operations – especially with construction projects and overall capital expenditure programs. The Office of the Deputy Mayor for Planning and Economic Development welcomes submissions directly connected to this goal. DMPED will fund non-residential components of a mixed-use real estate project or retail development project in targeted Census tracts where unemployment is 10% or greater. A map of these targeted Census tracts can be found <http://arcg.is/OLz80>.

The grant provides necessary funding only for the commercial component of development projects. DMPED will award 1 or more grants for an aggregate total of \$3,000,000.00.

Minimum application request of \$250,000.00 for each grant.

Eligibility:

1. Projects must be within the statutory boundaries of the Neighborhood Prosperity Fund (see at <http://arcg.is/OLz80>).
2. Mixed-use residential proposed project must include, at a minimum, an amount of affordable dwelling units (ADU's) that are equivalent to and compliant with the Inclusionary Zoning provisions of the District of Columbia Zoning Regulations (11DCMR §§ 2600 *et seq.* (2012)).
3. 50% of the tenants must be identified and/or secured through letters of intent evidenced by executed lease agreements or executed commitments to lease.
 - a. *Preference will also be given to projects that improve fresh food access (e.g. via grocery, sit-down or fast casual restaurants) or significantly support local businesses/entrepreneurs disproportionately affected by COVID.*
4. The developer of the project which is the subject of the grant application must commit to commence construction on the project within 18 months of the date of the executed grant agreement.
5. The developer of the project which is the subject of the grant application must demonstrate a commitment to support the sustainability of local business tenancy by

providing specific amenities and/or inducements, which may include rent concessions or abatements, flexible lease terms, etc.

Types of commercial component examples include, but are not limited to:

- Retail Store – clothing, jewelry, toys, electronics, hardware
- Cafes
- Grocery Stores
- Drugstores/Pharmacies
- Sit Down Restaurants (including fast-casuals format restaurants)
- Coffee Shops
- Medical Offices (doctor, dentist, chiropractor, urgent care)
- Professional office space

For additional eligibility requirements and exclusions, please review the Request for Application (RFA) which will be posted at by <https://greatstreets.dc.gov/page/neighborhood-prosperity-fund-npf>. **Friday, July 24, 2020.**

Award of Grants: DMPED will award 1 or more grants for an aggregate total of \$3 million.

For More Information: Check website at <https://greatstreets.dc.gov/page/neighborhood-prosperity-fund-npf>.

Questions may be sent to Sandra Villarreal, Grants Administrator at the Deputy Mayor for Planning and Economic Development at dmped.grants@dc.gov or 202-727-6365.

Reservations: DMPED reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or it may rescind the NOFA or RFA at any time in its sole discretion.

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

PUBLIC NOTICE

FORMAL CASE NO. 1165, IN THE MATTER OF THE PETITION FOR IMPLEMENTATION OF RELIEF FOR THE 202 AREA CODE,

1. Through this Public Notice, the Public Service Commission of the District of Columbia (“Commission”) opens this proceeding to review the Petition of the North American Numbering Plan Administrator (“NANPA”) on Behalf of the District of Columbia Telecommunications Industry (“Petition”) for relief for the 202 numbering plan area (“NPA” or “area code”).¹ Comments on the Petition are due within (thirty) 30 days of the publication of this Public Notice in the *D.C. Register*. Reply comments on the Petition are due within (sixty) 60 days of the publication of this Public Notice in the *D.C. Register*. The Commission will also hold a virtual community hearing for members of the community to discuss the Petition.

2. In the Petition, NANPA, on behalf of the District of Columbia telecommunications industry, requests the Commission to approve a new area code with an all-services overlay throughout the entire District of Columbia as relief for number exhaust in the 202 NPA. Absent this relief, NANPA represents that the supply of telephone numbers in the 202 area code is projected to run out during the Third Quarter of 2022. In order to ensure that the District of Columbia has enough telephone numbers for customers, NANPA requests that the Commission approve the Petition no later than the Fourth Quarter of 2020 and approve a 13-month implementation schedule for the new area code. NANPA asserts that by adhering to this schedule, the new NPA will be implemented six months prior to the exhaust of the 202 area code as required by industry guidelines.² NANPA asserts that a new area code with an all-services overlay is the only form of relief that will meet industry guidelines in the District of Columbia.³

3. NANPA explains that the proposed all-services overlay for the 202 area code would superimpose a new area code over the entire geographic area of the 202 area code. NANPA represents that all existing customers with a 202 area code would retain the 202 area code and would not have to change telephone numbers. All calls within the 202 area code and between the new area code and the 202 area code would be dialed using (ten) 10 digits.⁴ NANPA proposes a 13-month implementation schedule for implementation of the new area code, divided into (three) 3 stages. The first stage includes six months of network preparation. The second stage is (six) 6

¹ *Formal Case No. 1165, In the Matter of the Petition for Implementation of Relief for the 202 Area Code*, Petition of the North American Numbering Plan Administrator on Behalf of the District of Columbia Telecommunications Industry, filed June 16, 2020 (“Petition”).

² Petition at 1.

³ Petition at 2.

⁴ Petition at 3.

months of a customer education period in which customers would be permitted to use both (seven) 7-digit and (ten) 10-digit dialing within the 202 area code (“permissive dialing period”). The third stage is for one month after the end of the permissive dialing period (when (ten) 10-digit dialing becomes mandatory in the 202 area code) before numbers can be assigned in the new area code.⁵ The Commission is requested to approve the Petition and the implementation schedule in order to facilitate the transition to having a second area code in the District of Columbia.⁶

4. Any person interested in responding to the Petition may file comments within (thirty) 30 days and reply comments within (sixty) 60 days of the publication of this Public Notice in the *D.C. Register*. Comments and reply comments are to be 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.dcpssc.org/public/public_comments. Copies of the Petition may be obtained by visiting the Commission’s website at www.dcpssc.org. Once at the website, open the “eDocket System” tab, click on “Search Current Dockets” and input “FC 1165” as the case number and “1” as the item number.

⁵ Petition at 4.

⁶ State public service commissions have the authority to review and approve NPA relief plans. *See*, 47 C.F.R. § 52.19 (2020).

ROCKETSHIP DC PUBLIC CHARTER SCHOOL

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.

DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

NOTICE OF FUNDING AVAILABILITY (NOFA)

CLEAN TEAM GRANTS

The Department of Small and Local Business Development (DSLBD) is soliciting applications from eligible applicants to manage a **DC Clean Team Program** in four (4) Service Areas (listed below). **The application submission deadline is Thursday, August 13th, 12:00 PM.**

Through this grant, DSLBD will fund clean teams, which will achieve the following objectives.

- Improve commercial district appearance to help increase foot traffic, and consequently, the opportunity for customer sales.
- Provide jobs for DC residents.
- Reduce litter, graffiti, and posters, which contribute to the perception of an unsafe commercial area.
- Maintain a healthy tree canopy, including landscaping, along the corridor.
- Support Sustainable DC goals by recycling, mulching street trees, using eco-friendly supplies, and reducing stormwater pollution generated by DC’s commercial districts.

Eligible applicants are nonprofit organizations which are incorporated in the District of Columbia and businesses which are Certified Business Enterprises. All applicants must be current on all DC business licenses and permits.

DSLBD will **award** one grant for **each** of the following **service areas** (i.e., a total of four grants). The size of the grant is noted for each district.

Bladensburg Road	\$138,000.00
Fort Lincoln	\$50,000.00
Minnesota Avenue	\$107,982.00
South Dakota Avenue	\$100,000.00

The **grant performance period** to deliver clean team services is October 1, 2020 through September 30, 2021. Grants may be renewed for a second performance period of October 1, 2021 through September 30, 2022.

The **Request for Applications** (RFA) includes a detailed description of clean team services, service area boundaries, and selection criteria. DSLBD posted the RFA on **Monday, July 13, 2020** at www.dslbd.dc.gov. Click on the *Our Divisions* tab, then *Commercial Revitalization*, and then *Solicitations and Opportunities* on the left navigation column.

The online application opened on **Monday, July 13, 2020**. To open an application, applicants must complete and submit an **Expression of Interest** via the website address included in the

Request for Applications. DSLBD will activate their online access within two business days and notify them via email.

DSLBD will hold an online **pre-application informational meeting on Thursday, July 23, 2020 at 1:00 PM** and will hold a second **pre-application meeting on Tuesday, July 28, 2020 at 10:00 a.m.** Anyone interested in attending the meetings should send an email to Donnell Davis at (donnell.davis@dc.gov).

Application Process: Interested applicants must complete an online application on or before **Thursday, August 13th, 2020, 12:00 PM.**

DSLBD will not accept applications submitted via hand delivery, mail or courier service. **Late submissions and incomplete applications will not be forwarded to the review panel.**

Selection Criteria for applications will include the following criteria.

- Applicant Organization’s demonstrated capacity to provide clean team or related services, and managing grant funds.
- Application Organization’s prior experience with providing job training and social support services.
- Proposed service delivery plan for basic clean team services.
- Proposed service delivery plan for additional clean team services.

Selection Process: DSLBD will select grant recipients through a competitive application process that will assess the Applicant’s eligibility, experience, capacity, service delivery plan, and, budget. Applicants may apply for one or more service areas by noting the number of service areas for which the applicant would like to be considered. DSLBD will determine grant award selection and notify all applicants of their status via email on or before **Thursday, September 3rd, 2020.**

Schedule of Key Dates: Applicants should consider the Schedule of Key Dates when applying for an FY 2021 Clean Team Grant.

Scheduled Activities	Key Dates
DSLBD posted the RFA	Monday, July 13 th , 2019
Pre-Application Meetings	Thursday, July 23, 2020 at 1:00 PM and Tuesday, July 28, 2020 at 10:00 a.m.
Application Submission Deadline	Thursday, August 13th, 2020, 12:00 PM.
DSLBD will determine grant award selection and notify all applicants of their status via email on or before	Thursday, September 3 rd , 2020

Funding for this award is contingent upon funding availability from the DC Council. The NOFA does not commit the DSLBD to make an award. DSLBD reserves the right to issue

addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.

The DSLBD reserves the right to accept or deny any or all applications if DSLBD determines it is in the best interest of DSLBD to do so. The Agency shall notify the applicant if it rejects that applicant's proposal. DLSBD may suspend or terminate an outstanding NOFA pursuant to its own grant-making rule(s) or any applicable federal regulation or requirement.

DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of the RFA, or to rescind the NOFA.

DSLBD shall not be liable for any costs incurred in the preparation of applications in response to the NOFA. Applicant agrees that all costs incurred in developing the application are the applicant's sole responsibility.

DSLBD may conduct pre-award on-site visits to verify information submitted in the application and to determine if the applicant's facilities are appropriate for the services intended.

DSLBD may enter into negotiations with an applicant and adopt a firm funding amount or other revision of the applicant's proposal that may result from negotiations.

All applicants must attest to executing a DSLBD grant agreement as issued (sample document will be provided in the online application) and to starting services on October 1, 2020.

Questions must be sent to Donnell Davis at the Department of Small and Local Business Development at donnell.davis@dc.gov. All questions must be submitted in writing before August 12th, 2020 at 5:00 pm.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, July 16, 2020 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

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

DRAFT AGENDA

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

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Governance Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, July 8, 2020 at 9:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dewater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

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

DRAFT AGENDA

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|--|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Emerging Issues | Committee Chairperson |
| 3. Agenda for Upcoming Committee Meeting | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, July 8, 2020 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

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

DRAFT AGENDA

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|----------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Other Business | Committee Chairperson |
| 3. Executive Session | Committee Chairperson |
| 4. Adjournment | Committee Chairperson |

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

Application No. 19860 of District Properties.Com Inc, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development requirements of Subtitle U § 421.1, to construct a new, four-unit apartment house in the RA-1 zone at premises 4613 Minnesota Avenue, N.E. (Square 5160, Lot 5).

HEARING DATE: January 9, 2019¹
DECISION DATE: January 9, 2019

DECISION AND ORDER

District Properties.com Inc. (the “**Applicant**”) filed an application (the “**Application**”) with the Board of Zoning Adjustment (the “**Board**”) on August 15, 2018, requesting the following relief from the requirements of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**,” to which all references are made unless otherwise specified):

- a special exception under the new residential development requirements of Subtitle U § 421.1,

to construct a new, four-unit apartment house on Lot 5 in Square 5160, with an address of 4613 Minnesota Avenue, N.E. (the “**Property**”), in the RA-1 zone. 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 November 28, 2018 hearing by a September 28, 2018 letter to
 - the Applicant;
 - Advisory Neighborhood Commission (“**ANC**”) 7C, the ANC within which boundaries the Property is located and so the “affected” ANC per Subtitle Y § 101.8;
 - the Single Member District (“**SMD**”) Commissioner for ANC 7C07;
 - ANC 7D, the ANC adjacent to the boundary line of the Property;
 - the Office of ANCs;
 - the Office of Planning (“**OP**”);

¹ The public hearing, originally scheduled for November 28, 2018, was postponed to January 9, 2019, by motion of Applicant.

- the District Department of Transportation (“DDOT”);
 - the District Department of Parks and Recreation (“DPR”);
 - the Deputy Mayor for Education (“DME”);
 - the Councilmember for Ward 7;
 - the Chairman of the Council;
 - the At-Large Councilmembers; and
 - the owners of all property within 200 feet of the Property. (Exhibit [“Ex.”] 14, 16-30.)
2. OZ also published notice of the public hearing in the *D.C. Register* on September 28, 2018 (65 DCR 9941) as well as through the calendar on OZ’s website.
 3. OZ referred the Application to relevant District agencies, including DDOT, DPR, DME, and OP, for comment and recommendations.

PARTIES

4. In addition to the Applicant, ANCs 7C and 7D² were automatically a party in this proceeding pursuant to Subtitle Y § 403.5. No other party status requests were received.

THE PROPERTY

5. The Property is a corner, triangular shaped lot with 3,469 square feet in land area with 91.59 feet of combined street frontage along Minnesota Avenue, N.E. and Meade Street, N.E. (Ex. 1.)
6. The Property is a currently unimproved and vacant.
7. The Property is bordered by one parcel to the northeast, 4615 Minnesota Avenue, N.E., that is improved with a detached dwelling unit. The neighbor residing at that property, Ms. Tracy Newell (the “**Abutting Neighbor**”), testified at the hearing.
8. To the north and west, across Minnesota Avenue, and to the south, across Meade Street, are also existing detached dwellings; there are also institutional uses across Minnesota Avenue. (Ex. 8; BZA Public Hearing Transcript of January 9, 2019 [“Tr.”] at 29.)
9. The surrounding neighborhood is predominately developed with low and moderate density residential uses, including detached dwellings, apartment houses, and institutional uses.
10. The Property is located in an RA-1 zone. (Ex. 8.)

² Per Subtitle Y § 403.5, if the subject property is located on a street that serves as a boundary line between two ANCs, both ANCs are automatic parties.

11. The purpose of the RA-1 zone is to provide “for areas predominantly developed with low- to moderate-density development, including detached dwellings, rowhouses, and low-rise apartments.” (Subtitle F § 300.)

II. THE APPLICATION

12. The Applicant proposes to construct a three-story, four-unit apartment house with one two-bedroom unit on each floor and in the basement (the “**Building**”). (Ex. 8.)
13. The Application stated that the Building will meet all development standards of the RA-1 zone, as follows:
 - A height of 35.5 feet, below the 40-foot maximum permitted (Subtitle F § 303.1);
 - A floor area ratio (“**FAR**”) of 0.9, the maximum permitted (Subtitle F § 302.1);
 - A lot occupancy of 40%, the maximum permitted (Subtitle F § 304.1);
 - A 33.58-foot rear yard, greater than the 20-foot minimum required (Subtitle F § 305.1); and
 - Eight-foot side yards, the minimum permitted (Subtitle F § 306.1.)(Ex. 1, 8.)

REQUESTED ZONING RELIEF

14. The Application requested a special exception pursuant to Subtitle U § 421.1 to construct a new residential development, as required for all new residential developments, except detached and semi-detached dwellings, in the RA-1 zone. (Subtitle U § 421.1.)
15. The Application notes that an apartment house is a permitted use in the RA-1 zone, and the Building will comply with all development standards for the zone. As such, the Application asserted that the project will be in harmony with the general purpose and intent of the zoning regulations. (Ex. 8.)
16. The Application stated that the Building would not result in any adverse impacts to the light and air available to the immediately neighboring structure to the northeast, and the project would contribute to the neighborhood by developing a vacant lot. (Ex. 8.)
17. The Application asserted that the Property is supported by adequate educational facilities. (Ex. 8.)
18. The Application noted that even though not required by the Zoning Regulations, two off-street parking spaces will be provided on the Property to reduce impacts on street parking availability. (Ex. 8.)
19. The Application included a site plan, set of typical floor plans and elevations, and landscaping plan as required by Subtitle U § 421.4. (Ex. 42.)

Applicant's Public Hearing Testimony

20. At the January 9, 2019 public hearing, the Applicant testified that the Building complied with zoning requirements of the RA-1 zone including the requirements for setbacks, lot occupancy, and FAR. (Tr. at 16-17.)
21. The Applicant asserted that the Building would not have any adverse impact on the Zoning Regulations and would benefit the neighborhood by developing a vacant lot with new housing. The Applicant also noted that there were other apartment houses in the surrounding neighborhood and, as such, the Building would not be out of character with the surrounding development. (Tr. at 17-18.)
22. In response to the concerns about access to parking expressed by the Abutting Neighbor at the public hearing (Finding of Fact ["FF"] 32), the Applicant indicated they would coordinate with her and DDOT to ensure she retained access to her parking pad. (Tr. at 40.)

III. RESPONSES TO THE APPLICATION**OP REPORT AND TESTIMONY**

23. OP submitted a written report dated December 27, 2018 (Ex. 43, the "OP Report"), that analyzed the Application against the special exception standard, which it determined had been met, and recommended approval of the requested relief.
24. The OP Report concluded that:
 - The schools closest to the Property had adequate capacity to accommodate students at the proposed development;
 - The Property is well served by public streets and transportation including Metro and Metrobus;
 - The Property is also well served by public recreation facilities and services including the Deanwood Recreation and Aquatic Center and the Deanwood Neighborhood Library;
 - The Building complies with development requirements and is in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps; and
 - The Building would not adversely affect the use of neighboring property.
25. The OP Report noted that the Applicant had made significant improvements to the Building's design from the initial Application submission, including adding variation to the brick patterns and colors, adding windows, balconies and additional landscaping. As a result, OP did not recommend any additional treatment.
26. OP testified in support of the Application at the public hearing, noting that apartment houses are permitted in the RA-1 zone and that the requested special exception was intended to give the Board review over the proposed design of new residential development. OP also noted that this block has institutional uses as well as detached dwellings and that there are apartment buildings in the neighborhood. OP concluded that

the Building would therefore not be out of character with the neighborhood and therefore recommended approval of the requested special exception relief. (Tr. at 27-29.)

27. OP responded to the Abutting Neighbor's public hearing testimony (FF 32) by acknowledging that the Abutting Neighbor's access to her parking pad crosses the Applicant's property. However, OP noted that because DDOT required the Applicant to obtain approval for a new curb cut, which would be reviewed solely by DDOT, that the proposed new curb cut was beyond the scope of the Board's review of the Application. (Tr. at 38-39.)

DDOT REPORT

28. DDOT submitted a written report dated November 2, 2018 (Ex. 38, the "**DDOT Report**"), stating that DDOT had no objection to the Application because it concluded that "this proposed action will have no adverse impacts on the travel conditions of the District's transportation network."
29. The DDOT Report noted that any elements of the Building that entered public space would require public space approval. The DDOT Report also noted that even though there was an existing curb cut on the Property, the Applicant would need to apply for a "new" curb cut meeting DDOT's current curb cut requirements.

ANC REPORT AND TESTIMONY

30. ANC 7C submitted a November 8, 2018 written report (Ex. 45, the "**ANC Report**"), stating that at a duly noticed and scheduled public meeting on November 8, 2018, at which a quorum was present, the ANC voted to oppose the Application and stated the following issues and concerns:
 - The Building's proposed three-story apartment house was not consistent with the character of the surrounding neighborhood which consists of primarily two-story single-family homes; and
 - The ANC wishes to preserve the character of the neighborhood to allow for a historic designation in the future.
31. Although the ANC Report did not designate a representative to testify before the Board, ANC 7C Chairperson Antawan Holmes testified that the ANC and the Deanwood Citizens Association were not in favor of the Building given that the surrounding homes are single family residences and a four-unit apartment house would be out of character with the neighborhood. Chairperson Holmes noted that the ANC was concerned about higher density development in the "interior" of the Deanwood neighborhood which it believed should be preserved for predominantly single-family development. (Tr. at 20-26.)
32. ANC 7D did not submit a written report to the record.

OTHER RESPONSES

33. The Abutting Neighbor testified in opposition to the Application at the public hearing, noting that she believed that it did not conform with the surrounding neighborhood and citing specific concerns over the Building's impact on her privacy and access to parking on her lot. (Tr. at 33-35.) Both the Applicant and OP responded to this testimony as detailed above. (FF 22, 27.)

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the requested special exception, if granted:
 - a. will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,
 - b. will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and
 - c. complies with the special conditions specified in the Zoning Regulations.
2. For the relief requested by the Application, the "specific conditions" are those of Subtitle U § 421.
3. Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

SPECIAL EXCEPTION RELIEF – SPECIFIC CRITERIA - SUBTITLE U § 421

4. Per Subtitle U § 421, the Board may permit new residential developments, other than one-family detached and semi-detached dwellings, in the RA-1 zone by special exception pursuant to Subtitle U § 421.1 and the standard special exception requirements of Subtitle X § 901.2.
5. The Board concludes that the Application has met the criteria of Subtitle U § 421 and of Subtitle X § 901.2 for the following reasons:

Subtitle U § 421.1 - In the RA-1 and RA-6 zones, all new residential developments, except those comprising all one-family detached and semi-detached dwellings, shall be reviewed by the Board

of Zoning Adjustment as special exceptions under Subtitle X, in accordance with the standards and requirements in this section;

6. The Board concludes that the Application meets the special exception criteria of Subtitle X § 901.2 as more fully explained below.

Subtitle U § 421.2 - *The Board of Zoning Adjustment shall refer the application to the relevant District of Columbia agencies for comment and recommendation as to the adequacy of the following:*

- a. *Existing and planned area schools to accommodate the numbers of students that can be expected to reside in the project; and*
 - b. *Public streets, recreation, and other services to accommodate the residents that can be expected to reside in the project.*
7. The Board concludes that the Application was properly referred to relevant District of Columbia agencies for comment, as the Application was sent to DDOT, DPR, DME, and OP. (FF 3.)

Subtitle U § 421.3 - *The Board of Zoning Adjustment shall refer the application to the Office of Planning for comment and recommendation on the site plan, arrangement of buildings and structures, and provisions of light, air, parking, recreation, landscaping, and grading as they relate to the surrounding neighborhood, and the relationship of the proposed project to public plans and projects.*

8. The Board concludes that the Applicant was properly referred to OP for comment and recommendation. (FF 3, 23-27.)

Subtitle U § 421.4 - *In addition to other filing requirements, the developer shall submit to the Board of Zoning Adjustment with the application a site plan and set of typical floor plans and elevations, grading plan (existing and final), landscaping plan, and plans for all new rights-of-way and easements.*

9. The Board concludes that the Applicant submitted the required plans. (FF 19; Ex. 4, 6, 36, 42.)

SPECIAL EXCEPTION RELIEF – GENERAL CRITERIA – SUBTITLE X § 901.2

Subtitle X § 901.2(a) - *Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps;*

10. The Board concludes that the Application will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because:
 - The Building meets the intent of the RA-1 zone to permit low- to moderate-density housing that complies with the applicable development standards (FF 11, 13, 15, 20; Ex. 43);
 - The RA-1 zone allows apartment houses with four dwelling units within an otherwise low-density residential zone by special exception, which is evidence that the proposed use meets the intent of the Zoning Regulations (FF 11, 26);

- The Building would develop a vacant and unmaintained lot in this neighborhood and add more housing (FF 21); and
- This relief was supported by both OP and DDOT. (FF 23-29; Ex. 38, 43.)

Subtitle X § 901.2(b) - Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps;

11. The Board concludes that the Application will not tend to adversely affect the use of neighboring property because the Building complies with all development standards of the Zoning Regulations, which are intended to ensure adequate light and air to neighboring properties. (FF 13.) The Board is not persuaded by the Abutting Neighbor's privacy concerns because the Building complies with all required setbacks and height restrictions and so will not impair the light or air to neighboring properties more than any matter-of-right project. (FF 13, 15, 20; Ex. 43.) The Application will provide two off-street parking spaces even though the Building is not required to provide parking under the Zoning Regulations. (FF 18; Ex. 3.)
12. Regarding the Abutting Neighbor's concerns about access to her parking pad (FF 32), the Board notes that:
 - This parking is located on the Property owned by the Applicant;
 - The Abutting Neighbor had not demonstrated any legal entitlement to this parking;
 - Access to the Property via a curb cut is subject to review and approval by DDOT and is not within the purview of the Board or the Zoning Regulations (FF 27, 32); and
 - The Applicant stated its commitment to work with DDOT to preserve the Abutting Neighbor's parking access. (FF 33; Ex. 37.)

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

13. The Board is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
14. The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP's recommendation that the Application be approved, as discussed above. (Ex. 43; Tr. at 27.)

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

15. The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl)) and Subtitle Y § 406.2. 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.

BZA APPLICATION NO. 19860

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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).”

16. The Board is not persuaded by the ANC Report's concern that the Building was too tall because the Building complies with all matter-of-right development standards for the RA-1 zone. (FF 13, 15, 20.) The Board is similarly not persuaded by the ANC Report's concern that the Building would not fit in with the character of the neighborhood because the Board credited instead the conclusions of OP, which testified that the neighborhood included apartment buildings and institutional uses. (FF 26; Tr. at 29.) The Board notes that apartment houses are allowed in the RA-1 zone, which does not restrict residential uses to single family homes as the ANC Report asserts should be the predominant use of the neighborhood. Regarding the ANC Report's concern with maintaining the neighborhood's historic nature, the Board notes that the area has not yet been officially designated as an historic district, and the Application does not propose to alter any historic structures, merely to utilize a vacant piece of land. (FF 21; Ex. 45.)

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied its burden of proof with respect to its request for special exception relief under the new residential development requirements of Subtitle U § 421.1 and therefore orders that the Application for that relief be **GRANTED**, subject to the following **CONDITION**:

1. Development of the Property pursuant to this Order shall comply with the approved plans at Exhibit 42³ as required by Subtitle Y §§ 604.9 and 604.10.

VOTE (Jan. 9, 2019): 4-0-1 (Frederick L. Hill, Lesylleé M. White, Lorna L. John, and Robert E. Miller to **APPROVE**; Carlton E. Hart not participating.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

³ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 3). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. 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 such application that would require additional or different zoning relief from that is granted by this Order.

FINAL DATE OF ORDER: June 24, 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 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 SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 19860

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

Application No. 20111 of Trinity Episcopal Church, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 203.1(h), to permit the expansion of an existing child development center from 25 children with 6 staff members to 60 children with 16 staff members in the R-1-B zone at premises 7005 Piney Branch Road, N.W. (Square 3190, Lot 806).

HEARING DATE: December 11, 2019

DECISION DATE: December 11, 2019

DECISION AND ORDER

Trinity Episcopal Church (the “**Applicant**”) filed an application (the “**Application**”) with the Board of Zoning Adjustment (the “**Board**”) on June 26, 2019, requesting the following relief from the requirements of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “**Zoning Regulations**”, to which all references are made unless otherwise specified):

- Special exception under Subtitle U § 203.1(h)¹ to permit the expansion of an existing child development center from 25 children with 6 staff members to 60 children with 16 staff members,

for Lot 806 in Square 3190, with an address of 7005 Piney Branch Road, N.W. (the “**Property**”) and located in the R-1-B Zone. 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 originally scheduled September 18, 2019 hearing on July 19, 2019 letter to
 - the Applicant;
 - Advisory Neighborhood Commission (“**ANC**”) 4B, the “affected” ANC per Subtitle Y § 101.8;
 - the Single Member District (“**SMD**”) Commissioner for ANC 4B01 and the Office of ANCs;

¹ The Application originally requested relief from Subtitle U § 203.1(g), which at the time was the correct citation to request this relief. The Zoning Regulations were subsequently amended and renumbered so that the relief requested in the Application is now Subtitle U § 203.1(h).

- the Office of Planning (“OP”);
 - the District Department of Transportation (“DDOT”);
 - the National Park Service (“NPS”);
 - the Councilmember for Ward 4;
 - the Chairman of the Council;
 - the At-Large Councilmembers; and
 - the owners of all property within 200 feet of the Property. (Exhibit [“Ex.”] 18-30.)
2. OZ also published notice of the September 18, 2019,² public hearing in the *D.C. Register* on July 19, 2019 (66 DCR 84708) as well as through the calendar on OZ’s website.

PARTY STATUS

3. In addition to the Applicant, ANC 4B was automatically a party in this proceeding pursuant to Subtitle Y § 403.5.
4. At the December 11, 2019 public hearing, the Board granted party status in opposition to Manisha Modi, Anna Burger, and Sara Green (the “**Party Opponents**”). The Board requested that the opposition parties combine their testimony and questions at the hearing to the extent possible.

THE PROPERTY

5. The Property is improved with a building (the “**Building**”) housing Trinity Episcopal Church. (Ex. 8.)
6. Mi Palacio Child Development Center, L.L.C. (“**Mi Palacio**”) is a child development center that operates within the Building. Mi Palacio has been operating at the Property under Certificate of Occupancy No. 103105 issued October 3, 2011, which permits a child development center with a maximum of twenty-five (25) children and six (6) staff. (Ex. 8.)
7. The Property contains a small on-site play area. (December 11, 2019, Public Hearing Transcript [“**Dec. 11 Tr.**”] at 315.)
8. Abutting the Property to the east at 502 Dahlia Street, N.W. is a detached dwelling owned by the Applicant. (Ex. 8.)
9. The parking lot for the Property is located behind 502 Dahlia Street, N.W. The entry driveway is via the driveway between the Property and 502 Dahlia Street, N.W., and the exit driveway is via a driveway shared by 500 Dahlia Street, N.W. (Ex. 77A, 84.)

² The Board postponed the hearing to October 23, then to November 6, at the Applicant’s request, and to December 11, 2019 at the ANC’s request.

10. North of the Property is 505 Dahlia Street, N.W., which is improved with a detached dwelling owned and occupied by the proprietor of Mi Palacio (the “Director”). (Ex. 85.)
11. To the south of the Property are other detached residential structures. (Ex. 8.)
12. The area is characterized by a mix of residential and institutional uses. (Ex. 8.)
13. The Property is located in the R-1-B zone and located in the Takoma Park Historic District. (Ex. 8.)
14. The purposes of the R-1-B zone are to protect quiet residential areas now developed with detached dwellings and adjoining vacant areas likely to be developed for those purposes; and stabilize the residential areas and promote a suitable environment for family life. (Subtitle D § 300.1.)
15. Daytime care uses are permitted in the R-1-B zone by special exception pursuant to Subtitle U § 203.1(h).

THE APPLICATION

Zoning Relief Requested

16. The Application requests a special exception under Subtitle U § 203.1(h) to allow the expansion of the existing child development center from the current 25 children with 6 staff members to 60 children³ with 16 staff members. (Ex. 84.)

Applicant’s Justification for Relief

17. The Application included a “drop-off and pick-up plan” with the following provisions:
 - a. A parking restriction for 60 feet, or approximately three (3) parking spaces, on the south side of Dahlia Street, N.W., starting on the corner of Piney Branch Road, N.W. The parking restriction is from 7 a.m. to 6 p.m., Monday through Friday, during which time the requested parking spaces would be restricted for use only for pick-up/drop-off for the Mi Palacio Child Development Center. The parking spaces would be available to the community after hours, and on weekends. The requested signage should read “Pick-Up and Drop-Off Only. No Parking. 7am-6pm. Monday-Friday.” (Ex. 65.)
 - b. A prohibition of use by Mi Palacio of the church parking lot located behind 502 Dahlia Street, N.W., and the shared driveway with 500 Dahlia Street, N.W. (Ex. 84, Tr. at 314.)
 - c. Guidelines and procedures for drop-off and pick-up that would prohibit U-turns and require that vehicles approach the parking zone from the west in order to eliminate the need for those vehicles to turn around. (Tr. at 365.)

³ The Applicant originally requested approval for 62 children. (Ex. 8)

18. The Applicant submitted diagrams, and overhead and street view images, showing the proposed pick-up and drop-off zone and its relationship to the church and other nearby buildings and roads, as well as the proposed signage for the zone. (Ex. 67.)
19. The Applicant did not propose an off-site play area. (Ex. 8.)

Applicant's Public Hearing Testimony

20. At the public hearing of December 11, 2019, the Applicant testified that it was seeking to expand the number of families it served because of the tremendous need for childcare in the District. (Dec. 11 Tr. at 320, 322-324.)
21. The Applicant testified that
 - approximately 80% of the enrolled children came from families who lived within the neighborhood,
 - a large number of children are walked to the facility on most days, and
 - the majority of the children on its waitlist were residents of the neighborhood.(Dec. 11 Tr. at 315, 325.)
22. The Applicant further testified that the expected drop-off times are from 7-9 a.m. and pick-up from 4-6 p.m. The Applicant stated that it is not proposing to use church or residential driveways for pick-up and drop-off, but instead the Applicant proposed a plan reserving three parking spaces directly in front of the entrance on Dahlia Street, N.W., for dedicated pick-up and drop-off, and stated that DDOT supported its plan. (Ex. 84, Dec. 11 Tr. at 314.)
23. The Applicant testified that it agreed to prohibit use of the church driveway and parking lot by Mi Palacio families. (Ex. 84, Dec. 11 Tr. at 314.)
24. The Applicant acknowledged the Party Opponents, stated that it had been “working with neighbors,” and acknowledged that the Party Opponents had “cited concerns about traffic, parking, and use of a shared driveway.” The Applicant further stated that it was willing to agree to guidelines and procedures for drop off and pick-up that would prohibit U-turns and require that vehicles approach the parking zone from the west in order to eliminate the need for those vehicles to turn around. (Dec. 11 Tr. at 365-66.)
25. The Applicant testified that there is a small outdoor play area on the Property (Dec. 11 Tr. at 315) and that there is additional space that could be used for additional outdoor play areas on the Property. (Dec. 11 Tr. at 354-55.)
26. The Applicant testified that it is not proposing an offsite play area. (Dec. 11 Tr. at 315.) The Applicant conceded that Mi Palacio had used 505 Dahlia Street, N.W., as an outdoor play area in the past but stated that it was no longer doing so and would not do so in the future. (Dec. 11 Tr. at 355-56.)

27. The Applicant testified that there is not another child/elderly development center or adult day treatment facility within 1,000 ft. of the Property. (Dec. 11 Tr. at 315.)
28. The Applicant testified that a five-year term on the approval was too short because it would create uncertainty for employees concerned about their employment ending at the end of the term, and uncertainty for parents and prospective parents who might have to look for alternative childcare arrangements at the end of the term. (Dec. 11 Tr. at 316-17.)
29. The Applicant testified that it was willing to accept a ten-year term on the use approval. (Dec. 11 Tr. at 318.)

III. RESPONSES TO THE APPLICATION

OP REPORT AND TESTIMONY

30. OP submitted an October 25, 2019, report (Ex. 70, the “**OP Report**”) that analyzed the Application against the special exception standards, which it determined had been met, and recommended approval of the requested relief, subject to the following recommended conditions:
 - The maximum number of children shall be 62. The final number of children allowed will be determined by OSSE at the time of permitting and licensing;
 - The maximum number of staff persons shall be 16;
 - Hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday; and
 - Any additional recommendations from the District Department of Transportation.
31. At the public hearing, OP testified in support of the Application. OP noted that while it was in support of the Application’s requested increase of enrollment to 60 students, the final approved number would be determined by OSSE as part of its licensing process. OP also clarified that DDOT had not requested that a comprehensive transportation review (“**CTR**”) be performed because DDOT had determined that the increase of 35 students, the majority of whom were expected to walk to the property, was not significant enough an increase to trigger the CTR requirement. (Dec. 11 Tr. at 369-370.)

DDOT REPORT

32. DDOT submitted an October 23, 2019, report (Ex. 68, the “**DDOT Report**”) stating that DDOT had no objection to the Application, having determined that the Application would not result in any “adverse impacts on the travel conditions of the District’s transportation network.”
33. The DDOT Report noted that the Application would cause the following minor potential impacts: “[B]ased on the mode split provided by the Applicant, the proposed project may lead to a minor increase in vehicular, transit, pedestrian, and bicycle trips. In addition, the project has the potential to generate minor impacts to on-street parking conditions in the area. Vehicle parking demand may increase slightly as a result of the project, inducing a higher level of parking utilization in the immediate area.”

34. The DDOT Report also stated that the Applicant had submitted its pick-up and drop-off plan to DDOT's Parking and Ground Transportation Division and that DDOT supported the plan, subject to the following condition:
- The Applicant be required to implement its proposed pick-up and drop-off plan with the appropriate curbside signage, including the designation of three parking spaces (60 feet of curbside space) on the 500 block of Dahlia Street, N.W. between 7:00 a.m. and 6:00 p.m., Monday-Friday.
35. The DDOT Report also noted that the Applicant would need to obtain public space approval for any pick-up/drop-off area signage.

ANC REPORT

36. ANC 4B submitted a written resolution adopted on November 25, 2019, (Ex. 77A, the "ANC Report"), stating that at a duly noticed and scheduled public meeting on September 12, 2019, at which a quorum was present the ANC voted to adopt the following position: "ANC 4B supports the continued operation of Mi Palacio Child Development Center at its current address and limited expansion, but believes that there must be impact mitigation contained within the zoning order."
37. The ANC Report indicated that the ANC believed that the Board should impose the following conditions to mitigate potential impacts:
- A prohibition of the use of 505 Dahlia Street Northwest as an adjunct facility for the child development center, including parking, off-site play area or additional care facility under the same ownership.
 - A prohibition on the daycare and its patrons using the parking lot behind 502 Dahlia Street, Northwest and the shared driveway with 500 Dahlia Street, Northwest.
 - A reserved pick-up drop-off area on Dahlia Street, Northwest at the daycare entrance of no less than 60 feet as supported in letters by both the District Department of Transportation and the 4B01 Commissioner.
 - A cap on the total number of children enrolled at fifty (50) children.
 - A five-year sunset provision to ensure that these mitigation measures are implemented faithfully.
38. The ANC Report noted several items that it considered to be errors in the OP Report:
- "[T]he [OP] staff report notes that there are no off-site facilities, when the child development center uses the residential home at 505 Dahlia Street, Northwest as an off-site play area and as off-site staff parking."
 - "On Page 4 [of the OP Report] with regards to impact to neighbors, while the statements with regards to the location of the facility are true, it fails to note that the Trinity Episcopal Church parking facility is located behind a church-owned residence at 502 Dahlia Street, Northwest and the exit driveway is a shared driveway with the privately-owned 500 Dahlia Street, Northwest. An increase in usage of the Trinity Episcopal Church parking lot will cause a substantial burden on the residents of 500 Dahlia Street Northwest."

PARTY OPPONENTS

39. Ms. Green resides at 7106 Piney Branch Road, N.W. and owns a vacant lot adjacent to 505 Dahlia Street, N.W. (Ex. 81.) Her written submission stated that while she supported additional daycare in the neighborhood, she was opposed to the Application to ensure that the ANC's proposed conditions were included in the Board's approval of the Application. She further stated she was concerned about the possibility that 505 Dahlia Street, N.W., would be used as an adjunct facility for Mi Palacio because Mi Palacio had used it as such in the past. Ms. Green stated that in her discussions with the Applicant, the Applicant had discussed using 505 Dahlia Street as an off-site play area and for additional staff parking. Ms. Green was also concerned about potential adverse parking and traffic impacts of expanding the facility. (Ex. 81.)
40. Ms. Burger resides at 500 Dahlia Street, N.W. Her written submission stated that she was opposed to the Application to ensure that the ANC's proposed conditions were included in this Order and stated concerns similar to those listed in Ms. Green's submission. Her submission stressed the importance of a prohibition on the use of the church parking lot which shares a driveway with her residence. (Ex. 83.)
41. Ms. Modi resides at 7100 Blair Road, N.W., the back of which is adjacent to 505 Dahlia Street, N.W. Her written submission stated that she supported expansion of the center if limited to 50 children and if conditioned on all the recommendations of the ANC, a prohibition of the use of 505 Dahlia Street as a childcare center, and a detailed traffic and parking management plan. (Ex. 85.)

PERSONS IN SUPPORT

42. The Board received over twenty letters from persons in support of the Application. Most of the letters indicated that they lived within a mile of the site, had children who attended Mi Palacio, and walked their children to the site. (Ex 41 – 63, 74 -76.) One of the letters stated that “[i]n my experience (and based on the crowded stroller closet), most Mi Palacio families are commuting on foot to the daycare.” (Ex. 63.)

PERSONS IN OPPOSITION

43. The Board received no letters or testimony from persons in opposition to the Application other than from the individuals who were granted party status.

CONCLUSIONS OF LAW

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
- will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
 - will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*

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- c. *complies with the special conditions specified in the Zoning Regulations.*
2. For the relief requested by the Application, the “specific conditions” are those of Subtitle U § 203.1(h).
 3. Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board’s discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and “if the applicant meets its burden, the Board ordinarily must grant the application.” *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

SPECIAL EXCEPTION

Specific Special Exception Criteria - Subtitle U § 203.1(h)

4. The Board concludes that the Application has met the specific criteria required by Subtitle U § 203.1(h) for a special exception for a child development center as discussed below.

U § 203.1(h)(1) - The facility shall be located and designed to create no objectionable traffic condition and no unsafe condition for picking up and dropping off persons in attendance.

5. The Board concludes that the Application met this requirement because:
 - A large number of the families live in the neighborhood and pick up and drop off their children by foot, thereby mitigating the potential traffic and parking demand generated by the center. (FF 20.)
 - The Applicant submitted and agreed to abide by a pick-up and drop-off plan (FF 21-23, 32-33) and the Board is convinced it is adequate to prevent objectionable traffic conditions and/or unsafe conditions for picking up and dropping off children. The Board has incorporated the terms of the plan as conditions of this Order.
 - The Applicant’s plan includes the designation of a restricted pick-up and drop-off area on Dahlia Street, N.W., directly adjacent to Mi Palacio’s entrance during the key times for pick up and drop off. DDOT indicated that they will approve this restricted area. (FF 21-23, 32-33.)
 - The Applicant’s plan also includes a restriction on use of the church parking lot. (FF 21-23, 33-34.) This addresses a key concern of the opponents, who testified that use of the parking lot would result in an objectionable condition to property located at 500 Dahlia Street, N.W., which has a driveway that is shared with the exit driveway of the church parking lot.

Subtitle U § 203.1(h)(2) - Any off-site play area shall be located so as not to endanger individuals traveling between the play area and the center or facility.

6. The Board concludes that the Applicant meets this criterion because it will not have an off-site play area. (FF 24-25.)

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7. The Board is not persuaded by the Party Opponents' assertion that the Application failed to meet this criterion due to the Director's past use of her residence located at 505 Dahlia Street, N.W., as the Director testified she had done in the past. The Board instead finds credible the Director's assertion, through counsel, that she stopped doing so when she learned that this was not permitted by the applicable regulations, and that she would not do so in the future. (FF 25.)

Subtitle U § 203.1(h)(3) - The Board of Zoning Adjustment may require special treatment in the way of design, screening of buildings, planting and parking areas, signs, or other requirements as it deems necessary to protect adjacent and nearby properties.

8. The Board has included several such conditions in this Order.

Subtitle U § 203.1(h)(4) - More than one (1) child/elderly development center or adult day treatment facility in a square or within one thousand feet (1,000 ft.) of another child/elderly development center or adult day treatment facility may be approved only when the Board of Zoning Adjustment finds that the cumulative effect of these facilities will not have an adverse impact on the neighborhood due to traffic, noise, operations, or other similar factors.

9. The Board concludes that the Applicant meets this criterion because it has demonstrated there are no other such facilities within 1,000 feet. (FF 26; Ex. 8.)

General Special Exception Relief – Subtitle X § 901

10. The Board concludes that the Application, in addition to meeting the specific conditions of Subtitle U § 203.1(h), also meets the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties as follows:

- a. The Board concludes that granting the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because the Building meets the intent of the R-1-B zone to protect quiet residential areas by providing a compatible service use that will help stabilize the residential areas and promote a suitable environment for family life. (FF 13-14, 19.) The Board notes that the Application has satisfied the specific special exception criteria for the relief as discussed above and that this relief was supported by OP and DDOT.
- b. The Board concludes that granting the requested special exception will not tend to adversely affect the use of neighboring properties. In reaching this conclusion, the Board credits the OP and DDOT Reports that did not find any additional adverse impacts resulting from the expanded childcare center. (FF 29-32.) In particular, the Board credits the DDOT Report's conclusion that the proposed relief would not have an adverse impact on the District's transportation network. (FF 31.) The Board concludes the conditions in this Order requiring the Applicant to:
 - Limit the number of children and staff,
 - Limit the hours of operation,

- Abide by the terms of the pick-up and drop-off plan, including the designated loading zone, prohibition on the use of the church parking lot, and other requirements, and
 - Limit the proposed use to a seven-year term of approval,
- are adequate to prevent potential adverse impacts on nearby residents, including the Party Opponents.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

11. The Board is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405.8. *Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).
12. The Board concludes that the OP Report, which provided an in-depth analysis of how the Application met each of the requirements for the requested special exception relief, is persuasive and concurs with OP’s recommendation that the Application be approved with conditions. The Board also found the recommended OP conditions to be appropriate, and has incorporated them into this order.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

13. The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2. 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 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).
14. The ANC Report indicated that the ANC believed this Order should contain the following conditions:
 - *A prohibition of the use of 505 Dahlia Street Northwest as an adjunct facility for the child development center, including parking, off-site play area or additional care facility under the same ownership.*The Board does not find this advice persuasive. The use of the 505 Dahlia Street as a home occupation childcare center for a small number of children is permitted as a matter-of-right use. Given the need for childcare in the District, the Board does not want to limit the ability of Mi Palacio or others who may purchase or reside at 505 Dahlia Street, N.W. to provide otherwise permissible childcare facilities. The Board acknowledges that the Director had used her residence as an adjunct facility in the past, and presumably such use was not permissible under the Zoning Regulations. However, the Board found her testimony credible that she did so before she was

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- aware that this was not permitted by the Zoning Regulations, that she stopped doing so when she learned that it was not permitted, and that she does not intend to do so in the future.
- *A prohibition on the daycare and its patrons using the parking lot behind 502 Dahlia Street, Northwest and the shared driveway with 500 Dahlia Street, Northwest.*
The Board finds this advice persuasive and has included such a condition in this Order.
 - *A reserved pick-up drop-off area on Dahlia Street, Northwest at the daycare entrance of no less than 60 feet as supported in letter by both the District Department of Transportation and the 4B01 Commissioner.*
The Board finds this advice persuasive and has included such a condition in this Order.
 - *A cap on the total number of children enrolled at fifty (50) children.*
The Board finds the advice to have a student cap persuasive, but believes the appropriate cap number should be 60 students. The Board was persuaded by the Applicant's testimony that the facility is large enough to serve 60 students, and to meet the applicable regulatory requirements of OSSE licensing for that number. The Board finds that the other conditions of this Order are adequate to ensure there are no adverse effects if the facility is expanded to 60 students. Given this, and the need for quality childcare in the District, the Board does not want to restrict the number of seats that are available below 60.
 - *A five-year sunset provision to ensure that these mitigation measures are implemented faithfully.*
The Board finds the advice to have a term limit of the approval persuasive, but believes the appropriate term should be seven years. The Board was persuaded by the Applicant's testimony that a shorter term would create uncertainty for employees about their continued employment, and for prospective parents that they may need to look for alternative childcare arrangements. The Board believes that a ten-year term is too long to adequately ensure that the expanded facility is not adversely affecting neighboring properties.
15. The ANC Report also stated several items that it considered to be errors in the OP Report, and which the Board considered to be issues and concerns of the ANC:
- *"the staff report notes that there are no off-site facilities, when the child development center uses the residential home at 505 Dahlia Street, Northwest as an off-site play area and as off-site staff parking."*
The Board credits the testimony of the Director that she had been using her residence at 505 Dahlia Street as a play space, but that she stopped doing so when she realized that it was not permitted by the Zoning Regulations and has no intention to do so in the future. The Board therefore concludes that, while there is some truth to the issue

raised by the ANC, the issue has been addressed and the OP Report was largely accurate.

- *“On Page 4 with regards to impact to neighbors, while the statements with regards to the location of the facility are true, it fails to note that the Trinity Episcopal Church parking facility is located behind a church-owned residence at 502 Dahlia Street, Northwest and the exit driveway is a shared driveway with the privately-owned 500 Dahlia Street, Northwest. An increase in usage of the Trinity Episcopal Church parking lot will cause a substantial burden on the residents of 500 Dahlia Street Northwest.”*

The Board believes that the conditions of this Order, most notably the prohibition on Mi Palacio’s use of the church parking lot and the shared driveway, will adequately mitigate the potential adverse effect.

DECISION

Based on the case record, the testimony at the hearing, and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has satisfied its burden of proof with respect to its request for:

- Special exception under Subtitle U, § 203.1(h), to permit the expansion of an existing child development center from 25 children with 6 staff members to 60 children with 16 staff members,

and therefore orders the Application for that relief be **GRANTED**, subject to the following **CONDITIONS**:

1. Development of the Property pursuant to this Order shall comply with the approved plans at Exhibit 6⁴ as required by Subtitle Y §§ 604.9 and 604.10.
2. The maximum number of children shall be 60. The final number of children allowed shall be determined by OSSE at the time of permitting and licensing.
3. The maximum number of staff persons shall be 16.
4. Hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday.
5. The Applicant shall implement its proposed pick-up and drop-off plan with appropriate curbside signage. It is comprised of:

⁴ Self-Certification. The zoning relief requested in this case was self-certified, pursuant to Subtitle Y § 300.6 (Exhibit 4). In granting the requested self-certified relief subject to the plans submitted with the Application, the Board makes no finding that the requested relief is either necessary or sufficient to authorize the proposed construction project described in the Application and depicted on the approved plans. 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 such application that would require additional or different zoning relief from that is granted by this Order.

- a. A parking restriction for 60 feet, or approximately three (3) parking spaces, on the south side of Dahlia Street, N.W. starting on the corner of Piney Branch Road, N.W. The parking restriction is from 7 a.m. to 6 p.m., Monday through Friday, and with parking returning to the community after hours, and on weekends. The requested parking spaces would be restricted for use only for pick-up/drop-off for Mi Palacio Child Development Center. The requested signage should read "Pick-Up and Drop-Off Only. No Parking. 7am-6pm. Monday-Friday."
 - b. A prohibition of use by Mi Palacio of the church parking lot located behind 502 Dahlia Street, and the shared driveway with 500 Dahlia Street, N.W.
 - c. Guidelines and procedures for drop off and pick-up that prohibit U-turns and require that vehicles approach the parking zone from the west in order to eliminate the need for those vehicles to turn around.
6. The Applicant and party status individuals shall discuss language and content for brochures and information to share with daycare parents regarding parking and pick-up/drop-off.
 7. The Applicant shall check in annually with the ANC regarding compliance with BZA conditions.
 8. This Order shall expire after a term of seven (7) years from the effective date of this Order.

VOTE (Dec. 11, 2019): 4-0-1 (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Anthony J. Hood to **APPROVE**; one 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 19, 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 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

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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.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**Z.C. ORDER NO. 12-14C****Z.C. Case No. 12-14C****3rd and M LLC, 3rd and K, LLC, and Park Inn Associates, LP
(Modification of Consequence for PUD @ Square 542, Lots 817, 821,
816, 883, 2124-2251 [300 K Street, S.W.]****January 13, 2020**

At its properly noticed public meetings held on December 9, 2019 and January 13, 2020, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of 3rd and M, LLC, 3rd and K, LLC, and Park Inn Associates, L.P., (together, the “Applicant”) for a modification of consequence to the conditions and approved plans of the second building of the consolidated planned unit development (“PUD”) originally approved by Z.C. Order No. 12-14/12-14A¹ (the “Original Order”), for Lots 817, 821, 816, 883, and 2124-2251 in Square 542, with a street address of 300 K Street, S.W. (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”] to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT**Background**

1. Pursuant to the Original Order, the Commission granted the Applicant consolidated approval for the Property (the “Approved PUD”) and a related Zoning Map amendment to construct two new multifamily apartment buildings:
 - The South Building with 11 stories, 187 residential units, and 111 underground parking spaces; and
 - The North Building, with 11 stories, 175 units, and 174 underground parking spaces.
2. The South Building has been completed in accordance with the Original Order and received a certificate of occupancy on April 27, 2018.
3. Pursuant to Z.C. Order No. 12-14B, the Commission granted a two-year time extension of the deadline established in the Original Order to file a building permit for the North Building (within two years of the issuance of the first certificate of occupancy for the first building constructed under the Approved PUD) to April 27, 2022, with construction to start by April 27, 2024.

Parties

4. The parties to Z.C Case No. 12-14/12-14A, other than the Applicant, were Advisory Neighborhood Commission (“ANC”) 6D, the “affected” ANC pursuant to Subtitle Z

¹ Z.C. Case No. 12-14 applied to the North Building and Z.C. Case No. 12-14A to the South Building. The Commission heard the two cases together with a single shared record and order.

§ 101.8; the Carrollsburg A. Condominiums (“CAC”); and the Waterfront Towers Condominium Association (“WTCA”).

The Application

5. On October 3, 2019, the Applicant filed the Application requesting a modification of consequence to authorize modifications to the plans and conditions approved by Z.C. Order No. 12-14/12-1A to change:
 - The number of residential units; and
 - The number of parking spaces to reduce the approved 174 underground spaces to a range of 86-111 underground spaces. (Exhibit [“Ex.”] 2.)
6. The Applicant subsequently withdrew the request to modify the number of residential units. (Ex. 7)
7. The Applicant provided evidence that it served the Application on ANC 6D, the Office of Planning (“OP”), the CAC board, and WTCA’s attorney, by October 4, 2019, as attested by the certificate of service submitted with the Application. (Ex. 3.)
8. The proposed range of parking spaces, from 86 to 111, exceeds the 64 required by the Zoning Regulations.
9. The Applicant stated that only 55 of the 111 parking spaces built at the South Building were leased when the South Building’s occupancy stabilized in July 2019.
10. The requested modification of consequence would allow the Applicant to provide a range of parking spaces in the North Building more commensurate with the demand for parking spaces experienced in the South Building.
11. The Applicant asserts that the proposed change will not have an adverse impact on traffic and parking in the neighborhood because:
 - Condition No. B.3 to the Original Order stipulates that each residential lease shall include a provision prohibiting the tenant from applying for off-site parking; and
 - It is unlikely that there would be demand for the parking spaces proposed to be removed.
12. OP submitted a report on December 4, 2019 (the “OP Report”²), stating no objection to the Application being considered as a modification of consequence and recommending approval of the Application because: (Ex. 6.)
 - The proposed range of parking spaces still exceeds the requirement in the Zoning Regulations; and
 - The proposed modification should not have a significant negative impact on the surrounding area due to the location near the Waterfront Metro station, the presence of

² OP had filed an initial report that did not review the Application because it required clarification about the Applicant’s plans to modify the number of residential units, which was withdrawn. (Ex. 5.)

other non-automotive transportation options in the area, and the limited demand for parking observed at the South building.

13. ANC 6D submitted a written report (the “ANC Report”) stating that at its duly noticed public meeting of December 9, 2019, at which a quorum was present, the ANC voted to support the Application despite its general disfavor for reduced parking because it recognized that District residents are moving away from cars to alternative transportation methods. (Ex. 9.) The ANC Report requested that the Applicant make any vacant spaces available to rent to the general public and conditioned the ANC’s support for the Application on the Applicant’s execution of a memorandum of agreement (“MOA”) with WTCA.
14. WTCA submitted a MOA signed with the Applicant that includes:
 - A “New Landscape Plan” for the courtyard shared with the Applicant’s two new residential buildings and WTCA;
 - An agreement by the Applicant to pay half the fees to maintain the courtyard during the two-year time extension;
 - The extension of a “Construction Committee” composed of the Applicant and WTCA representatives; and
 - The Applicant’s proposal to offer Waterfront Towers residents the monthly contracts to park under the North and South Buildings. (Ex. 8.)

CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make modifications of consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a modification of consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of modifications of consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 6D, CAC, and WTCA.
5. The Commission concludes that the Application qualifies as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the conditions and architectural elements approved by the Original Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission concludes that because ANC 6D and WTCA each filed a response to the Application, the requirement of Subtitle Z § 703.17(c)(2) to provide a timeframe for

responses by all parties to the original proceeding had been met, and therefore the Commission could consider the merits of the Application at its January 13, 2020 public meeting.

7. The Commission finds that the Application is consistent with the Approved PUD as authorized by the Original Order, because the Application will not substantially affect the Approved PUD based on the demonstrated lower demand for parking following the delivery of the South Building.

“Great Weight” to the Recommendations of OP

8. The Commission is required to give “great weight” to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Y § 405. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

“Great Weight” to the Written Report of the ANC

10. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
11. The Commission finds the ANC Report’s support for the Application persuasive and concurs in that judgment.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application’s request for a modification of consequence to modify Z.C. Order No. 12-14/12-14A, as extended by Z.C. Order No. 12-14B, to reduce the parking requirements for the North Building to a range of 86-111 parking spaces by revising Condition No. A.1 to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text), with all other conditions of Z.C. Order No. 12-14/12-14A unchanged and in effect:

- A.1 The PUD project shall be developed in accordance with the plans and materials submitted by the Applicant marked as Exhibits 41, 50, 59B, 63A, and 63B ~~of the record in Z.C. Case No. 12-14/12-14A~~, as modified by the plans dated September 17, 2019 (Exhibit 2B in Z.C. Case No. 12-14C) only to the extent of reducing the parking spaces for the North Building to a range of 86-111 (pp 2, 4-5, and 11), and as further modified by the guidelines, conditions, and standards of this Order.

VOTE (January 13, 2020): 5-0-0 (Anthony J. Hood, Michael G. Turnbull, Peter G. May, Robert E. Miller, and Peter A. Shapiro, to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *DC Register*; that is, on July 3, 2020.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-10
Z.C. Case No. 19-10
Valor Development, LLC
(Consolidated PUD @ Square 1499, Lots 802, 803, 806, and 807)
December 9, 2019

Pursuant to notice, at its public hearings on October 7 and 10, 2019, the Zoning Commission for the District of Columbia (the “Commission”) considered a request from Valor Development, LLC (the “Applicant”) for a consolidated planned unit development (“PUD”) to construct a new mixed-use development (the “Application”) on Lots 802, 803, 806, and 807 in Square 1499 (the “PUD Site”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016, the “Zoning Regulations,” to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

NOTICE

1. On May 14, 2019, pursuant to Subtitle Z §§ 400.3 and 400.7, the Office of Zoning (“OZ”) sent a Notice of Filing of the Application to:
 - Advisory Neighborhood Commissions (“ANC”) 3D and 3E, the “affected ANCs” pursuant to Subtitle Z § 101.8;
 - The Office of Planning (“OP”);
 - The District Department of Transportation (“DDOT”); and
 - Ward 3 Councilmember Cheh, the at-large Councilmembers, and the Council Chair. (Exhibits [“Ex.”] 6, 9.)

OZ also published the Notice of Filing in the *D.C. Register*. (Ex. 8.)
2. On July 30, 2019, OZ sent notice of the rescheduled public hearing¹ to:
 - The ANCs 3D and 3E;
 - The ANC Single Member District (“SMD”) 3E02;
 - OP;
 - DDOT;
 - Department of Energy and the Environment (“DOEE”);
 - the District of Columbia Housing Authority (“DCHA”) relocation committee;
 - Council of the District of Columbia (the “DC Council”); and

¹ The hearing was originally scheduled for September 19, 2019, with the public hearing notice sent June 25, 2019 and published in the *D.C. Register* on June 28, 2019. (Ex. 14-16.) The hearing was subsequently rescheduled for October 7 and 10, 2019. (Ex. 20.)

- Property owners within 200 feet of the PUD Site. (Ex. 20-23.)

OZ also published notice of the public hearing rescheduled to October 7, 2019, in the *D.C. Register* on August 9, 2019 (66 DCR 10206), as well as through the calendar on OZ's website. (Ex. 21.)

3. On August 19, 2019, the Applicant filed an affidavit of posting the PUD Site with the Notice of Rescheduled Public Hearing and on October 1, 2019, the Applicant filed an affidavit of maintenance of the posted notice. (Ex. 24, 150.)

PARTIES

4. In addition to the Applicant, ANCs 3D and 3E were automatically parties to the case pursuant to Subtitle Z § 403.5.
5. The Commission received a total of four requests for party status, which the Commission granted:
 - Citizens for Responsible Development (“CRD”), as a party in opposition;
 - Spring Valley-Wesley Heights Citizens Association – Neighbors for a Livable Community (“SVWHCA-NLC”), as a party in opposition (collectively with CRD, the “Party Opponents”);
 - Ward 3 Vision (“W3V”), as a party in support; and
 - Spring Valley Neighborhood Association (“SVNA”) as a party in support (collectively with W3V, the “Party Supporters”).(Ex. 17, 31, 33, 34.)

THE PUD SITE

6. The PUD Site is located in the AU Park/Spring Valley neighborhood of Upper Northwest, Washington, D.C. The PUD Site is generally bounded by Yuma Street, N.W. on the north; Massachusetts Avenue, N.W. on the south; 48th Street, N.W. on the east; and the Spring Valley Exxon station on the west.
7. The PUD Site consists of approximately 160,788 square feet of land area, not including the area of a public alley, on the following lots:
 - Record Lot 9, comprised of:
 - The “Valor Lot” – Assessment and Taxation (“A&T”) Lot 807, improved with a building housing retail uses, including a vacant grocery store, with below-grade and surface parking, which the Application proposes to demolish and replace with a new mixed-used development; and
 - The “AU Building Lot” – A&T Lot 806, improved with the former American University Law School building (the “AU Building”), with a building height of

approximately 60 feet and contains approximately 179,302 square feet of GFA of commercial and education: college/university uses;² and

- The “MAPS Site” – Record Lot 1, comprised of A&T Lots 802 and 803, improved with the historic Massachusetts Avenue Parking Shops (“MAPS”), which consists of approximately 16,922 square feet of gross floor area (“GFA”) of retail and service uses.
8. The MAPS Site is separated from Record Lot 9 by a 20-foot public alley that runs north-south through Square 1499 connecting Yuma Street to Massachusetts Avenue, N.W.
 9. The existing alley is in poor condition and is scattered with several trash dumpsters and receptacles, most of which are located within the public alley right-of-way, unscreened HVAC equipment, and other utilities/equipment associated with the MAPS.
 10. The PUD Site is bordered by two-story single-family residential dwellings to the north and east, and one- to five-story commercial, institutional, and retail buildings located to the south and west along Massachusetts Avenue, including MAPS and the AU Building, that collectively form a neighborhood-serving commercial center. The surrounding context, except for the AU Building, is generally characterized by Colonial Revival style architecture.
 11. The PUD Site is located in the MU-4 zone, which is intended to:
 - *Permit moderate-density mixed-use development;*
 - *Provide facilities for shopping and business needs, housing, and mixed uses; and*
 - *Be located in low- and moderate-density residential areas with access to main roadways or rapid transit stops and include office employment centers, shopping centers, and moderate-bulk mixed-use centers.* (Subtitle G § 400.3.)
 12. The MU-4 zone permits residential and retail uses as a matter of right.
 13. The MU-4 zone permits a maximum building height as follows:
 - As a matter of right, 50 feet with no limit on the number of stories, with penthouses permitted to 12 feet for habitable space and 15 feet for mechanical space; and
 - For a PUD, 65 feet, with penthouses permitted to 12 feet for habitable space and 18.5 feet for mechanical space.(Subtitle G §§ 403.1, 403.3; Subtitle X §§ 303.7, 303.18.)
 14. The MU-4 zone permits a maximum floor area ratio (“FAR”) as follows:

² A private, recorded Declaration of Easement and Agreement between the owners of the Valor and AU Building Lots (the “Allocation Agreement”), which remains in effect, allocated the square footage permitted under the Zoning Regulations between the two lots, with 179,302 square feet of GFA allocated to the AU Building Lot for the AU Building, and 63,242 square feet of GFA allocated to the Valor Lot. (Ex. 241C.) The Allocation Agreement granted a non-exclusive access easement to the AU Building Lot owner (currently American University) to not less than 236 parking spaces located on the Valor Lot. The Allocation Agreement noted that any subsequent remodeling, additions or replacement construction on the two lots would need to comply with the requirements of the Zoning Regulations applicable to Record Lot 9.

- As a matter of right, 2.5 FAR (3.0 FAR for developments subject to Inclusionary Zoning (“IZ”)) with a limit of 1.5 for non-residential uses; and
 - For a PUD, 3.6 FAR with a maximum non-residential 2.01 FAR.
(Subtitle G § 402.1 and Subtitle X §§ 303.3, 303.4.)
15. After accounting for the existing AU Building and MAPS, the total matter-of-right density available across all of the lots comprising the PUD Site is approximately 286,140 square feet of GFA, of which approximately 44,958 square feet of GFA may be devoted to non-residential uses.
16. The total matter-of-right density on Record Lot 9 specifically, is approximately 184,514 square feet of GFA, of which approximately 2,606 square feet of GFA may be devoted to non-residential uses.
17. The Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the PUD Site (except the AU Building Lot which the Application does not propose to change) on the Generalized Policy Map (the “GPM”) as a Neighborhood Commercial Center, which the CP describes as follows:

Neighborhood Commercial Centers meet the day-to-day needs of residents and workers in the adjacent neighborhoods. Their service area is usually less than one mile. Typical uses include convenience stores, sundries, small food markets, supermarkets, branch banks, restaurants, and basic services such as dry cleaners, hair cutting, and childcare. Office space for small businesses, such as local real estate and insurance offices, doctors and dentists, and similar uses, also may be found in such locations. (CP § 223.15.)

18. The CP designates the PUD Site on the Future Land Use Map (the “FLUM”) for Low-Density Commercial, which the CP describes as follows:

This designation is used to define shopping and service areas that are generally low in scale and character. Retail, office, and service businesses are the predominant uses. Areas with this designation range from small business districts that draw primarily from the surrounding neighborhoods to larger business districts that draw from a broader market area. Their common feature is that they are comprised primarily of one- to three-story commercial buildings. The corresponding Zone districts are generally C-1 (MU-3) and C-2-A (MU-4), although other districts may apply. (CP § 225.8.)

II. THE APPLICATION

19. On May 6, 2019, the Applicant filed the Application for a consolidated PUD to construct a mixed-use building (the “Building”) and five townhomes (the “Townhomes”) on the Valor Lot, and to make a variety of other improvements to the open spaces within and

surrounding the PUD Site (collectively, the “Project”). The Application did not include a request for a Zoning Map amendment.

THE BUILDING

Use

20. The Building will be mixed use and include:
- Approximately 219 residential units; and
 - Approximately 18,000 square feet of GFA of retail uses (not including loading), of which a minimum of 13,000 square feet of GFA would be devoted to a full-service grocery store.

Density

21. To construct the Project, the Application proposes to redistribute approximately 50,115 square feet of GFA within the PUD Site from the MAPS Lot to the Valor Lot in order to construct the Project. This will result in a total FAR of 2.68 for the PUD Site, composed of a 1.33 residential FAR and a 1.35 non-residential FAR.

Height

22. The Building will have a maximum building height of approximately 43.5 feet, not including the penthouse, as measured from the level of the curb opposite the middle of the front of the building on 48th Street, N.W. to the top of the parapet; and a one-story penthouse meeting all required setbacks consisting of:
- Enclosed habitable and mechanical space, rising to a maximum height of 12 feet above the roof on which it is located; and
 - Unenclosed mechanical equipment above that rises to a maximum height of 15 feet.

Pedestrian Access

23. The main pedestrian entrance to the grocery store will be located at the northwest corner of the building along Yuma Street, set back approximately 17 feet from the property line. Due to the grade along Yuma Street, the grocery store entrance is approximately two feet lower than the adjacent sidewalk. Another retail entrance will be located at the southwest corner of the Building in close proximity to Massachusetts Avenue and the adjacent MAPS retail and service uses. This entrance will either be a second entrance to the grocery store or an entrance to a separate retail use. The main residential lobby will be located along Yuma Street closer to 48th Street.

Vehicular Access

24. The Building will contain a three-level, below-grade parking garage with approximately 370 vehicle parking spaces, inclusive of the 236 spaces mandated by the Allocation Agreement. In compliance with the loading requirements of Subtitle C, Chapter 9. The Building will contain a 55-foot loading berth, a 30-foot loading berth, and a 20-foot service/delivery space.
25. Access to the parking and loading facilities will be located on the south side of the Building, adjacent to the east-west public alley. This location will minimize views and the potential

for noise-related impacts on residential uses to the north and east of the PUD Site. It also improves circulation by locating these facilities closer to Massachusetts Avenue and away from the trash enclosures and other MAPS-related mechanical equipment located along the north-south alley.

Sustainable Features

26. The Project has been designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold v.4 certification. The Project will have sustainable design features such as low-flow plumbing fixtures; energy efficient light fixtures, mechanical systems, and appliances; and low-VOC materials and finishes. Convenient opportunities for recycling will be provided within a trash/recycling room on each residential floor. Conduits to provide PV panels on the roof in the future will be provided.
27. The Project will include a variety of strategies to satisfy Green Area Ratio (“GAR”) and stormwater management requirements, such as intensive and extensive green roof areas and bioretention areas in the various courtyards.
28. The parking garage will include eight Level 2 charging stations for electric vehicles and infrastructure to permit the installation of additional electric vehicle charging stations in the future. At least five electrical outlets will be provided within each long-term bicycle storage room for the charging of electric bikes. Locations for car-share vehicles, interior retail employee bike storage and showers, and interior residential bike storage that exceeds the required number of spaces will also be provided.

Exterior Design

29. The Building is designed in two different Colonial Revival architectural styles, and in response to the lower-density residential uses to the north and east, the massing of the Building includes lower building height step-downs; substantial ground- and upper-level setbacks; large courtyards, terraces, and public plazas; and context-sensitive articulation.
30. Along the 48th Street property line, the massing of the Building is minimized through the use of pavilions that are separated by 40-foot deep, 43-foot wide landscaped courtyards. The height of the pavilions is further reduced through the use of bay projections that are similar in scale to the height of the residential dwellings across 48th Street, which has a right-of-way width of 90 feet. The distance between the Building and the residential dwellings to the east along 48th Street ranges between approximately 96 to 136 feet, with the penthouse further separated by meeting or exceeding the required 1:1 setback.
31. The massing of the Building is also minimized along Yuma Street, N.W., where there is a drop in grade from east to west. The eastern portion of the Yuma Street façade has a three-part composition, with two lower-height pavilions separated by the main residential entry courtyard. This portion of the façade shares the same architectural style as the 48th Street elevation. The western portion of the Yuma Street façade has a similar three-part composition but expresses a distinct architectural style through the use of a different material palette and window pattern. The western portion of the façade is also set back

from the property line approximately 17 feet to create an open public plaza outside the entry to the grocery store, and the upper-most level is set back an additional 14 feet.

32. The west and south façades of the Building are designed in the same architectural style as the street-facing façades and will be treated with the same high-quality materials. Along the west, adjacent to the north-south public alley between the Valor Lot and the MAPS Site, the Building will be set back from the property line approximately 10 feet to provide adequate and safe circulation in the alley for vehicles and pedestrians. Above the lower level, the setback will increase another 20 feet, for a total of approximately 30 feet from the property line, along the majority of the west façade. This will allow for a full 20 feet of drive aisle width for vehicles and a new three-foot delineated pedestrian pathway along the west side of the Building.

Townhomes

33. The Townhomes are located along 48th Street at the southern end of the Valor Lot. Townhomes 1 through 4 are set back approximately 20 feet from the property line. Due to the angled southern boundary of the Valor Lot, Townhome 5 is located at the property line along 48th Street in order to meet the minimum rear yard requirement.
34. The Townhomes will each have three stories and range in height from 36 feet, 8 inches to 37 feet. Each Townhome will have a hatch no greater than five feet in height to access a private roof deck. Parking for the Townhomes will be provided in a lower level “tuck-in” garage that is accessed from the existing alley system that services the PUD Site.
35. The architectural style of the Townhomes relates to the prevailing Colonial Revival style of the surrounding neighborhood and utilizes similarly compatible materials.

Landscaping and Alley Improvements

36. The Project includes a variety of landscape improvements, including two publicly accessible open spaces and plazas:
 - A publicly accessible open space framed by the Building and Townhouse 1 will be located along 48th Street (“Windom Park”). Windom Park will contain plantings, seating, and other decorative features; and
 - Another public plaza will be located at the northwest corner of the Building, providing a forecourt to the grocery store and creating opportunities for outdoor seating and small gatherings (“Northwest Plaza”). The Northwest Plaza will be approximately 1,700 square feet in area and located approximately two feet lower than the adjacent sidewalk due to the grade change along Yuma Street. The Northwest Plaza will provide a variety of social settings for people to interact through the use of both fixed and movable seating. To accommodate the grade difference between the sidewalk and the Northwest Plaza, a series of steps and planted slopes will be located along the sidewalk.
37. Private landscaped courtyards and terraces are also proposed as residential amenities for the Building and the Townhomes. The Building will have a large central courtyard with landscaping, a paved plaza, and a swimming pool, along with several private outdoor

terraces reserved for individual residential units. Around the exterior of the Building, two large landscaped courtyards with residential terraces will face 48th Street, and a residential entry courtyard containing landscaping and seating will face Yuma Street. The Building will also have a modest sized fourth floor outdoor terrace at its northwest corner that will contain flexible seating areas and other amenities. Finally, each Townhome will have a private landscaped front yard area, rear main floor balcony, and a small roof deck.

38. Along the south side of the Building and Townhouse 5, the Applicant will provide a new six-foot pedestrian sidewalk on private property between 48th Street and the north-south public alley.
39. The Applicant also proposes to upgrade the intersection of the east-west and north-south public alleys, and the intersection of the north-south public alley and Massachusetts Avenue. These upgrades include visibility mirrors, textured/differentiated pavement, crosswalk striping, and stop signs and/or other signage.
40. Along the existing north-south public alley between the Valor Lot and the MAPS Site, the Applicant will consolidate the trash containers and place them in new enclosures.

Design Flexibility

41. The Application requested design flexibility from the plans for the Project in the following areas:
 - Interior Components – To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the buildings as shown on the plans approved by the Order;
 - Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the Order;
 - Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the buildings or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
 - Number of Units – To provide a range in the approved number of residential dwelling units of plus or minus 10%, except that (i) the total square footage of residential dwelling units shall not be reduced, and (ii) the total square footage reserved for affordable dwelling units shall not be reduced;
 - Affordable Units – To vary the number and location of affordable dwelling units, except that:
 - The number of three-bedroom affordable dwelling units shall not be reduced;
 - No affordable dwelling unit shall be located within a cellar; and
 - No more than two affordable units shall be located directly above and below each other on any immediately successive floors;

- Retail Uses – To vary the types of uses designated as “retail” use in plans approved by the Order to include the following use categories:
 - Retail (Subtitle B § 200.2(cc));
 - Services, General (Subtitle B § 200.2(dd));
 - Services, Financial (Subtitle B § 200.2(ee)); and
 - Eating and Drinking Establishments (Subtitle B § 200.2(j));
- Parking Layout – To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the minimum number of spaces provided is not less than the number of spaces shown on the plans approved by the Order;
- Streetscape Design – To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
- Signage – To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the plans approved by the Order and are compliant with the DC signage regulations, except that:
 - The content of the blade sign at the northwest corner of the Building shall be limited to directional signage only; and
 - No more than two retail tenant signs are permitted along Yuma Street at the northwest corner of the Building; and
- Sustainable Features – To vary the approved sustainable features of the project, provided the total number of LEED points achieved by the project does not decrease below the minimum required for the LEED standard required under the Order.

RELIEF REQUESTED

PUD Development Incentives Requested

42. Other than the ability to distribute density between individual lots on the PUD Site as permitted by Subtitle X § 303.2, the Applicant did not request any development incentives as part of the application:
- The proposed heights of the Project are below the maximum height permitted as a matter of right in the MU-4 zone;
 - The density of the buildings within the Overall PUD Site, as calculated pursuant to Subtitle X § 303.2, does not exceed the maximum overall and nonresidential density permitted as a matter of right in the MU-4 zone; and
 - The Applicant did not seek a Zoning Map amendment as part of the Application.

Special Exception Relief

43. Separate from the PUD, the Application requested relief from the rear yard requirement for the Building and the penthouse requirements for the Townhomes, both of which are permitted by special exception. The Application requested the Commission to consider these special exceptions by the standard special exception criteria and not as PUD development incentives, and so not part of the PUD balancing test.

Rear Yard Special Exception Relief for The Building (Subtitle G § 405.2)

44. The Application requested rear yard relief for the Building from Subtitle G § 405.2, which requires a minimum rear yard of 15 feet in order to provide a minimum rear yard depth of 10 feet along portions of Floors 1-4 at the northwest and southwest corners³ of the Building.

Penthouse Special Exception Relief for the Townhomes (Subtitle C § 1500.4)

45. The Application requested penthouse relief for the Townhomes from:
- Subtitle C § 1500.4, to permit a penthouse containing a limited amount of ancillary storage space and a stairway to provide access to a roof deck; and
 - Subtitle C § 1500.9, to permit the penthouse enclosing walls to be of unequal heights in order to minimize massing and views of the penthouses from surrounding streets.
46. In response to comments from the Commission at the public hearing, the Applicant agreed to significantly modify its design by substituting roof hatches for the proposed penthouse access stairways. Nonetheless, because the final design of hatches could potentially require relief, the Applicant did not withdraw its requested penthouse relief.

PUD JUSTIFICATION**Not Inconsistent with Comprehensive Plan and Other Adopted Public Policies (Subtitle X § 304.4(a))**

47. The Application asserted it was not inconsistent with the CP, including its maps and policies, and in fact furthers many of its elements as follows:

GPM

48. The Application asserted that the Project was not inconsistent with the GPM's Neighborhood Commercial Center designation because it will provide a new mixed-use building, including a full-service grocery store and additional retail, that will serve the day-to-day commercial needs of the new and existing residents, workers, and visitors. The Project will also complement and contribute to the existing commercial node formed by the businesses on either side of Massachusetts Avenue. (Ex. 2F.)

FLUM

49. The Application asserted that the Project was not inconsistent with the FLUM's Low Density Commercial designation because the Project will provide a mix of uses that will support and enhance the surrounding commercial development, while also providing needed commercial uses for the surrounding residential areas. The Application also noted that all commercially designated areas on the FLUM permit residential development. The Application also noted that the MU-4 zone (previously the C-2-A) is specifically called out in the CP as being compatible with the Low Density Commercial designation. The Application also reiterated that the FLUM is not a zoning map and does not specify dimensional standards and noted that while the FLUM designation notes that Low-Density

³ The relief is limited to these areas because above 20 feet, the rear yard must be measured from the rear property line, instead of from the centerline of the north-south public alley.

Commercial areas are “comprised **primarily** of one- to three-story commercial buildings” (emphasis added) this is intended only as general guideline for building heights and uses, and not an outright limitation. (Ex. 2F.)

Land Use Element

50. The Application asserted that the Project furthers the CP’s Land Use Element because it would redevelop a long-term vacant site with a compatible infill development that would complement and respect the surrounding lower-scale residential uses, while serving as a buffer between the residential uses and the commercial uses along Massachusetts Avenue. The Project would also support and enhance the existing commercial node by adding a needed retail use and additional residents to serve as a customer base for existing retail establishments. The Application noted that it would advance the following element policies: LU-1.4.1 Infill Development; LU-1.4.2 Long Term Vacant Sites; LU-2.1.3 Conserving, Enhancing, and Revitalizing Neighborhoods; LU-2.1.5 Conservation of Single Family Neighborhoods; LU-2.2.4 Neighborhood Beautification; LU-2.3.3 Buffering Requirements; LU-2.4.1 Promotion of Commercial Centers; LU-2.4.2 Hierarchy of Commercial Centers; LU-2.4.5 Encouraging Nodal Development; and LU-2.4.6 Scale and Design of New Commercial Uses.

Housing Element

51. The Application asserted that the Project furthers the CP’s Housing Element because the Project will provide new market rate and affordable (12%) housing opportunities, including family-sized units within a mixed-use building with easy access to surrounding retail and transportation options. The Application noted that it would advance the following area policies: H-1.1.1 Private Sector Support; H-1.1.3 Balanced Growth; H-1.1.4 Mixed Use Development; H-1.2.3 Mixed Income Housing; H-1.3.1 Housing for Families; and H-4.2.2 Housing Choice for Seniors.

Environmental Protection Element

52. The Application asserted that the Project furthers the CP’s Environmental Protection Element because the Project will redevelop the existing impervious site with a LEED-Gold certified building incorporating green roofs and a sustainable stormwater management system. The Application noted that it would advance the following element policies: E-3.1.2 Using Landscaping and Green Roofs to Reduce Runoff; and E-3.2.1 Support for Green Building.

Economic Development Element

53. The Application asserted that the Project furthers the CP’s Economic Development Element because it will provide new neighborhood-serving retail uses, including a full-service grocery store, and the new residents are also expected to utilize the existing area commercial uses. The Application noted that it would advance the following element policies: ED-2.2.3 Neighborhood Shopping; ED-2.2.6 Grocery Stores and Supermarkets; and ED-3.1.1 Neighborhood Commercial Vitality.

Urban Design Element

54. The Application asserted that the Project furthers the CP's Urban Design Element because the Project had been carefully designed to respect the scale and character of the surrounding neighborhood. The Application noted that various design details had been chosen in order to relate to the residential areas to the north and east, while providing a smooth visual transition to the larger commercial and institutional buildings to the south and west. The Application noted that it would advance the following element policies: UD-2.2.1 Neighborhood Character and Identity; UD-2.2.4 Transitions in Building Intensity; UD-2.2.5 Creating Attractive Facades; UD-2.2.7 Infill Development; and UD-2.2.8 Large Site Development.

Historic Preservation Element

55. The Application asserted that the Project furthers the CP's Historic Preservation Element because the Project responds to the existing Historic MAPS in both its design and massing and serves as a transitional site between both the larger AU Building, the residential properties and the MAPS. The Project will also assist in the long-term preservation of the MAPS by shifting density to the Valor Lot thereby reducing the economic incentive to redevelop the MAPS. The Application noted that it would advance the following element policies: HP-2.4.3 Compatible Development; and HP-3.1.2 Incentives for Special Property Types.

Transportation Element

56. The Application asserted that the Project furthers the CP's Transportation Element because the Project will provide a number of transportation related improvements including improvements to the pedestrian network around the Property and in the existing alley, the installation of the HAWK signal, and numerous other strategies included in the Applicant's Transportation Demand Management ("TDM") Plan. The Application noted that it would advance the following element policies: T-1.1.2 Land Use Impact Assessment; T-1.1.B Transportation Improvements; T-1.2.3 Discouraging Auto-Oriented Uses; T-2.2.2 Connecting District Neighborhoods; T-2.3.3 Bicycle Safety; T-2.3.A Bicycle Facilities; T-2.4.1 Pedestrian Network; T-2.4.2 Pedestrian Safety; T-3.1.1 Transportation Demand Management (TDM) Programs; T-3.1.3 Car-Sharing; T-3.1.A TDM Strategies; and T-3.2.D Unbundle Parking Costs.

Rock Creek West Area Element

57. The Application asserted that the Project was not inconsistent with the CP's Rock Creek West Area Element because the Project would construct a mixed-use building that responds to and respects the character and scale of the surrounding residential neighborhoods while providing a transition to the more dense commercial uses along Massachusetts Avenue. The Application also asserted that the Project would support the existing commercial development and would provide a needed, local-serving grocery store which has long been missing in the area. The Application noted that it would advance the following element policies: RCW-1.1.3 Conserving Neighborhood Commercial Centers; RCW-1.1.4 Infill Development; and RCW-1.1.5 Preference for Local-Serving Retail.

No Unacceptable Potential Project Impacts (Subtitle X § 304.4(b))**Impacts to Land Use**

58. The Applicant asserted that potential impacts of the Project on land use will be favorable. The Valor Lot is presently underutilized; improved with a vacant grocery store building, some additional retail space that is currently in use, and a large impermeable surface parking lot. The mixed-use/mixed-income development proposed by the Project will significantly improve the PUD Site's utilization, particularly in light of its designation as a Neighborhood Commercial Area on the CP's GPM, and its location in an area of the District with a significant need for more affordable housing. The Applicant also noted that opportunities for multi-family housing in this area are rare and so where opportunities do exist, such as on the PUD Site, they should be taken advantage of in a manner that takes into consideration and balances potential impacts on transportation and on the surrounding context.

Impacts to Housing

59. The Applicant asserted that potential impacts of the Project on housing will be favorable. The Project will produce approximately 219 new dwelling units in a desirable area of the District that contains high-quality public and private schools, abundant parks and open space, and many neighborhood-serving amenities. Most importantly, the Project will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the PUD Site and will do so without requesting any additional PUD-related density. This will result in approximately 30 dedicated affordable housing units devoted to households earning up to 50% and 60% of the median family income ("MFI").

Impacts to Environmental Protection

60. The Applicant asserted that potential impacts of the Project on environmental protection will be favorable. The Project will redevelop an underutilized, impervious property with a new mixed-use development that will be certified LEED Gold v.4. The significant reduction in impervious surface is likely to have favorable impacts on urban heat island effect, and the new landscaping and green roof elements will provide new habitat. The Project is not expected to have any impacts on water quality or hydrology.
61. As noted by the Applicant at the public hearing, the assessment of the Project's environmental impacts does not conclude with the Commission. Rather there is an entirely separate set of regulatory requirements under the D.C. Environmental Protection Act (the "Environmental Act") and implementing regulations that require the evaluation of the potential environmental impacts before the issuance of a building permit. Further, the D.C. Court of Appeals has held that "implementation" of a zoning approval occurs when construction actually begins. (*See Foggy Bottom Ass'n v. D.C. Bd. Of Zoning Adjustment*, 791 A.2d 64, 73 (D.C. 2002).)
62. Thus, the Applicant will be required to complete an Environmental Impact Screening Form ("EISF") when submitting its building permit application. Various District agencies will analyze the different topics covered by the EISF including; water quality, sedimentation,

and storm water management, watershed protection, air quality (which will take into account the results of the Applicant's CTR), underground storage tanks, toxic substances, hazardous waste, and environmental justice. To the extent that a reviewing agency identifies impacts that exceed established thresholds, the Applicant will be required to work with that agency to avoid, minimize, and/or mitigate such impacts to the extent necessary before the Project is implemented. Further, to the extent that any mitigation measures identified by a reviewing agency require modifications to the Project that are not covered by flexibility granted in this Order, the Applicant would be required to seek a PUD modification from the Commission.

Impacts to Infrastructure

63. The Applicant asserted that any potential impacts to infrastructure will be favorable or capable of being mitigated. With respect to storm water runoff, currently the Valor Lot is entirely impervious, and what storm water management infrastructure exists most likely does not provide any treatment of runoff before it enters the municipal sewer system due to its age. The Project will replace this impervious surface condition with a LEED-Gold certified development that will meet or exceed the District's current storm water management regulations, which are far more stringent than the regulations that existed in the 1960s when the existing improvements on the Valor Lot were constructed. Overall, as a result of the extensive amount of green roof, landscaping, and pervious surfaces proposed in the Project, the volume of storm water runoff entering the District's municipal sewer system will be significantly reduced. Finally, comments provided by DC Water expressed no concerns or objections to the Project. (Ex. 53 at 25.)

Impacts to Economic Development

64. The Applicant asserted that any potential impacts to economic development will be favorable or capable of being mitigated. The Project will result in new businesses and employment opportunities created by the proposed grocery store, and potentially at existing businesses in the surrounding area as a result of additional demand generated by future residents of the Project. Moreover, the Applicant has agreed to offer, on a right of first refusal basis, any retail space within the Building that is not reserved for or leased to the grocery store to the businesses currently operating on the PUD Site as a mitigation measure.
65. The Project will also have favorable impacts on tax revenue through increased property, income, and sales taxes. While the exact amount of additional revenue is not known, the redevelopment of the Valor Lot will certainly increase the assessed value of the Valor Lot given the age and condition of the existing improvements on that property. New income tax revenue will result from residents that move to the Project from other jurisdictions, and increased sales tax revenue will result from the additional business generated by residents of the Project.

Impacts to Urban Design

66. The Applicant asserted that any potential impacts to urban design will be positive or acceptable given the quality of benefits provided by the Applicant. The Project will replace a largely vacant and underutilized property that is almost entirely impervious with a new

high-quality mixed-use development that is pedestrian-oriented and has been designed to appropriately relate to the surrounding context. The Project supports its designation on the GPM as a Neighborhood Commercial Center by improving the mix of uses that are available to residents and supporting existing businesses through increased residential density. The Project will also provide significant improvements to the public realm.

67. The Project will also successfully complement the established character of the surroundings and provide an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building. The height of the Building is below the maximum permitted as a matter of right, is only slightly taller than the maximum height permitted in the adjacent R-1-B zone, and is not substantially taller than the highest point of the roofs of the houses along 48th and Yuma Streets from street grade. The Project is also separated from the houses to the east and north by approximately 96 to 137 feet.

Impacts to Historic Preservation

68. The Project will help protect the historic MAPS by limiting the economic feasibility of selling the MAPS, and the economic incentive for future development on the MAPS Site, because density on the MAPS Site will be permanently reduced to that permitted under existing zoning minus the FAR allocated to the Valor Lot. Furthermore, as stated in the HPO report, the Project will “enhance the character of the [MAPS] by improving its architectural setting through compatible design and superior execution as ensured through the PUD process” (Ex. 187.)

Impacts to Transportation

69. The transportation aspects of the Project were thoroughly analyzed in the Applicant’s Comprehensive Transportation Review (“CTR”) that was prepared in coordination with, and reviewed by, DDOT. The CTR found that the Project will not have a detrimental impact on the surrounding transportation network, and that no mitigation was required with respect to roadway capacity and operations. As such, DDOT stated in its hearing report that “no mitigation for traffic impacts is requested by DDOT.” (Ex. 52 at 2.)
70. The DDOT Report did note that it considered the Project to be “over-parked,” which had the “potential to induce additional demand for driving.” (Ex. 52 at 3.) However, the DDOT Report noted that these potential adverse impacts could be mitigated through the Applicant’s agreement to fund pedestrian improvements at four adjacent intersections in order to encourage pedestrian trips to and from the Project, and by the Applicant’s adoption of its “robust” TDM and Loading Management Plans (“LMP”). (Ex. 52 at 3.)
71. The Applicant will fund and construct pedestrian network improvements in the immediate vicinity of the PUD Site to encourage walking and mitigate the potential impacts of being over-parked. Specifically, the Applicant will upgrade substandard curb ramps, stripe missing crosswalks, and install curb extensions, subject to DDOT public space approval, at the following intersections:
 - 49th Street and Yuma Street, N.W.;

- 48th Street and Yuma Street, N.W.;
- 48th Street and Windom Place, N.W.; and
- 48th Street and Warren Street, N.W.

72. The Applicant will implement the following TDM Plan:

- Exceed the minimum zoning requirements for bicycle parking/storage facilities, which includes secure long-term bicycle storage rooms located within the Building and short-term bicycle parking located around the perimeter of the PUD Site;
- Install a bicycle repair station in each of the long-term bicycle storage rooms located within the Building;
- Unbundle the cost of residential parking from the cost of lease or purchase of each residential unit in the Building. The unbundled cost of parking will be at a minimum equal to the average market rate within a quarter mile of the PUD Site;
- Not offer free parking to any resident, employee, student, or otherwise, and only offer daily, weekly and monthly rates for purchase;
- Identify TDM leaders (for planning, construction, and operations) who will work with residents and grocery/retail employees to distribute and market various transportation alternatives and options;
- Work with DDOT and goDCgo to implement TDM measures;
- Share the full contact information of the TDM leaders with DDOT and goDCgo;
- Post all TDM commitments online for easy reference;
- Provide TDM materials to new residents in the Resident Welcome Package materials;
- Provide residents and grocery/retail employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by Metropolitan Washington Council of Governments (“MWCOC”);
- Install a Transportation Information Center Display (electronic screen) within the residential lobby of the Building containing information related to local transportation alternatives;
- Offer either a one-year membership to Capital Bikeshare or a one-year membership to a car-sharing service to each residential unit for the initial lease of each unit;
- Dedicate four vehicle parking spaces in the parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy the four spaces, then the Applicant will provide an additional year of Capital Bikeshare memberships to new residents within the Building; and
- Provide one shopping cart for grocery shopping and running errands for every 30 residential units in the Building.

73. The Applicant will implement the following LMP:

- A loading dock manager will be designated by the building management. The dock manager will coordinate with vendors and tenants to schedule deliveries and will be on duty during delivery hours;
- All tenants in the Building will be required to schedule deliveries that utilize the loading docks – defined here as any loading operation conducted using a truck 20 feet in length or larger;

- Commercial deliveries will be scheduled between 7:00 a.m. – 7:00 p.m. (7 days a week), and discouraged from making deliveries after 4:00 p.m. on weekdays;
 - Waste collection (both commercial and residential) is allowed 7:00 a.m. – 4:00 p.m. (seven days a week);
 - Residential move-ins/outs are allowed 9:00 a.m. – 4:00 p.m. (seven days a week);
 - The dock manager(s) will schedule deliveries such that the dock’s capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to return at a later time when a berth will be available so as to not impede the drive aisle that passes in front of the loading dock;
 - The dock manager(s) will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular traffic except during those times when a truck is actively entering or exiting the alley;
 - The loading manager(s) will monitor the alley to keep the designated loading areas clear for deliveries, keep the alley from being blocked due to vehicle loading/unloading activity, and enforce the no parking restrictions;
 - Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, Section 900 (Engine Idling), the regulations set forth in DDOT’s Freight Management and Commercial Vehicle Operations document, and the primary access routes listed in the DDOT Truck and Bus Route System;
 - The Applicant will continue to coordinate with DDOT and the owners of the MAPS Site (Lots 802 and 803) regarding loading operations for the MAPS Site; and
 - Trucks traveling to the MAPS Site will be directed not to pick-up or drop-off on Yuma Street, N.W. and will be directed to use the alley network.
74. In addition, the Project will have several favorable transportation impacts that result from the proposed improvements, which are being proffered as public benefits because they were not required as mitigations by DDOT. These improvements include, upgrades to the alley system, the closure of large curb cuts adjacent to the Valor Lot, the installation of a HAWK signal, contributions for connections to Metrorail and to conduct specified transportation studies, as well as others and are discussed in the public benefits section below.

Impacts to Community Services and Facilities

75. The Project will not have any adverse impacts on publicly owned land, health care facilities, libraries, emergency services, or community centers. The PUD Site is located in a part of the District that has numerous parks and open spaces and a variety of recently renovated schools, libraries, and community centers. Finally, the Project was reviewed by D.C. Fire and Emergency Management Services (“FEMS”) and the D.C. Public Library (“DCPL”), neither of which expressed objections. (Ex. 53 at 23-24.)

Impacts to Educational Facilities

76. The Project will not result in unacceptable impacts to educational facilities. As stated in the report by the Deputy Mayor for Education (“DME”):

DME estimates that the additional impact that the [Project] would have on the three DCPS by-right schools is low. While there is overutilization now and estimated in the future, this development has been incorporated into the [Master Facility Plan] 2018 estimates and DCPS planning efforts. Therefore, the additional small number of students that may live in the Project in the future should not negatively influence decisions about the merit of this PUD case. (Ex. 53 at 26-29.)

Impacts to Parks, Recreation and Open Space

77. The Project will provide new publicly accessible open spaces in the form of the Northwest Plaza and Windom Park, and the Project also includes significant landscaping improvements to adjacent public spaces. (Ex. 53 at 23.)

Public Benefits and Amenities (Subtitle X § 304.4(c))

78. The Application asserts that the Project provides the following public benefits as prescribed by Subtitle X § 305.5.

Superior Urban Design, Architecture, and Landscaping (Subtitle X § 305.5(a) and (b)) and Site Planning and Efficient Economical Land Utilization (Subtitle X § 305.5(c))

79. The proposed height and mass of the Project has been carefully designed to relate to the scale and character of the surrounding neighborhood through height reductions, courtyards, landscaping, façade articulation, upper-level setbacks, and high-quality, context-sensitive materials.
80. The Project exhibits efficient and economical land utilization through:
- The provision of multiple residential building types (multi-family and townhomes) within a designated neighborhood commercial center in close walking proximity to numerous amenities, such as retail, services, parks, schools, and convenient bus service; and
 - The utilization of unused density from the historic MAPS Site, which will facilitate additional housing, restore a full-service grocery store to the neighborhood, and permanently reduce the amount of density that could potentially be constructed on the historic MAPS Site in the future.
81. The Project includes development of Windom Park, a new publicly accessible open space along 48th Street; the Northwest Plaza, a new landscaped plaza adjacent to the grocery store entrance along Yuma Street; and a variety of private landscaped courtyards and terraces. In addition to the superior landscaping surrounding the PUD Site and within Windom Park and the Northwest Plaza, the Applicant will construct improvements specifically intended to activate these spaces and the surrounding streetscape. To demonstrate this commitment, the Applicant stated that it will dedicate \$15,000 toward such improvements, the design of which will be developed based on input from ANC 3E, and will be subject to review and approval by District public space permitting authorities, as necessary. As part of this effort, the Applicant will also consider incorporating playable and interactive elements into the design of these spaces.

82. The Project's site plan also takes into consideration the potential for pedestrians to circulate through the public alley system through pedestrian improvements that do not currently exist, including a new three foot delineated pedestrian path along the north-south alley, a new six foot sidewalk along the east-west alley, and improvements at the alley intersections.

Historic preservation of private or public structures, places, or parks (Subtitle X § 305.5(e))

83. The Project's allocation of approximately 50,115 square feet of unused GFA from the MAPS Lot (approximately 0.31 FAR based upon the land area of the PUD Site) to the Valor Lot will help protect the historic MAPS by limiting the economic feasibility of selling the MAPS, and the economic incentive for future development, because development on the MAPS Lot will be permanently reduced to that permitted under existing zoning minus the FAR allocated to the Valor Lot.

Housing, including housing that provides units with three or more bedrooms (Subtitle X § 305.5(f))

84. The Project results in the creation of new housing consistent with the objectives and policies of the CP and the Mayor's Housing Initiative. Overall, the Project will replace a long vacant and underutilized site with approximately 219 new residential units in approximately 214,094 square feet of residential GFA. The Project's unit mix includes studio, one-, two, and three-bedroom units.

Affordable Housing in an amount that exceeds what would have been required through matter-of-right development (Subtitle X § 305.5 (g))

85. The Applicant will set aside a minimum of 12% of the residential GFA to IZ units devoted to households earning up to 60% of the MFI, and 12% of the non-communal penthouse habitable space to IZ units devoted to households earning up to 50% of the MFI. The Applicant will also set aside 12% of cellar floor area dedicated to residential dwelling units, and projection floor area dedicated to residential use, to IZ units devoted to households earning up to 60% of the MFI. The amount of affordable GFA proffered by the Applicant exceeds the amount that would have otherwise been required through matter-of-right development on the PUD Site by 20%. Further, the Applicant will provide a minimum of four, three-bedroom IZ units in the Building.

Environmental and sustainable benefits (Subtitle X § 305.5(k))

86. The Project has been designed to integrate a host of sustainable features and will be designed to achieve LEED-Gold v.4 certification.
87. The Applicant will redevelop the PUD Site, which is presently impervious and lacks any form of sustainable storm water management, with new landscaping, trees, open space, green roof systems, and bioretention areas. The parking garage includes eight electric vehicle charging stations that will be Level 2 chargers or greater, and the Applicant will install infrastructure to permit the installation of additional electric vehicle charging stations in the future. Electrical outlets will also be provided within the long-term bicycle

storage rooms for the charging of electric bikes. Locations for car-share vehicles, interior retail employee bike storage and showers, and interior residential bike storage that exceeds the required number of spaces will also be provided.

Transportation infrastructure beyond that needed to mitigate any potential adverse impacts of the Application, including provision of a public easement for a pedestrian walkway that would not otherwise be required (Subtitle X § 305.5(o))

88. The Applicant will provide the following transportation-related benefits that are not required by DDOT to mitigate any potential adverse transportation impacts created by the Project:

- Fund a new high intensity activated crosswalk (“HAWK”) signal on Massachusetts Avenue, between 48th and 49th Streets, subject to DDOT public space approval;
- Allocate \$100,000 to means for connecting Project residents to the Tenleytown Metro station through shuttle or geofence with ride hailing services;
- Restrict residents of the Building from obtaining a Residential Parking Permit (“RPP”) with penalty of lease termination;
- Consolidate trash receptacles currently located in the north-south alley and in public space along Yuma Street to a new enclosure along the north-south alley;
- Improve the existing alley system by widening the north-south public alley by seven feet onto private property to maintain a 20-foot vehicle travel way and provide a new 3-foot pedestrian path; providing a new 6-foot sidewalk on private property along the east-west alley; constructing a new 5- to 6-foot sidewalk along the western side of the public alley entrance from Massachusetts Avenue; and constructing improvements to the alley intersection to increase pedestrian safety and visibility;
- Contribute \$15,000 toward studying the potential to open the median on Massachusetts Avenue to improve porosity and turning movements at the MAPS Site, and/or studying the installation of a “pork chop” near Massachusetts Avenue and 49th Street;
- Work with ride hailing services to designate the building entrance on Yuma Street as the preferred pick-up and drop-off location; and
- Work with DDOT to designate a section of 48th Street between Yuma Street and Warren Street as an “alternative transportation block” where transit options such as electric scooters, bikes, and mopeds; bike shares; and car shares can be co-located.

Uses of special value to the neighborhood or the District of Columbia as a whole (Subtitle X § 305.5(q))

89. The Applicant will dedicate approximately 18,000 square feet of GFA to retail space, of which no less than 13,000 square feet will be dedicated to a full-service grocery store for at least 10 years from the date of the first certificate of occupancy.

Other public benefits and project amenities and other ways in which the proposed PUD substantially advances the major themes and other policies and objectives of any of the elements of the Comprehensive Plan (Subtitle X § 305.5(r))

90. The Applicant will plant any missing trees within the tree-box areas located along the east side of 48th Street between Yuma Street and Massachusetts Avenue, and along the north side of Yuma Street between 48th and 49th Streets.

Applicant's Submissions

91. The Applicant submitted a total of seven submissions to the case record as follows:
- On May 6, 2019, the Applicant filed its initial Application submission (the "Initial Submission"); (Ex. 1-2I.)
 - On June 17, 2019, the Applicant filed a Prehearing Submission responding to the comments made in the OP setdown report (the "Prehearing Statement"); (Ex. 12.)
 - On September 3, 2019, the Applicant filed a copy of its Comprehensive Transportation Review (the "CTR"), a copy of which was also sent to DDOT; (Ex. 25.)
 - On October 4, 2019, the Applicant submitted a response to the OP and DDOT Hearing Reports (the "Response to OP and DDOT"); (Ex. 151.)
 - On October 24, 2019, the Applicant submitted its post-hearing submission (the "Post-Hearing Statement"); (Ex. 241.)
 - On October 31, 2019, the Applicant also filed a response to the Party Opponents' post-hearing submissions (the "Response to Party Opponents"); (Ex. 246.) and
 - On November 5, 2019, the Applicant submitted a motion to strike a portion of CRD's post-hearing submission that included a newly prepared shadow study ("Applicant's Motion to Strike"); (Ex. 249.)

The Initial Submission

92. The Initial Submission included:
- A statement in support of the Application; (Ex. 2.)
 - The initial set of architectural plans for the Project; (Ex. 2C1-2C11.)
 - An analysis of the Project's consistency with the CP; (Ex. 2F.)
 - Authorization letters; (Ex. 2H.) and
 - Certificate of notice. (Ex. 2I.)

The Prehearing Statement

93. The Prehearing Statement responded to the questions raised by the OP setdown report as follows:
- **Unbundling Residential Parking** – The Prehearing Statement noted that the Applicant was working on developing a CTR with DDOT, in which the Applicant intended to include a proposal to unbundle the cost of residential parking from the cost to lease or purchase one of the residential units in the Building;
 - **Townhome Roof Access** – The Prehearing Statement noted that the Applicant would reevaluate the proposed design and materials for the roof access stairs on the Townhomes in order to reduce their visibility; and
 - **Housing Choices for Seniors** – The Prehearing Statement noted that the Project would provide new market-rate and affordable housing units for seniors looking to simplify their housing needs and demands. The Prehearing Statement also noted that the Project was designed to be accessible and "senior friendly."

94. The Prehearing Statement also noted that the Commission had not raised any questions at the Setdown meeting and provided a list of the Applicant's proposed witnesses and outlines of their testimony.

The CTR

95. The analysis provided in the Applicant's CTR included an estimate of the number of vehicle and truck trips that were expected to be generated by the Project and applied these trips to the surrounding transportation network (together with background trips and pipeline projects) to determine whether the Project will have unacceptable traffic impacts. The CTR also analyzed pedestrian circulation and truck maneuverability along streets and in the alleys. Overall, the results of the CTR concluded that the Project will not have unacceptable impacts on the transportation network. (Findings of Fact ["FF"] 69-74.)
96. With respect to traffic volume, while the Project is projected to generate more trips than what are currently generated by the existing uses on the Valor Lot, the CTR found that all of the intersections analyzed around the PUD Site will continue to operate at acceptable levels of service. Regarding truck circulation along streets and within the alleys, the CTR demonstrates through a series of truck maneuver diagrams that vehicles and trucks will be able to successfully access and navigate the alley and loading facilities.
97. As set forth in the CTR, the Project will provide more than enough parking to accommodate parking demand and will exceed the minimum parking required under the Zoning Regulations. In direct response to requests from the community and ANCs, the Applicant will provide one parking space per dwelling unit in the Building by allocating a greater percentage of the 236 parking spaces required under the Allocation Agreement to the Building, based upon the final number of dwelling units. Furthermore, the Applicant will impose RPP restrictions on the Building residents with the penalty of lease termination.
98. To mitigate the potential impacts caused by the Project being "over-parked," the CTR recommends certain pedestrian improvements to specified intersections around the PUD Site and the implementation of several TDM strategies. (FF 72.) Finally, the CTR recommends implementation of an LMP to offset any potential impacts that loading activities might have on surrounding intersections and the neighborhood. (FF 73.) The Applicant has committed to implement the mitigation measures identified in the CTR, and any others requested in the report submitted by DDOT.

The Response to OP and DDOT

99. In response to the OP Hearing Report, the Applicant made the following commitments:
- The Applicant would provide two grocery signs on the north building façade;
 - The corner "retail/amenity" space would be devoted to retail uses only;
 - The Applicant would install conduit to the roof so that it is "solar ready";
 - The Applicant would provide Level 2 electric vehicle chargers and install infrastructure to allow additional charging stations to be readily added in the future;

- The Applicant would work with ANC 3E to consider providing “playable” elements in the common areas and public spaces as part of its \$15,000 contribution to improve these spaces;
 - The Applicant submitted updated PUD flexibility language; (Ex. 151A.)
 - The Applicant provided details on the long- and short-term bicycle parking spaces including their location, rack type and rack spacing. (Ex. 151C, Sheets A02, A09, L1.1.) The Applicant also agreed to provide electrical outlets within the long-term bicycle storage rooms;
 - The Applicant provided dimensioned sections and renderings showing the walk-out unit at the corner of 48th and Yuma Streets and the outdoor patios along 48th Street; (Ex. 151C, Sheet A15.1.)
 - The Applicant stated that it had not yet determined the tenure type of the Townhomes. The Applicant also reconfirmed its IZ commitment that 11% of the Project’s residential GFA, including the GFA of the Townhomes, would be dedicated to IZ units at 50% and 60% of the MFI, which is greater than the amount of IZ square footage required by the Zoning Regulations. However, the Applicant increased this commitment to 12% at the public hearing; and
 - The Applicant submitted an updated list of public benefits and amenities. (Ex. 151B.)
100. The Applicant agreed to the conditions of the DDOT Report as follows:
- The Applicant agreed to construct the pedestrian improvements requested at the intersections identified in the DDOT report;
 - The Applicant agreed to implement the TDM plan as proposed in the CTR, and as set forth in Condition No. C.2 of this Order; and
 - The Applicant agreed to implement the LMP as proposed in the CTR, and as set forth in Condition No. D.1 of this Order.
101. The Applicant also agreed to all of the additional comments listed in the DDOT Report and responded to all of the items identified by DDOT as considerations to be reviewed during public space permitting.

Applicant’s Public Hearing Testimony

First Public Hearing Session – October 7, 2019

102. At that hearing, the Applicant proffered the following expert witnesses: Sarah Alexander of Torti Gallas Urban, expert in architecture; Erwin Andres of Gorove/Slade Associates, expert in transportation planning and engineering; and Shane Dettman of Holland & Knight LLP, expert in zoning and land use planning. The Commission accepted these witnesses as experts in their respective fields.
103. Mr. Dettman testified as to the Project’s consistency with the CP. Mr. Dettman noted that the MU-4 zone (previously the C-2-A) was expressly stated as not being inconsistent with the low-density commercial designation on the FLUM. Mr. Dettman also cited to the Commission’s decision in the Cathedral Commons case (as upheld by *Wisconsin-Newark Neighborhood Coalition v. District of Columbia Zoning Com’n*, 33 A.3d 382 (2011)) which

determined that the MU-4/C-2-A zone was not inconsistent with the low-density commercial designation and that development that is consistent with the development standards of the MU-4 is not inconsistent with the CP. (October 7, 2019 Public Hearing Transcript [“Oct. 7 Tr.”] at 25.)

104. Mr. Dettman also rebutted the Party Opponents reliance on the *Durant*⁴ line of cases by noting that *Durant* concerned a very different application than the current one, including *Durant*'s inclusion of a PUD related map amendment and the *Durant* PUD's location in low-density zones with more restrictive development requirements. Mr. Dettman noted that the Project had been designed to comply with the development standards of the MU-4 zone. Further, unlike the zoning map amendments proposed in *Durant*, the MU-4 zone is specifically identified by the CP as being consistent with the FLUM designation of Low-Density Commercial. (Oct. 7 Tr. at 25-27.)
105. Mr. Dettman addressed the Project's density with a diagram showing the Commission how, within the PUD Site, approximately 50,115 square feet of unused GFA from the historic MAPS Site will be redistributed to the Valor Lot for purposes of providing a new full-service grocery store and additional housing that would not otherwise be possible under matter-of-right development. Mr. Dettman noted that this aggregation of density from the MAPS Site to the Valor Lot is expressly permitted under Subtitle X § 303.2, which allows the Commission to consider density across the entirety of a PUD site, with flexibility to distribute density across different lots and buildings within an overall PUD site. Mr. Dettman cited to the Court of Appeals' upholding of the Commission's ability to aggregate density in a PUD in *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Commission*, 335 A.2d 550, 556-57 (D.C. 1976), in which the Court stated that:

[t]he very nature of the Planned Unit Development concept as promulgated by the Zoning Commission ... suggests that a transfer of development rights from one building to another must have been contemplated as one that was both feasible and appropriate in the development of such a plan...It is not surprising then that the Commission provided ... that “[t]he floor area of all buildings shall not exceed the aggregate of the floor area ratios as permitted in the several districts included within the project area...” On the other hand, there is no provision in the PUD regulations that the floor area ratio of each building in the PUD must be within the maximum permitted in the district. The requirement to be met is that the FAR of all buildings does not exceed the “aggregate” permitted within the project area.

106. Mr. Dettman rebutted the Party Opponents' contention that the grade of 48th Street was the result of an artificial embankment, by testifying that the curb grade of 48th Street, N.W. has an elevation of 262 feet, which is unchanged since the street's construction. Mr. Dettman further testified that the construction of the existing SuperFresh Building on the Valor Lot

⁴ Party Opponents cited to both *Durant v. District of Columbia Zoning Com'n*, 99 A.3d 253 (D.C. 2014) (“Durant II”) and *Durant v. District of Columbia Zoning Com'n*, 139 A.3d 880 (D.C. 2016) (“Durant III”).

did not result in the raising of 48th Street, N.W., but rather cut into the existing slope running west from 48th Street, N.W. Therefore, the Applicant had used the correct building height measuring point to calculate the height of the Building. (Oct. 7 Tr. at 34-36.)

107. Mr. Dettman responded to the Commission's questions regarding the balancing of the CP's competing and overlapping policies by testifying that the Project is consistent with the Low-Density Commercial FLUM description due in part to the fact that the Project does not utilize any PUD height or density incentives, but rather it is well below the matter-of-right height and density limits of the MU-4 zone. The Applicant noted that while the density of a PUD is measured across the entire PUD site, at 2.95 FAR, even the overall density on the Valor Lot is within matter-of-right permissions. Further, while as a matter of right, up to 1.5 FAR of nonresidential use is permitted in the MU-4 zone, the nonresidential density on the Valor Lot is only 0.26 FAR. (Oct. 7 Tr. at 46-50, 51-52.)
108. The Applicant also explained that even though the height and density of the Project are below the matter-of-right permissions, it still employed a number of design elements including, massing reductions, upper-level setbacks, large courtyards, high-quality materials, and landscaping, in order to advance the various CP policies relating to infill development, preservation of single-family neighborhoods, building transitions, and neighborhood conservation.
109. The Applicant also testified that to the extent the Project was inconsistent with one or more of these specific policies, the inconsistency was far outweighed by other competing policies and considerations in the CP that relate to housing, affordable housing, environmental sustainability, and uses of special value to the neighborhood.

Continued Public Hearing of October 10, 2019

110. At the continued hearing on October 10, 2019, the Applicant provided rebuttal testimony to the testimony given by the various parties and was subject to cross-examination by other parties.
111. In response to the Party Opponents' arguments concerning the building height measuring point ("BHMP"), the Applicant presented testimony from Brad Glatfelter of Bowman Consulting. Mr. Glatfelter testified that in order to determine the true curb elevation, he had reviewed historical maps starting in 1900 showing the site elevation of approximately 265 feet. Mr. Glatfelter stated that this elevation was maintained in maps from 1945 and 2015 (the existing conditions survey). To address the Party Opponents' assertion that the road had been artificially elevated by an embankment, Mr. Glatfelter also reviewed aerial photos of the Valor Lot during the construction of existing building during the 1960s and 70s. Based on these photos, Mr. Glatfelter confirmed that the site had been excavated out and the street level of 48th Street maintained with sheeting and shoring. Finally, Mr. Glatfelter noted that the measurements had been taken of the existing street trees along 48th Street, N.W., which showed that they were approximately 75 years old, and as such indicated that the curb grade had not changed in the past 75 years. (Public Hearing of October 10, 2019 Transcript ["Oct. 10 Tr."] at 164-166.)

112. In response to the Party Opponents' arguments concerning traffic volume, the Applicant's traffic expert, Mr. Andres, testified that the traffic projections needed to be understood in the context of the uses that had previously been existing on the Valor Lot. Mr. Andres testified that when compared to the previously existing 44,000 square-foot combined grocery and retail use, the Project results in less traffic during the evening and weekend peak hours. As Mr. Andres explained, this is because "retail per square-foot generates more traffic than residential." Mr. Andres also pointed out that due to the lack of a grocery store in the immediate area, many of the existing vehicle trips could be reduced by providing a grocery store within walking and biking distance. (Oct. 10 Tr. at 170-172.)

Post-Hearing Statement

113. The Post-Hearing Statement responded to the requests made by the Commission at the conclusion of the second public hearing by providing the following:
- A response on the affordable housing issues and options that were raised during the public hearing, including confirmation of the Applicant's revised IZ proffer of 12%; (Ex. 241 at 1.)
 - Contested issues of fact;
 - Contested conclusions of law;
 - An evaluation of the requested special exception relief; and
 - An evaluation of the Project against the PUD standards of Subtitle X, Chapter 3.

Response to the Party Opponents

114. In the Response to the Party Opponents, the Applicant rebutted the assertion that the Allocation Agreement was intended to benefit nearby property owners because the Allocation Agreement is a private agreement to which the nearby property owners are not parties or beneficiaries. (Ex. 246.) Rather, the Applicant stated that the Allocation Agreement simply established an allocation of development rights as permitted by the Zoning Regulations between the tax lots within Record Lot 9, and the only beneficiaries to the Allocation Agreement are the parties – the owners of the Valor and AU Building Lots.
115. The Applicant asserted that the Party Opponents mischaracterized the opinion of the Court in *AU Park Citizens Assoc. v. Burka*, a case in which the Petitioner was challenging the D.C. Council's approval of the closing of a public alley that existed in the area that is now at the rear of the AU Building on the AU Building Lot. The Applicant noted that the line from the opinion, "... *benefiting the neighboring residents*" was taken out of context and erroneously attributed to the reduction of density on the Valor Lot. As noted by the Applicant, this line was actually in reference to an easement for vehicular and pedestrian access associated with the closing of the public alley. (Ex. 241 at 5.) In support of its position, the Applicant also submitted copies of the opinion and the underlying easement to the record. (Ex. 241B, 241C.)
116. The Response to the Party Opponents also addressed the following issues:
- Affordable Housing Proffer – The Applicant noted that the IZ proffer is particularly important given the current lack of affordable housing units in the Rock Creek West

area and noted that the Project would increase the pipeline of affordable units by approximately 36%. In support of this position, the Applicant provided a chart comparing the Project to other recent PUD approvals and noting that the Project was requesting minimal relief while still providing a greater percentage of affordable units. Finally, the Applicant defended the Application's IZ calculations and noted that neither OP nor the Department of Housing and Community Development ("DHCD") had raised any concerns with regard to the calculations; (Ex. 246 at 3.)

- BHMP – the Applicant reiterated its testimony from the public hearings that the BHMP was properly calculated and that 48th Street does not rest upon an artificially elevated embankment based on analysis of historic data and street elevations; and
- Historic Preservation – The Applicant rebutted the Party Opponents' challenges by asserting that the PUD process authorizes the Applicant to allocate density within the PUD Site and that distributing 50,115 square feet of unused GFA from the MAPS Site to the Valor Lot would result in a tangible quantifiable historic preservation benefit to the MAPS Site by reducing the available unused GFA on the MAPS Site and so reducing the economic feasibility of further developing the MAPS Site.

Applicant's Motion to Strike

117. The Applicant's Motion to Strike requested that the Commission strike the Party Opponents' submission of a new shadow study which was beyond the scope of the post-hearing information requested by the Commission. (Ex. 244 at 22-27.) The Applicant's Motion to Strike requested that the Commission strike the filing from the record or, in the alternative, reopen the record to allow the Applicant an opportunity to respond to the new information.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

118. In addition to its testimony at the public hearings, OP Submitted a total of two reports to the case record as follows:

- A setdown report, dated May 31, 2019, recommending that the Commission setdown the Application for a public hearing (the "OP Setdown Report"); and (Ex. 11.)
- A hearing report dated September 27, 2019 recommending approval of the Application with conditions (the "OP Hearing Report"). (Ex. 53.)

OP Setdown Report

119. The OP Setdown Report included comments on the Application and a description of items where resolution or additional information was required prior to the public hearing. Specifically:

- An explanation of how the Project would provide housing choices for seniors;
- A determination as to whether the cost of residential parking could be unbundled from the cost of leasing or purchasing a residential unit; and

- A suggestion that the Applicant refine the design of the proposed access stairs for the Townhome roof decks.

The Applicant responded in its Prehearing Statement. (FF 93.)

120. The OP Setdown Report concluded that the Project would not be inconsistent with the CP map designations and would further these designations as follows:
- The Project was not inconsistent with the GPM designation as a Neighborhood Commercial Center because it is a mixed-use development that would also provide a full-service grocery store and additional retail space that “would make it easier for existing and new residents and workers to meet their day-to-day needs”; and
 - The Project was also not inconsistent with the FLUM’s Low Density Commercial Designation because the Project would provide a mixed-use building with ground-floor commercial space that OP determined was appropriate for the designation. The OP Setdown Report also noted that the overall PUD Site provides a range of densities and building heights and that the Project was compatible with this range.
121. The OP Setdown Report also concluded that the Project was not inconsistent with the CP and furthered various CP Elements including the Land Use, Transportation, Housing, Environmental Protection, Economic Development, Urban Design, Historic Preservation, and Rock Creek West Area Elements.
122. The OP Setdown Report noted that OP had referred the Application to DOEE, DHCD, DDOT, Department of Parks and Recreation (“DPR”), DME, Department of Public Works (“DPW”), Department of Aging (“DOA”) [now the Department of Aging and Community Living (“DACL”)], Department of Employment Services (“DOES”), FEMS, Metropolitan Police Department (“MPD”), DC Water, and Washington Metropolitan Area Transit Authority (“WMATA”) for further review. (Ex. 11 at 18.)

OP Hearing Report

123. The OP Hearing Report contained a total of 11 conditions and comments that it requested the Applicant address at or prior to the Public Hearing, including:
- Provide a revised sign plan that reduces the number of grocery signs on the north building façade to no more than two signs;
 - Determine whether the 1,109 square-foot space at the southwest corner of Building 1 will be used for retail or amenity;
 - Incorporate solar photovoltaics (PV) and design the remaining roof space to be as solar-ready as possible for potential expansion in the future;
 - Ensure the electric vehicle supply equipment is at least a Level 2 charger and consider the installation of additional make-ready infrastructure to install future charging equipment at significantly lower expense and disruption;
 - Provide playable elements in the common areas and public space, especially geared at younger kids and toddlers;
 - Address any conditions recommended by DDOT;

- Continue to work with OP and the Office of the Attorney General to refine the requested common flexibility language;
 - Provide a detail for the long-term bike parking, including access, racks, and rack spacing;
 - Provide a detailed drawing, including a dimensioned section, of the walk-out and patios on the east facade;
 - Confirm that the townhouses would be rental and consider locating one Inclusionary Zoning (IZ) unit in a townhouse; and
 - Submit a final list of proffered project benefits and amenities.
124. The OP Hearing Report also noted that none of the District Agencies to which the Application had been referred had objected to the Application and that all comments received recommended approval of the Application or expressly stated no objection. The comments and reports received by these entities were included in the OP Hearing Report. (Ex. 53 at 22-25.)
125. The Applicant included its responses in its Response to OP and DDOT. (Ex. 151; FF 99-101.)

OP Public Hearing Testimony

126. At the October 7, 2019 public hearing, OP testified in support of the Application noting that the Application was not requesting a map amendment or any PUD related flexibility. OP also noted that it concluded that the site was appropriate for the proposed use and scale of the Project, that the Project was offering a commendable number of public benefits, particularly with regards to housing, and that it would overall constitute a better than matter-of-right development. (Oct. 7 Tr. at 97-99.)
127. In terms of the Applicant's housing proffer, OP testified that "Rock Creek West has the smallest percentage of income-restricted affordable housing units of the District's Comprehensive Plan planning areas." OP also noted that the opportunities for multi-family developments, as well as opportunities to utilize IZ and bonus densities, were very limited in this area of the District. (Oct. 7 Tr. at 99-100.)
128. Finally, OP noted that all questions and issues raised in the OP Hearing and Setdown Reports had been addressed. (Oct. 7 Tr. at 101-103.)

DDOT REPORT AND TESTIMONY

129. On September 27, 2019, DDOT filed a hearing report stating no objection to the application subject to conditions. (Ex. 52.) The conditions listed in DDOT's report were as follows:
- Fund and construct pedestrian network improvements in the immediate vicinity of the PUD Site to encourage walking and offset the impacts of being over-parked. Specifically, upgrade substandard curb ramps, stripe missing crosswalks, and install curb extensions, subject to DDOT approval, at the following intersections:
 - 49th Street and Yuma Street, N.W.;
 - 48th Street and Yuma Street, N.W.;

- 48th Street and Windom Place, N.W.; and
 - 48th Street and Warren Street, N.W.;
 - Implement the TDM Plan as proposed in the Applicant's August 23, 2019, CTR for the life of the Project, unless otherwise noted; and
 - Implement the LMP proposed in the Applicant's August 23, 2019, CTR for the life of the Project, unless otherwise noted.
130. The DDOT report also commented that the Applicant should do the following:
- Provide a public access easement on the seven-foot private space setback along the public alley; and
 - Ensure that all trucks serving [MAPS] are directed not to load or unload on Yuma Street, and instead utilize the alley or internal private drive aisles.
131. The DDOT report also noted seven items for the Applicant to address during the public space permitting process including:
- The existing curb cuts on Yuma Street and 48th Street, N.W. should be closed and replaced with green space and street trees;
 - An occupancy permit will be required for any portion of the outdoor café in public space near the Yuma Street, N.W. grocery store entrance;
 - Building projections on Yuma Street, N.W. should not project more than four feet into public space;
 - The concrete strips running north-south in the middle of the green space near the grocery store entrance on Yuma Street, N.W. should be removed;
 - The proposed trash enclosures along the public alley will require a public space occupancy permit;
 - All dumpsters currently located in public space along Yuma Street west of the alley and east of Exxon, which is within the DDOT right-of-way, should be moved to the new enclosures in the public alley; and
 - Several sections of pavement in public space along Yuma Street west of the alley and east of Exxon, within the PUD area. These areas should be restored to green space with leadwalks connecting from the sidewalk to building entrances.
132. The Applicant responded to DDOT's comments in its Response to OP and DDOT. (Ex. 151; FF 99-101.)

DDOT Public Hearing Testimony

133. At the public hearing of October 7, 2019, DDOT testified in support of the Application, reiterating that based on its analysis of the CTR that "there would not be any impacts to the roadway operations necessitating the need for any mitigation at intersections in the vicinity of the site." DDOT also indicated that all issues and proposed conditions of the DDOT report had been addressed and agreed to by the Applicant. (Oct. 7 Tr. at 105-106.)
134. In response to questions from the Commission, DDOT confirmed that the only mitigations requested by DDOT were the TDM Plan, the LMP, and the intersection improvements. All

other transportation-related improvements were being proffered by the Applicant as amenities or benefits. (Oct. 7 Tr. at 111.)

135. In response to questions from the Party Opponents, DDOT explained that its design and engineering manuals did not require sidewalks in alleys. DDOT further noted that the alley walkways and sidewalks proposed by the Project are all on private property and therefore outside of DDOT's jurisdiction. (Oct. 7 Tr. at 115.) DDOT also confirmed that it agreed with the findings of the Applicant's CTR that the residential use would generate less traffic during peak hours than the grocery and retail uses it was replacing. (Oct. 7 Tr. at 118.)

HPO REPORT

136. On October 7, 2019, the Historic Preservation Office ("HPO") filed a report on the Application ("HPO Report"). (Ex. 187.) The HPO Report stated that although the Overall PUD Site includes the MAPS, a District of Columbia historic landmark, the Project is not subject to review by the Historic Preservation Review Board ("HPRB") because no construction is proposed on the MAPS site (Lots 802 and 803), except for low trash enclosures along the north-south alley. The HPO Report stated specifically that it did not have review authority over the Valor Lot.
137. Nevertheless, the HPO Report evaluated the potential impacts of the Project on the historic MAPS, noting that "[t]he proposed PUD would have no direct physical impact on the historic landmark" but concluded that "the setting of the landmark would be positively improved by the proposed upgrading of the rear alley and reconfiguration of the street wall line along Yuma Street to the east."
138. The report also found that the scale and design of Project are compatible with the landmark and overall will have favorable impacts on the MAP Site. Specifically, the HPO Report states that:

[t]he rear wall of the SuperFresh [, the existing vacant building proposed to be replaced by the Project,] and its rooftop mechanical equipment is un-designed and unattractive, thereby detracting from the landmark, while the rear wall of the proposed structure is a well-designed primary façade in a compatible architectural style using materials, coloration, fenestration and a window-to-wall ratio that harmonize with the landmark. Its horizontal massing with forward-projecting end pavilions echoes the arm-like embrace of the horizontal shopping center and its forecourt, responding in a similar way to the dignified character of Massachusetts Avenue. Although the proposed building is taller, it does not visually overwhelm the landmark... Overall, the [proposed building] would improve the architectural setting of the landmark through compatible design ensured through the PUD process.

ANC REPORTSANC 3D

139. On September 6, 2019, ANC 3D filed a resolution stating that at its regularly scheduled and publicly advertised meeting on September 4, 2019, at which a quorum of commissioners was present, it voted to support the Application and authorized Troy Kravitz, SMD 3D02, to represent the ANC before the Commission (the “ANC 3D Report”). (Ex. 26.)
140. The ANC 3D Report stated that it was most concerned with the impacts of the Project on the District’s education and transportation systems:
- **Education** - The ANC Report concluded that despite many local schools being at or near capacity, the ANC “did not expect the project to have an appreciable impact upon the utilization of public school facilities.” In fact, the ANC believed that creating the opportunity for more members of the community to utilize the high performing local public schools constituted a project benefit; and
 - **Transportation** – The ANC Report credited the findings of the CTR which had concluded that the traffic impacts of the Project would be “about the same as if the existing buildings were simply reoccupied.”
141. The ANC 3D Report also noted that it considered the proposed grocery store as a “highly-valued” public benefit, which would be “right-sized” for the surrounding neighborhood and allow residents to fulfill their shopping needs by foot or bicycle instead of by automobile.
142. The ANC 3D Report also stressed its support for the creation of new housing, and in particular the Project’s provision of 10% (later revised to 20%) more IZ units than required. The ANC 3D Report noted that it believed that the Project was managing to advance the Mayor’s housing goals with a building that was compatible with the height and scale of the surrounding community.
143. The ANC 3D Report also noted the numerous transportation improvements being provided by the Project, particularly the HAWK signal across Massachusetts Avenue and the improvements to the Alley network, which the ANC believed would greatly improve pedestrian safety over the existing conditions.
144. The ANC 3D Report ultimately concluded that it believed the Project to be compatible with the surrounding neighborhood and better than a matter-of-right development. The ANC did make several requests of the Commission to be included as conditions to any approval including:
- Memorializing an agreement by the Applicant to include at least 13,000 square feet for exclusive use by a full-service grocery store for at least 10 years;
 - Memorializing the Applicant’s agreement to provide at least 144 parking spaces of the 236-easement held by AU for use by tenants and patrons of the Property;
 - Noting that the ANC was supportive of limiting the Applicant’s requested design flexibility to increase the number of units in the Building;
 - Encouraging the Applicant to utilize high-quality materials and architectural stylings;

- Encouraging the Applicant to expand the sidewalks within the alley system from three to four feet; and
- Allowing the Applicant, at its discretion, to substitute approved residential GFA for additional commercial GFA on a 1:1 basis up until the new building contains leasable square footage of 44,000 square feet.

145. On October 17, 2019, ANC 3D submitted its post-hearing submission which defended the ANC's ability to analyze the Project and explained the criteria required for the Commission to grant the ANC Report "great weight." ANC 3D also submitted a revised version of the ANC 3D Report with corrected citations to the Zoning Regulations of 2016. (Ex. 231.)

ANC 3E

146. On September 27, 2019, ANC 3E filed a resolution stating that at its properly noticed meeting on September 25, 2019,⁵ at which a quorum of commissioners was present, ANC 3E voted in support the Application and authorized Commissioners Amy Hall and Jonathan McHugh to represent the ANC before the Commission (the "ANC 3E Report"). (Ex. 48.) ANC 3E also filed a Memorandum of Understanding ("MOU") and a draft parking management plan. (Ex. 49-50.)

147. The ANC 3E Report noted the numerous design changes that the Applicants had made since the Project had initially been proposed and also emphasized that the Application was not requesting any additional height or density and would be within the development standards for the zone district. The ANC 3E Report also noted that the Applicant was providing more parking than required under the Zoning Regulations and had worked with the ANC to propose a "wide range of transit options to serve the site." Further, the ANC 3E Report noted that the Project was providing numerous other improvements to the surrounding transportation network and alley system that the ANC believed would greatly benefit pedestrian safety.

148. The ANC 3E Report did acknowledge that some members of the community had raised concerns about the scale and impact of the Project but that the ANC believed that the Applicant had sufficiently addressed these issues through its design changes and through its agreement to the MOU.

149. Both ANCs provided written and oral testimony in support of the Application. (Ex. 26, 48-50, 154, 200, 201, 218, 229, 231.)

PARTY SUPPORTERS

150. SVNA made a total of three submissions to the record:

- On September 20, 2019, SVNA filed its request for party status in support. The request noted SVNA's strong support for the Application and noted that the Project would provide a number of public benefits to the surrounding community; (Ex. 34.)

⁵ The ANC's resolution incorrectly stated that the meeting occurred on October 25, 2019, but the meeting was actually held on September 25, 2019.

- On October 24, 2019, SVNA filed its post-hearing submission; and (Ex. 240.)
 - On November 11, 2019, SVNA submitted a letter in support of the Applicant's motion to strike. (Ex. 251.)
151. W3V made a total of five submissions to the record:
- On September 20, 2019, W3V filed its request for party status in support; (Ex. 31.)
 - On October 6, 2019, W3V filed a letter in support of the Application noting the need for more housing units in Ward 3, the benefit of a full-service grocery store and commending the Applicant for its efforts to address the concerns of the community; (Ex. 157.)
 - On October 22, 2019, W3V submitted its post-hearing submission; (Ex. 235.)
 - On October 31, 2019, W3V submitted a response to the Party Opponents' post-hearing submissions; and (Ex. 243.)
 - On November 11, 2019, W3V submitted a letter in support of the Applicant's motion to strike. (Ex. 252.)
152. At the public hearing of October 7, 2019, both SVNA and W3V testified in support of the Application, reiterating the issues raised in their written submissions.

PARTY OPPONENTS

CRD

153. On October 3, 2019, CRD submitted:
- A statement in opposition to the Application ("CRD's Statement"); and (Ex. 118.)
 - A response to the Applicant's CTR, which included its own analysis of the Project's transportation impacts (the "CRD Traffic Study"). (Ex. 124.)
154. CRD's Statement raised several issues concerning the Project, including:
- The Project's consistency with the CP, including the FLUM;
 - The relationship of the Project to the D.C. Court of Appeals ("Court") decision in the *Durant* case;
 - The adequacy of public benefits and project amenities proffered by the Applicant;
 - The potential impacts of the Project on the surrounding area, particularly with as to traffic and congestion, pedestrian safety, and deprivation of sunlight;
 - The manner in which the height of the Building is measured relative to the Zoning Regulations and the 1910 Height of Building Act (the "Height Act");
 - The impacts of the Project on the historic MAPS;
 - The calculation of the amount of affordable housing required under IZ; and
 - The Applicant's failure to submit its agreements with other property owners within the PUD Site to the Commission.

NLC

155. On October 4, 2019, NLC filed comments in opposition to the Application. The issues raised in NLC's comments relate primarily to:

- The consistency of the Project, including the residential use, with the CP, including the FLUM;
- The adequacy of public benefits and project amenities proffered by the Applicant;
- The scale and massing of the Project relative to the surrounding neighborhood;
- The impact of the Project on existing businesses on the Valor Lot;
- The impacts of the Project on traffic; and
- Vehicular circulation and pedestrian safety in the alleys.

SVWHCA

156. On October 7, 2019, SVWHCA submitted a letter in opposition to the Application. The issues raised by SVWHCA in its letter relate primarily to:
- The scale of the Project relative to the surrounding neighborhood;
 - The adequacy of public benefits and project amenities proffered by the Applicant;
 - The impacts of the Project on public safety, particularly pedestrian safety in the alleys; and
 - The impacts of the Project on the historic MAPS and the adequacy of the Applicant's proffered historic preservation benefit.

Party Opponents Contested Issues

Noncompliance of the Project

Measurement of Building Height

157. CRD asserted that the Applicant's BHMP for the Building violates Subtitle B § 307.7, which dictates how a BHMP must be established when the curb grade adjacent to a site has been artificially changed by, among other things, an embankment. Pursuant to Subtitle B § 307.5, where a building fronts on more than one street, any front may be used to measure the height of the building. In this case, the Building fronts on both 48th and Yuma Streets, and, as permitted under the Zoning Regulations, the Applicant measured the height of the Building from the elevation of the curb opposite the middle of the front of the Building along 48th Street. The Party Opponents asserted that the Applicant is not permitted to measure the height of the Building from the elevation of the curb along 48th Street, N.W. because the grade of the curb along 48th Street rests upon an artificially elevated roadway embankment. The Party Opponents supported their claim through a series of existing conditions photographs taken along 48th Street.

Calculation of Project Density

158. The Party Opponents asserted that the Project contains almost 50,000 square feet of GFA more than what is available on the Valor Lot as a matter of right. Specifically, CRD included a table in their Statement in Opposition showing that while 185,514 GFA is available for development on the Valor Lot as a matter of right, the Applicant is proposing 234,629 GFA on the Valor Lot. (Ex. 118.)

Violation of the Allocation Agreement

159. The Party Opponents claimed that the Project violates the terms of the Allocation Agreement.

160. CRD responded to the Applicant’s testimony at the public hearing by asserting that “[b]y allowing greater density on the AU Building Lot and limiting density on the Valor Lot, [the Allocation Agreement] effectively pushed development to the Massachusetts Avenue side of Record Lot 9, thereby benefitting the nearby property owners by reducing density on the portions of the SuperFresh site facing the neighborhood. This is consistent with sensible land use principles, as encouraged by the Comprehensive Plan.” CRD further asserted that in *AU Park Citizens Assoc. v. Burka*, “[t]he District of Columbia Court of Appeals...opined that the beneficiaries of the Easement were intended to be “nearby property owners.”

Durant

161. The Party Opponents cited to the *Durant* case in support of their argument that the Project is inconsistent with the CP. *Durant* involved a PUD-related Zoning Map amendment to establish C-2-B zoning (under the Zoning Regulations of 1958), which appears under the Moderate- and Medium-Density Commercial FLUM descriptions, on a site that was largely designated as Low-Density Residential on the FLUM.
162. The Party Opponents asserted that under *Durant*, the Applicant cannot seek approval of a PUD to construct a six-story mixed-use building by employing “flawed efforts to diminish the visual impact of the proposed structure” because the Court in *Durant* rejected reliance on architectural features to determine whether a project met a FLUM description. CRD further stated that the Project, “unlike the PUD in *Durant*, is not set back from the property line at ground level. Rather, the portions that are directly adjacent to the detached, single family homes on 48th and Yuma Streets mostly sit on the property line.”

Neighborhood Context

163. The Party Opponents asserted that the Project is out of context with the surrounding residential and small-scale commercial neighborhood. CRD specifically stated that:

[t]he oversized, six-story Valor building will be a jarring intrusion into the neighborhood of much lower 2-story homes and will destroy the attractive, open vista ... on Massachusetts Avenue ... Plus, the building, which rises to 81.5 feet and will be built on the property line, will have a wall-like appearance along both Yuma and 48th Streets.

Potential Adverse Impacts

Traffic and Pedestrian Safety

164. The Party Opponents contended that the number of vehicle and truck trips that may be generated by the Project is unacceptable and that the Project will increase danger to pedestrians due to increased traffic volume and that trucks will not be able to fit in the alleys. The CRD Traffic Study alleged that contrary to the CTR’s findings of approximately 400 additional vehicle trips per day, that the Project would generate an additional 3,003 to 3,437 daily vehicle trips. (Ex. 124.)

165. In support of this argument, the Party Opponents submitted charts showing the potential increase in vehicles and trucks entering and exiting the alleys during peak PM period. (Ex. 124.) According to the charts in the CRD Traffic Study, approximately 13 vehicles currently enter the north-south alley leading from Yuma Street to Massachusetts Avenue per hour during the peak PM period and approximately 14 vehicles enter the east-west alley off of 48th Street. The CRD Traffic study asserted that these numbers would increase to 215 and 126 vehicles per hour during the peaking PM period after construction of the Project.
166. The Party Opponents also asserted that the Project will jeopardize pedestrian safety in the alley system due to the significant increase in cars and trucks using the alleys and the increase in the number of pedestrian-vehicle conflict points. The Party Opponents stated that the increased traffic entering the PUD Site will create more conflict with pedestrians walking along Massachusetts Avenue, 48th Street, and Yuma Street. The Party Opponents also stated that the improvements proposed along the alleys to accommodate pedestrians are not adequate and fail to meet safety standards. The Party Opponents stated that “the PUD Site does not meet industry practices recommended by the American Association of State Highway and Transportation Officials (AASHTO), the Federal Highway Administration (FHWA), the National Association of City Transportation Officials (NACTO), and the Institute of Transportation Engineers.” (Ex. 185 at 3.)

Parking

167. The Party Opponents stated that the Commission should ascertain the availability of the parking spaces being provided by the Applicant since the availability of these spaces depends upon the reallocation of spaces that must be shared with AU. The Party Opponents also stated that the agreement reallocating these spaces should be made public.

Deprivation of Sunlight

168. The Party Opponents allege that the Project, specifically the Building, will deprive adjacent neighbors of sunlight.

Loss of Privacy and Views

169. The Party Opponents claimed that the Project will cause impacts to privacy and existing views.

Accuracy of Landscaping in Project Renderings

170. In its visual impact study (Ex. 217), the Party Opponents asserted that the Applicant’s “unrealistic depiction of the height, location and maturity of the vegetation surrounding the proposed site distorts the true mass and scale of the proposed building.” (Ex. 217.) The Party Opponents’ expert in visual impact studies, Mr. Curt Westergard, testified to the same at the public hearing.

Construction Damage

171. The Party Opponents stated that “[d]amage to neighboring homes is likely” during construction of the Project. No additional information was provided to substantiate that this

will actually occur, and to the extent damage does occur, what will be the nature of the damage.

Proffered Benefits

Calculation of Affordable Housing

172. The Party Opponents asserted that the Applicant is circumventing the IZ regulations and using incorrect calculations to determine the amount of square footage to be set aside.

Historic Preservation as a Public Benefit and Other Historic Preservation Issues

173. In its response to the HPO Report, the Party Opponents made several statements regarding the historic preservation benefits of the Project and the applicability of D.C. preservation law. Specifically, the Party Opponents stated that the Project does not provide “tangible” or “quantifiable” preservation benefits as required under Subtitle X § 305.5(e), and that density determination and allotment on the MAPS Site have not been addressed.

174. The Party Opponents argued that the HPO Report failed to address whether the Project provides tangible and quantifiable preservation benefits, as required under the PUD regulations, but instead only discussed indirect effects that cannot be considered PUD benefits. To support its argument, the Party Opponents provided the following quote from the HPO Report – “[t]he Project would enhance the character of the Parking Shops by improving its architectural setting through compatible design and superior execution.”

175. The Party Opponents also made several other assertions regarding the use of aggregation of density from the MAPS Site and the resulting protection afforded to the historic landmark. First, the Party Opponents stated that “[d]ensity belongs to and is an attribute of the MAPS landmark. Removing such an attribute from a landmark is beyond the purview of the Zoning Commission.” The Party Opponents also stated that “[t]he open space of the [MAPS] parking lot is as much part of the allocation and use of density as it [*sic*] the building itself. Therefore, one must consider the parking lot space as already used density.” Finally, CRD stated that “MAPS’s density cannot be done simply by subtracting the amount of density (FAR) already used by the landmark building’s footprint on Lots 802 and 803 from what would generally be available under MU-4 zone for those lots.”

176. In its response to the Applicant’s post-hearing submission, the Party Opponents asserted that the sale of density from the MAPS Site may represent an alteration of the historic landmark, and that the unused density on the MAPS Site is considered a defining feature of the landmark.

Opposition Public Hearing Testimony

177. The Commission continued the public hearing on the Application on October 10, 2019. At that time, CRD proffered the following expert witnesses: Stephen Hansen of Preservation Matters, expert in historic preservation; and Curt Westergard of Digital Design + Imaging Service, expert in visual impact studies. The Commission accepted these witnesses as experts in their respective fields.

Opposition Post-Hearing Submissions

178. On October 24, 2019, the SVWHCA-NLC and CRD submitted their post-hearing submissions responding to the Commission's requests at the end of the second public hearing: (Ex. 236-239.)
- SVWHCA-NLC's submission addressed questions posed by the Commission regarding other solutions for addressing the lack of affordable housing units in Ward 3. SVWHCA-NLC noted the high number of rent-controlled units in Ward 3, and also stated that it was supportive of multi-unit housing on the PUD Site it did not believe that the Applicant's proffer of 12% IZ units was an "adequate or sufficient" public benefit;
 - CRD's submission also addressed the issue of affordable housing, provided a list of the contested issues of fact and law, an evaluation of the Application against the PUD requirements of Subtitle X, Chapter 3, and a response to the Applicant's proffers. CRD concluded that the Applicant had not met its burden under the PUD standards; and
 - CRD's submission also objected to the Application's requested special exception relief. CRD predicated their argument on the basis that it fundamentally believed that the Project was exceeding the matter-of-right density permitted on the Valor lot, and that fundamentally the Project was "too big for the site." As a result, CRD opposed the requested rear yard relief on the basis that it was just further evidence that the Building was too large and rather than utilizing special exception relief, the Applicant should revise the building design by "pulling back the western side of the building." CRD did note that it did not have concerns with the Applicant's decision to revise the Townhouse penthouse design to provide hatches but that it wanted to see the final designs. (Ex. 238 at 12-13.)
179. On October 29, 2019, SVWHCA-NLC submitted a letter requesting additional time to respond to the Applicant's post-hearing submission because it received the Applicant's submission by U.S. Mail and not email or hand delivery, and the request was granted by the Commission. (Ex. 242.)
180. On October 31, 2019, CRD submitted a response to the Applicant's post-hearing submission. (Ex. 244.) CRD's response largely reiterated the arguments against the Application raised in its prehearing submissions, oral testimony, and post-hearing submissions. In addition, CRD also included a shadow study analyzing the Project's potential shadow impacts that had not previously been submitted to the record. (Ex. 244 at 23-29.)
181. On November 4, 2019, SVWHCA-NLC submitted a response to the Applicant's post-hearing submission. (Ex. 247.) SVWHCA-NLC reiterated its assertion that the Applicant's IZ proffer was inadequate and should be increased. The response also stated that additional information was needed on the proposed grocery store use, the potential for roof top solar, the landscaping plans, and traffic impacts and mitigations.
182. On November 7, 2019, CRD submitted a letter opposing the Applicant's motion to strike CRD's shadow study. (Ex. 250.) CRD contended that it was merely responding to issues

that the Applicant had raised in its post-hearing submissions as permitted by terms for post hearing submissions laid out by the Commission at the end of the October 10, 2019 public hearing.

Other Non-Party Responses

183. Numerous letters were submitted to the record in support of the Application. At the hearing on October 10, 2019, the Coalition for Smarter Growth testified as an organization in support of the Application, as did several individuals. The supporters of the Application generally cited to the importance of increasing housing stock in the area, including affordable units, the need for a locally serving grocery store, and the care and consideration that went into the design of the Project.
184. Numerous letters were submitted to the record in opposition to the Application and several individuals testified in opposition at the public hearing on October 10, 2019, in addition to one individual who was undeclared. The individuals in opposition contended that the Project would be out of scale with the surrounding neighborhood, and that the increased traffic would have a detrimental impact on the surrounding road network and to pedestrian safety in the alleys. The opponents also argued that the public benefits proffered by the Applicant were not sufficient given the scale of the development.

CONCLUSIONS OF LAW

1. The Commission is authorized under the Zoning Act to approve a consolidated PUD consistent with the requirements set forth in Subtitle X §§ 302, 304, and 309 and Subtitle Z § 300.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - a. *Results in a project superior to what would result from the matter-of-right standards;*
 - b. *Offers a commendable number or quality of meaningful public benefits; and*
 - c. *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X § 303.13:

As part of any PUD, the applicant may request approval of any relief for which special exception approval is required. The Zoning Commission shall apply the special exception standards applicable to that relief, unless the applicant requests flexibility from those standards. Any such flexibility shall be considered the type of development flexibility against which the Zoning Commission shall weigh the benefits of the PUD.

4. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

and must find that the proposed development:

- a. *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - b. *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - c. *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
5. Pursuant to Subtitle X § 304.4(a), the Commission shall find that the proposed development is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site. The purposes of the Comprehensive Plan are six-fold:
- a. *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - b. *To guide executive and legislative decisions on matters affecting the District and its citizens;*
 - c. *To promote economic growth and jobs for District residents;*
 - d. *To guide private and public development in order to achieve District and community goals;*
 - e. *To maintain and enhance the natural and architectural assets of the District; and*
 - f. *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District. (D.C. Code §1-245(b).)*
6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals recently discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (the “McMillan PUD”). (Z.C. Order No. 13-14(6).) In its decision affirming the Commission’s approval of the McMillan PUD, the Court stated the following:

The Comprehensive Plan is a “broad framework intended to guide the future land use planning decisions for the District.” *Wisconsin-Newark Neighborhood*

Coal. v. District of Columbia Zoning Comm'n, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). ... “[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.” *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous “occasionally competing policies and goals,” and, “[e]xcept where specifically provided, the Plan is not binding.” *Id.* at 1167, 1168 (internal quotation marks omitted). Thus “the Commission may balance competing priorities” in determining whether a PUD is consistent with the Comprehensive Plan as a whole.” *D.C. Library Renaissance Project/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013). ... [I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission “must recognize these policies and explain why they are outweighed by other, competing considerations.” (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016).)

7. “If there is substantial evidence to support the [Commission's] finding, then the mere existence of substantial evidence contrary to that finding does not allow this court to substitute its judgment for that of the [Commission].” *Watergate E. Comm. Against Hotel Conversion to Co-op Apartments v. District of Columbia Zoning Comm'n*, 953 A.2d 1036, 1043 (D.C.2008) quoting *Brown v. District of Columbia Bd. of Zoning Adjustment*, 486 A.2d 37, 52 (D.C.1984) (en banc) (quotation omitted). See also, *St. Mary's v DC ZC*, 174 A.3d 260, 270 (2017) “[t]he mere fact that petitioners presented contrary evidence ... is immaterial[;] [a]s the trier of fact, the [Commission] 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 on the other.” quoting, *Fleischman v. District of Columbia Bd. of Zoning Adjustment*, 27 A.3d 554, 562 (D.C. 2011).

COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

8. The PUD Site meets the PUD eligibility requirements because its approximately 160,788 square feet of land area exceeds the 15,000-square-foot minimum land area requirement for a PUD in the MU-4 zone. (Subtitle X § 301.1; FF 7.)

Not Inconsistent with the Comprehensive Plan (Subtitle X 304.4(a))

9. Based on the filings and testimony at the public hearing, as well as the OP analyses submitted to the case record, the Commission concludes that the Project is not inconsistent with the CP when read as a whole and in fact furthers numerous CP elements and policies. In particular, the Commission concludes that the Project would further policies contained in the GPM, FLUM and the Land Use, Housing, Environmental Protection, Economic Development, Urban Design, Historic Preservation, Transportation, and Rock Creek West Area Elements. In particular, the Commission concludes that the Project constitutes compatible infill development that will not adversely affect the surrounding neighborhood

as discussed in these various CP elements. With a more detailed discussion to follow. (Ex. 11 at 4-11; Ex. 53 at p. 5-7.)

GPM

10. The Commission concludes that the Project is not inconsistent with its designation on the GPM as a Neighborhood Commercial Center because the Project will not only provide a full-service grocery store that will serve the everyday needs of building residents and immediately surrounding community but will also complement and support the existing commercial node in which it is located, including the MAPS and the additional commercial establishments across Massachusetts Avenue, N.W., by introducing additional residents to the area. (FF 48; CP § 223.16.)

FLUM

11. The Commission concludes that the Project is consistent with the FLUM's low-density commercial definition, which specifically includes the MU-4 zone, because the Project will provide a mix of residential and commercial uses in a low-density area of the District, outside of the central commercial core, but that still has access to main arterial roads, including Massachusetts Avenue, and transit centers including metro bus lines and the Tenleytown Metro Station. (FF 49.)
12. The Commission notes that the CP anticipates residential uses in all of its commercial use categories, provided that the primary use remains commercial. (CP § 225.7; Oct. 7 Tr. at 108-109.) The Commission finds that the predominant use of the PUD Site is intended to remain commercial, with residential uses limited to the Valor Lot. The Commission also finds that the residential uses will be compatible with both the existing commercial character of the PUD Site and the surrounding low-density residential areas.
13. The Commission also notes that the CP directs that the FLUM should not be used as a zoning map, and does not "establish detailed requirements for setbacks, height, use, parking, and other attributes" nor "specify allowable uses or dimensional standards." (CP § 226.1(a)). Instead, the FLUM is to be "interpreted broadly":

The densities within any given area on the Future Land Use Map reflect all contiguous properties on a block—there may be individual buildings that are higher or lower than these ranges within each area. Similarly, the land use category definitions describe the general character of development in each area, citing typical building heights (in stories) as appropriate. It should be noted that the granting of density bonuses (for example, through Planned Unit Developments) may result in heights that exceed the typical ranges cited here. (CP § 226.1(c).)

14. As discussed further below, the Commission notes that the Project is within the matter-of-right limits for the MU-4 zone and has not requested any additional height or density as part of the PUD application. The Commission also notes that while the definition of Low Density Commercial states that development should be "**generally** low in scale and

character” and notes that such zones are “comprised **primarily** of one- to three-story commercial buildings” (emphasis added), the Commission concludes that this language constitutes general guidance and not an absolute limitation on the number of stories or allowed uses⁶. Based on this the Commission concludes that the Project’s scale and character is appropriate, and the Project is not inconsistent with the FLUM’s designation.

15. The Commission is not persuaded by the Party Opponents’ arguments based on the decision in *Durant*, and instead concludes that the Project is compliant with the *Durant* holding because:
- *Durant* involved the construction of a PUD in an area designated as a “Neighborhood Conservation Area” on the GPM, and predominantly “Low Density Residential” on the FLUM, both designations imposing more restrictions on potential development; (*Durant I*, 65 A.3d at 1163.)
 - The MU-4 zone of the PUD Site is specifically identified in the Low Density Commercial designation, whereas the new zones proposed in *Durant* were not included in the FLUM designation, and were clearly beyond the scope of what the designation contemplated;
 - Further, as has been noted, the Project will comply with the MU-4 development standards; and
 - Finally, the Commission notes that while the Project must demonstrate compatibility with the surrounding uses and development, it is not required to meet the more restrictive requirement present in *Durant* to “conserve” these areas through more restricted development.

In reaching this conclusion the Commission credits the testimony of the Applicant at the October 7, 2019 public hearing. (FF 105-106, 107, 109.)

Height

16. The Commission concludes that the height and number of stories for the Building were properly measured in accordance with Subtitle B of the Zoning Regulations. The Commission also concludes that, since the BHMP was properly determined, the 43-foot, 6-inch height of the Building is substantially below the maximum height of 50 feet permitted as a matter of right in the MU-4 zone. The Commission also noted that the height is only three feet, six inches taller than the maximum height of 40 feet that is permitted in the adjacent R-1-B zone.
17. In reaching this conclusion, the Commission credits the testimony of Mr. Dettman and Mr. Glatfelter, that 48th Street does not rest upon an artificial embankment. (FF 106, 111.) The Commission finds that the thorough analysis of this issue conducted by Mr. Glatfelter demonstrates that the curb grade elevation of 48th Street has remained at generally the same

⁶ “Except where specifically provided, the Plan is not binding; it is only an interpretative tool [that] guide[s] but do [es] not direct the Commission’s action.” (*Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161,1168 (2013)(“Durant I”).)

elevation for at least the last 75 years, and that the subsequent construction of the existing grocery store building and parking structure on the Valor Lot in the 1960s did not impact the curb grade elevation of 48th Street. In fact, based on Mr. Glatfelter's historical analysis, the Commission concludes that these construction activities specifically sought to maintain the existing curb grade through the use of a sheeting and shoring program. (FF 111; Ex. 229.) Thus, because the curb grade of 48th Street has not been artificially changed, the Commission concludes that the Applicant may properly measure the height of the Building from 48th Street.

18. The Commission also concludes that measuring the height of the Building from 48th Street, N.W. also complies with the Height Act. Based on the Commission's review of the plans submitted by the Applicant, the height of the Building is measured from the elevation of the curb along 48th Street, N.W. Compared to the elevation of the curb along Yuma Street, N.W. this is the elevation that will permit the greater height. (Ex. 28A6.) Per § 7 of the Height Act, "[i]f the building has more than one front, the height shall be measured from the elevation of the sidewalk opposite the middle of the front that will permit the greater height." (D.C. Code § 6-601.07.)

Density

19. The Commission concludes that the Project properly aggregated the proposed FAR across the PUD Site pursuant to Subtitle X § 303.2, "the FAR of all buildings shall not exceed the aggregate of the FARs as permitted in the zone or zones included within the PUD boundary, as that may be increased by Subtitle X § 303.3." In reaching this conclusion, the Commission credits the calculations provided by the Applicant, as confirmed by OP, that the GFA of the existing AU Building and MAPS have been properly accounted for, and that the Applicant has properly redistributed remaining available density within the PUD Site from the MAPS Site to the Valor Lot.
20. The Commission notes that this kind of density aggregation is not only permitted by the regulations but has been upheld by the Court, which stated in its opinion on the McMillan PUD:

The FLUM explicitly contemplates two ways in which more intensive development than is otherwise reflected in the FLUM may be permissible: (1) a larger development that as a whole is consistent with the FLUM designation may contain individual buildings with greater height or density; and (2) the PUD process may permit greater height or density. 10-A DCMR § 226.1 (c) (2016). Here the Commission concluded that, when the entire site is taken into account, the PUD's overall density is consistent with that permitted in moderate-density commercial zones. We do not understand FOMP to dispute that conclusion. The Commission thus reasonably determined that the PUD as a whole was not inconsistent with the FLUM. (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1034 (D.C. 2016).)

21. The Commission also concludes that the PUD Site's density of 2.68 FAR is not inconsistent with the Low Density FLUM designation because (i) the MU-4 zone is specifically identified by the CP as compatible with the Low Density Commercial designation and (ii) the PUD Site's FAR is well below both the maximum 3.0 FAR allowed as a matter of right for IZ developments in the MU-4 zone and the 3.6 maximum FAR allowed for a PUD for the MU-4 zone.
22. The Commission therefore not only concludes that the PUD regulations specifically permit aggregation of density across the PUD Site but that the overall Project density complies with the Zoning Regulations' density limits for the MU-4 zone while remaining under the maximum the matter-of-right height limits.
23. The Commission concludes that the Allocation Agreement is a private matter between two private entities and is not intended to benefit nearby property owners.⁷ The Commission therefore concludes that the Allocation Agreement does not involve the Commission or the District because the Allocation Agreement only distributed the maximum matter-of-right square footage of GFA permitted under the Zoning Regulations on Record Lot 9 between the owners of the AU Building and Valor Lots. The Application accounted for the square footage of the AU Building in calculating the Project's FAR. The Commission therefore concludes that the Allocation Agreement is not relevant to this decision. Nonetheless, the Commission sees no basis for CRD's assertion that the Project's redistribution of density from the MAPS Site to the Valor Lot violates the Allocation Agreement.

CP District Elements

24. The Commission concludes that the Project will advance the CP's Land Use Element through the thoughtful development of an underutilized site in a way that respects the character of the surrounding neighborhood through the use of sensitive design features, public gathering spaces, extensive landscaping, and the concentration of the retail spaces away from the residential areas. (FF 50; Ex. 11.)
25. The Commission concludes that the Project will significantly advance the CP's Housing element because the Project will result in the redevelopment of an underutilized site with 219 residential units, including 20% more GFA for affordable units than would be provided as a matter of right, as well as a significant number of family sized units (approximately 53% of the total units). (FF 51; Ex. 11.)
26. The Commission concludes that the Project will advance the CP's Environmental Protection Element through its use of green building methods in order to achieve

⁷ As stated by the Applicant, the April 17, 1973, D.C. Council alley closing resolution ordered closure of the alley "subject to a deed of easement for vehicular and pedestrian access." Further, the Court's opinion in *AU Park Citizens Assoc. v. Burka* clearly states that the easement was for vehicular and pedestrian purposes, not to limit density on the Valor Lot. While the Court's opinion references a benefit to nearby property owners, it does so in the context of the purpose of the easement being for vehicular and pedestrian access: "[t]he Council, nevertheless, did not find reason to solicit the zoning authorities' views in this case; nor did it attempt to impose restrictions beyond the filing of an easement over the alley primarily for the benefit of nearby property owners."

- LEED-Gold certification and extensive green roofs and landscaping which will greatly improve the PUD Site's ability to handle stormwater runoff over the existing, largely impervious condition. (FF 52; Ex. 11.)
27. The Commission concludes that the Project will advance the CP's Economic Development Element by creating an additional shopping opportunity in a neighborhood commercial area through the development of a full-service grocery store. The Commission also concludes that the new residential units would also increase traffic at other neighboring businesses, which might in turn lead to additional job creation. (FF 53; Ex. 11.)
 28. The Commission concludes that the Project will advance the Urban Design Element by proposing an appropriately scaled and sensitively designed building that relates to, and complements the scale, development pattern and established character of the adjacent residential and commercial uses and provides an appropriate transition between the lower-scale residential neighborhood to the north and east and the larger-scale AU Building and commercial uses to the south and west. In particular, the Commission notes that the Project's use of setbacks, high-quality materials, and extensive landscaping allow the Project to blend with the surrounding neighborhood. (FF 54.)
 29. The Commission concludes that the Project will advance the Historic Preservation Element by not only providing a building that respects the design and character of the historic MAPS, but also through the distribution of non-residential density from the MAPS Lot to the Valor Lot. As discussed further below, the Commission concludes that this will serve to protect the MAPS by limiting the future development on the MAPS Lot. (FF 55.)
 30. The Commission concludes that the Project will advance the CP's Transportation Element by providing a robust TDM Plan, making extensive improvements to the surrounding pedestrian network that will improve both the safety and appearance of the network, providing bicycle facilities and encouraging transportation alternatives. The Commission also concludes that the provision of the retail grocery component will encourage residents of the Project, as well as the surrounding community, to shop locally rather than traveling to other locations in the District. (FF 56, 72, 74, 88; Ex. 11.)
 31. The Commission concludes that the Project will advance several policies of the CP's Rock Creek West Area Element by providing a compatible infill development that will not only provide local serving retail in the form of the proposed grocery store, but will also help support and sustain the existing commercial uses in the surrounding neighborhood commercial center. The Commission notes that the Rock Creek West Element specifically encourages the development of mixed-use projects over single use projects. The Commission finds that the Applicant has provided sufficient design elements and mitigations where needed to ensure that the Project is compatible with the surrounding neighborhood. (FF 57.)
 32. Therefore, as set forth in Exhibits 2F and 241D, and particularly when viewed together with OP's conclusions demonstrating that the Project is not inconsistent with the FLUM

and GPM, guiding principles, and other policies within the Citywide and Rock Creek West Elements of the CP, the Commission concludes that the Project is not inconsistent with the CP when read as a whole. To the extent the Project may be inconsistent with one or more individual policies, the Commission finds that any such inconsistencies are far outweighed by the Project's consistency with other competing policies and considerations, and in particular those policies relating to housing, affordable housing, and environmental sustainability. (FF 51-52, 109.)

Potential Unacceptable Impacts - How Mitigated or Outweighed (Subtitle X § 304.4(b))

33. The Commission finds that the Project will not result in any unacceptable project impacts. The Commission concludes any impacts will be favorable, capable of being mitigated, or acceptable of given the quality of public benefits provided by the Application as detailed below.

Vehicular and Alley Traffic

34. The Commission concludes that the potential impacts of the Project on vehicular and alley traffic will be minor and will be either directly mitigated by the Applicant's TDM and LMP or outweighed by the transportation benefits provided by the Project. The transportation aspects of the Project were thoroughly analyzed in the Applicant's CTR that was prepared in coordination with and approved by DDOT. The CTR found that the Project will not have a detrimental impact on the surrounding transportation network, a fact confirmed by the DDOT Report that stated that "no mitigation for traffic impacts is requested by DDOT." (FF 69.)
35. The Commission also concludes that any other potential adverse impacts resulting from vehicular traffic will be outweighed by the numerous improvements and transportation related benefits proffered by the Project, including upgrades to the alley system, the closure of large curb cuts adjacent to the Valor Lot, the installation of a HAWK signal, contributions for connections to Metrorail and performance of specified transportation studies. The Commission notes that these improvements were not required as mitigations by DDOT but were proffered by the Applicant as benefits of the Project. (FF 74, 88.)
36. The Commission credits the results of the Applicant's DDOT-approved CTR, which shows the alley systems will function at an acceptable level. The Commission finds that the various improvements to the alley network, including the consolidation of the trash enclosures, and widening the alley will result in safer and more efficient vehicular traffic in the alleys. Furthermore, the Commission finds that the alley-related elements of the Applicant's TDM Plan and LMP, as confirmed by DDOT, are sufficiently robust to mitigate any potential impacts resulting from increased traffic in the alleys. Therefore, the Commission concludes that the Project will not result in any potential adverse impacts on the alley network that cannot be suitably mitigated. (FF 69, 72-73, 95-98.)
37. The Commission does not find the traffic study and charts concerning alley traffic submitted by CRD to be persuasive. The Commission finds that CRD's baseline numbers are extremely low for a neighborhood commercial center and that they do not provide an

accurate starting point from which to measure the impacts of the Project on traffic or the alley system. The Commission credits the testimony of DDOT and the Applicant's traffic expert, that the traffic generated by the Project needs to be understood in the context of the previous large retail uses on the site. The Commission concludes that the residential elements of the Project will generate less vehicular traffic than the previously existing retail use, and the incorporation of a grocery store in the Building will also help reduce traffic by allowing residents of the Building, and the surrounding neighborhood to do shopping by foot or bicycle. (FF 112, 133-135.)

Pedestrian and Alley Safety

38. The Commission concludes that even though not required by DDOT as mitigations, the Applicant is proposing substantial improvements to pedestrian safety and circulation through and around the PUD Site over what is existing including:
- Eliminating two large curb cuts from 48th and Yuma Streets resulting in approximately 80 linear feet of new, unbroken sidewalk for pedestrians to use without the risk of conflict with a vehicle crossing the sidewalk;
 - Funding the installation of a new HAWK signal along Massachusetts Avenue between 48th and 49th Streets to address a known safety issue caused by mid-block pedestrian crossings between the Spring Valley Shopping Center and the MAPS/AU Building; and
 - Making significant upgrades to public and private spaces along the alleys within the PUD Site and along surrounding sidewalks that will create a safer and more welcoming pedestrian experience.
39. The Commission credits DDOT's testimony that the District's design standards do not require sidewalks or pedestrian paths to be provided along alleys because alleys are intended to be used by vehicles and trucks while public sidewalks are intended to be used by pedestrians. It is this hierarchy and separation of travel ways that provides the greatest degree of safety to pedestrians. (FF 135.)
40. Even through DDOT does not require pedestrian improvements in alleys, the Commission concludes that the Applicant is providing several improvements along the alley system that will improve pedestrian safety. These improvements being voluntarily provided in order to respond to the community and accommodate any pedestrian circulation that may occur in the alley. The improvements include:
- Widening the north-south alley to accommodate the new trash enclosure while maintaining a 20-foot drive aisle and a 3-foot delineated pedestrian path;
 - Providing a six-foot-wide sidewalk and delineated pavement along the east-west alley;
 - Installing protective bollards and special paving at the alley intersection;
 - Providing a sidewalk at the southern end of the north-south alley (along the west side near MAPS) from Massachusetts Avenue to the intersection of the east-west alley; and
 - Installing striping and signage, as necessary, at the alley intersection and entrance to the north-south alley at Massachusetts Avenue.

Compared to existing conditions, where there are no pedestrian facilities in the alleys, the Commission finds that these will improve the safety of pedestrian circulation in the alley to the extent that it occurs.

41. The Commission is not persuaded by SVWHC-NLC's argument that the Applicant is not complying with "industry practices" for alley improvements. (FF 166.) The Commission finds that while SVWHC-NLC referenced the "industry practices" of several agencies and entities connected with transportation safety, they did not provide any specifics as to what these specific industry practices are, or how the Project fails to meet them. Therefore, based on the Applicant's proposed alley improvements, and the testimony of both DDOT and the Applicant's transportation expert, the Commission concludes that the Project will improve the safety and efficiency of the alleys over what is currently existing and will not result in any unacceptable impacts.
42. Overall, the Commission finds that the Project will not have a detrimental effect on the surrounding transportation network. Further, the Commission finds that the Applicant has adequately addressed the concerns expressed regarding pedestrian safety in and around the PUD Site, and that pedestrian safety will likely increase as a result of the several pedestrian improvements that will be made as part of the Project.

Parking

43. The Commission concludes that the Project will not result in any unacceptable impacts to parking that are not either being mitigated or outweighed by Project benefits. The Commission credits the findings of the DDOT Report that concluded that the Project is "overparked" but concluded that any resulting adverse impacts would be sufficiently mitigated by the Applicant's commitment to pedestrian improvements at the four nearby intersections, and adoption of the Applicant's robust TDM Plan and LMP. (Ex. 52 at 2.) These mitigation measures are conditions to this Order.
44. The Commission notes that the Project is "overparked" as a result of efforts by the Applicant to reduce the potential impacts of the Project on the on-street parking supply. The Commission notes that the following measures proposed by the Applicant measures and mitigations will address concerns regarding on-street parking availability:
 - The ample parking being provided on-site within the parking garage in excess of what is required under the Zoning Regulations;
 - The Applicant's commitment to impose RPP restrictions on residents of the Building; and
 - The extensive TDM Plan and other transportation-related benefits that will reduce vehicle trips and promote the use of alternative modes of transportation.
45. In light of this "overparking," the Commission finds that it does not need the parking agreement, or any other agreement that the Applicant might have with any of the other owners within the PUD Site to be submitted to the record in order for the Commission to review and render a zoning decision on the Project. To the extent it is necessary to address parking-related issues, the Commission is well within its authority to impose specific

requirements or restrictions in the form of conditions to this Order irrespective of the terms and conditions of any separate agreement the Applicant may have or will enter into.

Sunlight

46. The Commission concludes that the Project will not result in any unacceptable impacts to sunlight. The Commission finds that the Project's impacts are likely to be less than the impacts resulting from the matter-of-right development standards. In reaching this conclusion, the Commission credits the Applicant's testimony that the MU-4 development standards would permit the building façades along 48th and Yuma Street to be built entirely on the property line to a height of 50 feet. Furthermore, the building penthouse could be constructed much closer to the property line than currently proposed. The Commission notes that at 43.5 feet, the Project is over 10% lower than the matter-of-right height and provides substantial ground- and upper-level setbacks. (Public Meeting of December 9, 2019 Transcript ["Dec. 9 Tr."] at 22-23.)
47. The Commission notes that the D.C. Court of Appeals has previously accepted the Commission's use of comparing a proposed development to a matter-of-right standards for purposes of evaluating impacts under a PUD. Specifically, in its decision upholding the Commission's approval of the first-stage PUD for the Southwest Waterfront, the Court stated: (Z.C. Order No. 11-03.)
- ...an exhibit from the record compares "by-right" development under the previous R-3 requirements with the residential building proposed as part of the PUD. It demonstrates that row houses constructed along Sixth Street without any zoning flexibility would have a substantially similar impact on petitioners' views and their light and air. (*See Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014).)
48. Overall, the Commission finds that the Project will have minor impact on direct sunlight to the most immediate properties. As shown on the Applicant's shadow study, between spring and fall the Project has only minor to moderate impacts on sunlight that occur during the later hours of the day on homes immediately east across 48th Street. As expected, the impacts of the Project increase slightly during the winter when the sun is lower in the sky throughout the day. (Ex. 28A7 at 6-7.)
49. The Commission concluded that the shadow studies submitted by the Party Opponents were not persuasive because the studies focused on the shadow effects early in the morning and late in the afternoon when the shadows would be most extreme. The Commission concluded that given timing of the most intense shadows, they were unlikely to result in undue impacts to the nearby properties. The Commission also concluded that the Party Opponent's arguments concerning the methodology of the Applicant's studies were unfounded and that the Applicant's study had been properly prepared and was in accordance with typical studies submitted to the Commission. (Dec. 9 Tr. at 21-22.)

Impacts on Views

50. The Commission concludes that the impacts on views will not be unacceptable because the Project does not intrude upon views along defined rights-of-way, and there are no historically designated viewsheds associated with the MAPS. Further, and as has previously been acknowledged by the Commission, a property owner has no right to a view across another individual's property unless expressly granted by easement as upheld by the Court. Specifically, in *Hefazi v. Stiglitz*, 862 A.2d 901, 911 (D.C. 2004)⁸, the Court stated:

[h]ere, the appellants cannot demonstrate that they have acquired an easement by prescription. In essence, they assert that they have acquired a negative easement - the right to prevent appellee from using his property in such a manner as to affect their use and enjoyment of their own property. However, it is well settled that a negative easement cannot be created by prescription. To the contrary, a negative easement can only be created by an express grant ... This rule flows from the basic principle that the actual enjoyment of the air and light by the owner of the house is upon his own land only, and that the owner of the adjoining lands has submitted to nothing which actually encroached upon his rights. Thus, one may obstruct his neighbor's windows at any time and no action can be maintained for obstructing a view...

Based on the foregoing, the Commission finds that opponents to the Project asserting adverse impacts on views are not entitled to any of the existing views that may currently exist across the PUD Site and that may be potentially obstructed by the Project.

51. The Commission also concludes that the Party Opponents appeared to be relying upon the wrong set of renderings to evaluate the Project in relation to the existing surrounding context. The plans submitted by the Applicant contained two versions of each rendering prepared for the Project taken from multiple vantage points around the PUD Site. The first was an "all virtual" version that digitally renders the existing and proposed buildings and surrounding streetscape and landscape. These "all-virtual" renderings were clearly marked as being intended to "best illustrate design intent." Thus, the Commission views these renderings as being intended for analyzing the design of the proposed buildings and nothing more. When asked by the Commission, Mr. Westergard confirmed that the proposed buildings in the "all-virtual" renderings appeared to be accurately depicted, including their relation to the surrounding buildings.
52. In the past, the Commission has requested applicants to submit images that depict a proposed project with an existing conditions photograph. The Commission has made this request specifically for purposes of being able to evaluate a proposed project relative to the existing surroundings. Accordingly, the Applicant also submitted a second set of

⁸ See also, *Randolph v. District of Columbia Com'n*, 83 A.3d 756 (D.C. 2014), in which the Court did not disturb the Commission's finding that "[t]he viewsheds and property values of the Tiber Island homeowners are not protected by any restrictive covenants or by the Zoning Regulations." (Z.C. Order No. 11-03, Finding of Fact 91.)

renderings as part of its prehearing submissions that inserted the proposed buildings into a photograph showing the existing surrounding context. (Ex. 28A3-28A5.) This second set of renderings was clearly marked as being “intended to best illustrate design intent in the current context,” and thus are the renderings that are intended to be used to evaluate the Project relative to the surroundings. These particular renderings were the ones the Commission relied upon in evaluating the impacts of the Project on the surrounding environment and they were not challenged in any way by the Party Opponents. There, the Commission finds that even if the Applicant’s first set of “all-virtual” renderings did include inaccuracies in the height, location, and maturity of vegetation surrounding the PUD Site, this did not in any way impact the Commission ability to evaluate the Project relative to the surrounding context.

Impacts on Privacy

53. The Commission concludes that the Project will not result in any unacceptable impacts to the privacy of nearby properties. To the extent that there are impacts, the Commission concludes that such impacts would not be any greater than would be permitted by the matter-of-right standards. Considering the setbacks and reduced height of the Project and the widths of 48th and Yuma Streets, the distance between the Project and existing development to the east and north will range between 96 to 137 feet. In addition, the Applicant has agreed to restrict the hours of use for the fourth-floor outdoor terrace along Yuma Street, as a condition to this Order. Therefore, the Commission finds that any potential impacts to privacy will be mitigated through setbacks and separation distances, and through restrictions on the use of the outdoor terrace. (FF 30.)

Community Services and Facilities

54. The Commission credits the thorough review of the Project carried out by District agencies and utilities, all of which found that the Project would not create any unacceptable impacts on the surrounding area or on the operation of city services and facilities that are not capable of being mitigated. In addition to OP, the Application was reviewed by DDOT, DHCD, DOEE, Urban Forestry Administration (“UFA”), DPR, HPO, FEMS, DCPL, DME and DC Water. Each of these agencies issued reports or comments to OP stating their support for or “no objection” to the Application. (Ex. 53 at 22-25.) Therefore, the Commission concludes that the Project will not create any adverse impacts that cannot be mitigated or found to be acceptable.
55. In particular, the Commission concludes that the Project will not have any adverse impacts on publicly owned land, health care facilities, educational facilities, libraries, emergency services, or community centers. The PUD Site is located in a part of the District that has numerous parks and open spaces and a variety of recently renovated schools, libraries, and community centers. (Ex. 53 at 23-24.) The Commission notes specifically, that the surrounding schools were found by DME to have adequate facilities for the additional student population created by the Project. (FF 76.)

Construction Damage

56. The Commission concludes that the Project will not result in any unacceptable construction impacts. The Commission finds that any development project has the potential to cause damage to neighboring properties, which is why the Applicant, and the contractor it selects to construct the Project, are required under District law to have specific types and amounts of liability insurance. Proof of this insurance is required to be provided at the time of building permit, and the Applicant will be required to comply with this and all other applicable laws and regulations regarding building construction to ensure that any impacts will be properly mitigated.
57. Furthermore, as part of its agreement with ANC 3E, the Applicant is required to abide by several construction mitigation measures that include vibration monitoring and corrective action should damage occur to surrounding buildings. Therefore, the Commission finds that the Applicant will properly mitigate any potential constructed-related impacts to the extent required by law and through its agreement with ANC 3E. (FF 146; Ex. 49.)

Requested Flexibility Balanced by Public Benefits (Subtitle X § 304.4(c))

58. In deciding a PUD application, the Commission shall judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case. A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many. (Subtitle X § 305.12.)
59. As discussed below, the Commission finds that the Project offers a high level of public benefits and project amenities, does not request any additional PUD height, density, or flexibility beyond the ability to aggregate density across the PUD Site. The Project also does not result in any unacceptable potential project impacts. As such, the Application satisfies the balancing test required in Subtitle X § 304.3. The Commission also finds that the benefits and amenities of the Project are acceptable in all proffered categories and are superior in the categories of:
- Housing and affordable housing;
 - Environmental and sustainability;
 - Urban design, architecture, and landscaping;
 - Historic preservation; and
 - Uses of special value to the surrounding neighborhood.

Housing and Affordable Housing

60. The Commission concludes that the Project will produce approximately 219 new dwelling units and will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the PUD Site without requesting any additional PUD-related density or height. This will result in approximately 30 dedicated affordable housing units devoted to households earning up to 50% and 60% of the MFI.

61. The Commission concludes that the new market-rate and affordable housing units will greatly help achieve the Mayor's goal of creating 36,000 new housing units by 2025, of which 12,000 units would be affordable. Based upon information contained in the Mayor's recently released Housing Equity Report, the Project will increase the number of dedicated affordable housing units in the Rock Creek West pipeline by approximately 36%, and will move the District closer to achieving its dedicated affordable unit target for the Rock Creek West Planning Area. This is a significant contribution to the District's dedicated affordable housing goal for Rock Creek West considering that the Project is below matter-of-right height and density. (Ex. 53 at 20.)
62. The Commission concludes that the Applicant has properly calculated its IZ contribution. Pursuant to Subtitle C § 1003.1(a), the Applicant is required to set aside:
- *The greater of 10% of the GFA dedicated to residential use excluding penthouse habitable space or 75% of the bonus density utilized; and*
 - *An area equal to 10% of the penthouse habitable space as described in Subtitle C § 1500.11.*
- The Applicant is also required to set aside an area equal to 10% of cellar floor area devoted to residential dwelling units and 10% of building projection area devoted to residential use.
63. The Commission concludes that based upon the proposed density of the PUD (2.68 FAR), the greater set aside amount is equal to 75% of the bonus density utilized. As required, penthouse habitable space, cellar floor area, and building projection areas are all included in the Applicant's IZ requirement calculations. Thus, the Commission finds the Applicant's IZ calculations to be fully consistent with the IZ regulations.
64. In total, under the IZ regulations, the Applicant would be required to set aside approximately 27,504 GSF to affordable housing. The Applicant is exceeding this amount through its PUD proffer to devote no less than 12% of the residential GSF in the Project to affordable housing, which amounts to approximately 5,200 GSF (or 20%) more affordable housing than would otherwise be required under IZ. The Commission finds that these calculations have been reviewed by OP and DHCD, and neither agency has raised any questions or issues. Furthermore, these calculations will be reviewed again by the Zoning Administrator's Office during the building permit application stage in order to ensure that the affordable housing provided is no less than 12% of the residential GFA (including cellar floor area dedicated to dwelling units, projections dedicated to residential use, and non-communal penthouse space in the Project).
65. The Commission notes that DHCD did suggest that the Applicant consider increasing its IZ proffer to 15%, and that the Party Opponents have claimed that this is evidence that the 12% proffer is insufficient. However, the Commission notes that DHCD's comment was merely a suggestion and they did not have any objection to the Application. The Commission further concludes that the Applicant's proffer is sufficient to qualify as a public benefit when considered against the minimal flexibility requested by the Application. In particular, the Commission notes that the Project is not utilizing any additional PUD density or height and has not requested flexibility from the special

exception standards for the requested yard and penthouse relief. The Commission credits the testimony of the Applicant that 12% was the most that could be proffered while balancing the Applicant's desire to keep the Project within the matter-of-right standards against the Project's economics. (Oct. 10 Tr. at 181, 186-187; Ex. 241.) The Commission notes that while more affordable housing is desirable, the Applicant did voluntarily increase its original proffer by an additional 10%. The Commission concluded that given the limited opportunities in this area of the District for multi-family housing including affordable units, the Applicant's proffer was sufficient.

Environmental Protection and Sustainability

66. The Commission concludes that the Project will provide meaningful environmental benefits. In reaching this conclusion, the Commission credits the favorable comments on the Project submitted to OP by DOEE and concludes that the Project will provide a number of environmental benefits. The Commission finds that the Project will redevelop an underutilized, impervious property with a new mixed-use development that will be certified LEED Gold v.4. The significant reduction in impervious surface is likely to have favorable impacts on urban heat island effect, and the new landscaping and green roof elements will provide new habitat. In addition, the Project will also provide electric vehicle charging stations and the infrastructure for future rooftop solar facilities. The Project is not expected to have any impacts on water quality or hydrology. (Ex. 53 at 23.)

Urban Design, Architecture, and Landscaping

67. While under the matter-of-right limits for height and density, the Commission concludes that the Project provides various design elements that result in a project that is superior to matter of right development and that effectively relates the Project to the surroundings. (Ex. 28A) These include:
- The use of a tripartite/banded façade composition; and
 - Varied, high-quality materials.
68. While under the matter-of-right limits for height and density, the Commission concludes that the Project provides various design elements that result in a project that is superior to matter-of-right development and that are effectively the Project to the surroundings. (Ex. 28A) These include:
- The use of a tripartite/banded façade composition; and
 - Varied, high-quality materials.
69. The Commission concludes that the contributions of the Project to parks, recreation, and open space will constitute a benefit. The Commission finds that the Project will provide:
- New publicly accessible open spaces in the form of the Northwest Plaza and Windom Park, which are integrated through their design into the surrounding neighborhood and street grid;
 - Significant landscaping improvements to adjacent public spaces to further incorporate the Project into the surrounding area;
 - The provision of public and private landscaped courtyards and open spaces; and
 - The provision of abundant foundation level landscaping.

In reaching this conclusion, the Commission also credits the favorable comments on the Project submitted to OP by DPR. (Ex. 53 at 23.)

70. Due to the Project's inherent compliance with both the FLUM and the zone requirements, the Commission concludes that the setbacks along 48th and Yuma Streets, N.W., along with the other design features of the Project listed above, are not necessary for the Applicant to make its case under the current FLUM. Rather, they are voluntarily provided by the Applicant as superior design features of the Project. The Commission also concludes that any potential adverse impacts on the surrounding area resulting from the Project's height, massing, scale, and density are acceptable given the quality of public benefits proffered by the Applicant, particularly with respect to housing and affordable housing.
71. The Commission finds that all of these design features have been voluntarily provided by the Applicant as part of the PUD process and that all of them will benefit the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development. As such, the Commission concludes that the above described urban design, architectural, and landscape features are correctly considered benefits of the Project.
72. The Commission is not persuaded by CRD's assertion that the Project's massing and height reductions, large courtyards, façade articulation, upper-level setbacks, and high-quality, context-sensitive materials cannot be proffered as benefits because per Subtitle X § 305.9 "[e]lements or items required as mitigation of potential adverse impacts of the PUD shall not also be considered as benefits." As discussed above, the Commission finds that the Project is under the matter-of-right height and density limits, and not inconsistent with the CP, and therefore concludes that these design elements are not required as mitigation measures.

Historic Preservation

73. The Commission concludes that the Project will result in a public benefit by helping to protect the historic MAPS by permanently reducing the amount of future development that could take place on the MAPS Site. The Commission finds this benefit to be both "tangible and quantifiable" based on the diagram presented by the Applicant at the public hearing demonstrated that approximately 50,115 GFA will be permanently applied to the Valor Lot to construct the Project, a fact not contested by the Party Opponents. (Oct. 7 Tr. at 84-85; Ex. 194, 229.) The Commission considers this a significant reduction in the MAPS future development potential and notes that Regency, the owners of the MAPS, supported the density redistribution, stating that the Project "will greatly assist [Regency] in maintaining the historic integrity and long-term viability of the [MAPS]." (Ex. 227.)
74. The Commission also credits the findings of the HPO Report which stated that the Project will "enhance the character of the [MAPS] by improving its architectural setting through compatible design and superior execution as ensured through the PUD process" (Ex. 187.) The Commission notes that the Applicant never proffered the proposed design of the Project as a historic preservation benefit under Subtitle X § 305.5(e), nor does the Commission read the HPO Report as making such a claim. In fact, the HPO Report does

not opine on the Applicant's proffered set of PUD benefits and amenities as this is the sole jurisdiction of the Commission. As such, the Commission considers the favorable design comments in the HPO Report as being more appropriately read within the context of the Project's consistency with the Historic Preservation Element of the Comprehensive Plan, and as additional benefits provided by the Project in the category of superior Urban Design and Architecture under Subtitle X § 305.5(a).

75. The Commission notes that it not only has purview over the aggregation of density on properties, but zoning review is an effective means of preserving historic landmarks. Indeed, in upholding the Commission's decision in the Heurich Mansion PUD, the Court specifically addressed the issue and found that the Commission has jurisdiction to accomplish historic preservation under the broad general authority granted to the Commission under the Zoning Act to, in relevant part, "promote the general welfare of the District of Columbia and its planning and orderly development as the national capital." (*Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 355A.2d 550, 557 (1976).)
76. The Commission has previously found that the permanent reduction of development potential on the PUD Site of a historic landmark can be considered a PUD benefit. Specifically, in the PUD involving the Heurich Mansion site, the Commission found that "[t]he most significant feature of this [PUD] is the proposal to transfer unused density from [the Heurich Mansion]...to the proposed 12 story office building to be built in the center of the PUD Site." (Z.C. Order No. 101, FF 7.) The Commission further found that:

The transfer of development rights concept is a recognized means of preserving urban landmarks ... The sale of development rights will assure preservation of the Heurich Mansion for two reasons: (1) it will provide the necessary funds to operate and repair the property and (2) it will reduce the economic feasibility of ever selling the property because the development on said property will be permanently reduced to that permitted under the existing zoning minus the development rights sold...Historic preservation ordinances are limited in their ability to preserve historic landmarks because of constitutional restrictions on the taking of property. The transfer of development rights is an effective means of preserving the Heurich Mansion as an historic landmark. (*Id.*)

77. The Commission is not persuaded by CRD's assertion that "[t]angible benefits for a landmark included in a PUD would be ... monies specifically earmarked for preservation and maintenance" because the Commission concludes that while this is one example of a "tangible and quantifiable" benefit, it is not the only one. The Commission concludes that because a set amount of density (50,115 GFA) will be permanently redistributed from the MAPS Lot to the Valor Lot, prior to the completion of the Project, this satisfies the requirements of Subtitle X § 305.3(a) and (b) that benefits be "tangible and quantifiable" and "measurable and able to be completed or arranged prior to the issuance of a certificate of occupancy."

78. The Commission is not persuaded by the Party Opponents' assertion that the distribution within the PUD Site of unused density from the MAPS Site to the Valor Lot will result in an alteration of the historic landmark or that the unused density is a "defining feature" of the landmark. As stated by the Applicant, a "character-defining feature" is defined under the District historic preservation regulations as "[t]he form and detailing of those architectural materials and features that are important in defining a building's historic character and whose retention will preserve that character." (Ex. 241D.) Based on this definition, the Commission agrees with the Applicant that the unused density on the MAPS Site is not a defining feature of the landmark.
79. The Commission also concludes that the MAPS parking lot does not constitute "used density" regardless of whether it is considered part of the designated landmark. The parking lot does not constitute "gross floor area," as that term is defined in the Zoning Regulations. In addition, historic designation of a building or structure does not automatically zero out the development potential of a property. If that were the case, then the Heurich Mansion site would have had no density to transfer. Rather, historic designation merely makes future development on the PUD Site of the historic landmark subject to review by the HPRB, which may or may not reduce the amount of development that can be constructed on the historic property.

SPECIAL EXCEPTION RELIEF

80. Pursuant to Subtitle G § 1200.4,⁹ relief from the development standards of the MU-4 zone may be granted as a special exception if it is found that the special exception:
- a. *Will be in harmony with the general purpose and intent of the MU zone, the Zoning Regulations, and Zoning Maps;*
 - b. *Will not tend to affect adversely the use of neighboring property, in accordance with the Zoning Regulations and Zoning Maps; and*
 - c. *Will meet any other applicable conditions.*
81. The Commission concludes that the Applicant's request for five feet of rear yard relief is de minimis as it is limited to two upper portions of the Building (Northwest and Southwest corners) due to the change in the rear yard measuring point. (FF 44.)

Rear Yard Relief

82. The Commission finds that the requested rear yard relief meets the general special exception standards of Subtitle G § 1200.4 and Subtitle X § 901.2 because the rear yard will be in harmony with the general purpose and intent of the Zoning Regulations, Zoning Map, and specifically, the MU-4 zone.

⁹ The general special exception standards for the MU-4 zone under Subtitle G § 1200.4 are the same as the general special exception standards of Subtitle X § 901.2.

83. In addition to the general special exception standards, the Commission finds that the rear yard relief meets the following specific criteria listed in Subtitle G § 1201.1, as follows:
- Subtitle G § 1201.1(a): *No apartment window shall be located within forty feet (40 ft.) directly in front of another building* – Consistent with this section, there are no residential dwelling unit windows along the rear of the Building that are located within 40 feet directly in front of another building. The only building directly opposite the rear of the Building is the MAPS, which does not have any windows along the façade that faces the Building, and the height of the MAPS is below the height of the first level of dwelling units that face the alley in the Building;
 - Subtitle G § 1201.1(b): *No office window shall be located within thirty feet (30 ft.) directly in front of another office window, nor eighteen feet (18 ft.) in front of a blank wall* – This section is not applicable because office use is not proposed;
 - Subtitle G § 1201.1(c): *In buildings that are not parallel to the adjacent buildings, the angle of sight lines and the distance of penetration of sight lines into habitable rooms shall be considered in determining distances between windows and appropriate yards* – Consistent with this section, the rear yard relief will not result in the Building being not parallel to the MAPS. In addition, there are no windows along the eastern façade of the MAPS that faces the Building. Thus, the distance of penetration of sightlines into habitable rooms did not need to be evaluated;
 - Subtitle G § 1201.1(d): *Provision shall be included for service functions, including parking and loading access and adequate loading areas* – The Project will satisfy all minimum parking and loading requirements and the rear yard relief will not impact access to these facilities because the Project will provide the required rear yard at the lower level and the parking and loading facilities are not located along the north-south alley where the rear yard relief is requested. The Applicant will reduce the number of trash containers in the north-south alley, place trash containers in a new enclosure(s) and ensure that safe and adequate vehicular and pedestrian circulation is provided along the alley by setting the Building back from the west property line of the Valor Lot; and
 - Subtitle G § 1201.1(e): *Upon receiving an application to waive rear yard requirements in the subject zone, the Board of Zoning Adjustment shall submit the application to the Office of Planning for coordination, review, report, and impact assessment, along with reviews in writing from all relevant District of Columbia departments and agencies, including the Department of Transportation, the District of Columbia Housing Authority and, if a historic district or historic landmark is involved, the Historic Preservation Office* – Consistent with this section, all applicable District agencies had full authority to review and comment on the rear yard relief identified in the application and none of the agencies objected to the Project.
84. Based on the foregoing, the Commission finds that the Applicant has satisfied all applicable criteria for special exception relief from the rear yard requirement for the Building under Subtitle G § 405.2. The Commission is not persuaded by the arguments advanced by the

Party Opponents regarding the rear yard relief, as the Commission has concluded that the Building complies with the matter-of-right height and density development standards for the MU-4 zone. (FF 178.) Therefore, the Commission grants the requested rear yard relief.

Penthouse Special Exception for the Townhomes (Subtitle C § 1500.4)

85. Pursuant to Subtitle C § 1500.4:

[A] penthouse, other than screening for mechanical equipment or a guard-rail required by the D.C. Construction Code for a roof deck, shall not be permitted on the roof of a detached dwelling, semi-detached dwelling, rowhouse or flat in any zone; however, the Board of Zoning Adjustment may approve a penthouse as a special exception under Subtitle X, Chapter 9, provided the penthouse:

- (a) Is no more than ten feet (10 ft.) in height and contains no more than one (1) story; and*
- (b) Contains only stair or elevator access to the roof, and a maximum of thirty square feet (30 sq. ft.) of storage space ancillary to a rooftop deck.*

86. The penthouse is also required to meet the general special exception standards of Subtitle X § 901.2:

- a. Will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps; and*
- b. Will not tend to affect adversely, the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps.*

87. Based on the plans submitted by the Applicant, the Commission concludes that the requested penthouse relief will meet the requirements of Subtitle C § 1500.4 as the proposed hatches will be less than 10 feet in height and will only provide access to the proposed roof decks on the Townhomes. (Ex. 241A.)

88. The Commission also concludes that the hatches will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps. The Commission notes that the Applicant, at the Commission's request, revised the design of the roof access and selected hatches in order to reduce the impacts on the neighboring properties. Given their modest size and compliant setbacks, the proposed hatches will not negatively impact the general welfare of the neighboring properties. The properties and buildings that are immediately adjacent to the proposed hatches on the Townhomes include the Building and the AU Building, both of which will not be adversely affected by the hatches, even if they are five feet in height. The closest existing residential uses are located over 110 feet away from the proposed hatches. Given this substantial distance, and the small size of the proposed hatched the Commission concludes that the proposed hatches will not adversely affect the use of neighboring properties in accordance with the Zoning Regulations and Zoning Maps.

89. For the reasons stated above, the Commission finds that the Applicant has satisfied all applicable criteria for special exception relief under Subtitle C § 1500.4; and therefore, grants the request special exception to allow penthouses hatches on the Townhomes provided the penthouses hatches do not exceed five feet above the roof upon which they are located.

Conclusion

90. The Commission concludes that approval of the Application is appropriate because the Project is superior to a matter-of-right development, compatible with the character and development pattern of the surrounding area and is not inconsistent with the Comprehensive Plan. In addition, the Project, complies with the applicable matter-of-right height, bulk, and density standards of the Zoning Regulations, as measured in accordance with the PUD regulations. The proposed mix of uses is appropriate for the PUD Site, and the potential impacts of the Project on the surrounding area will not be unacceptable given the Applications proposed mitigation measures and the high level of proffered public benefits and project amenities.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

91. 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).)
92. The Commission carefully considered the OP reports and testimony in this case and concludes that OP’s analysis of the Project’s consistency with the CP, potential impacts, and proffered benefits is persuasive. In particular, the Commission finds OP’s analysis of the Project’s housing, and affordable housing contribution in connection with the relevant CP and District policies, including the Mayor’s initiative, compelling. As such, the Commission concurs with OP’s recommendation to grant the Application.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

93. The Commission must give “great weight” to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase “issues and concerns” to “encompass only legally relevant issues and concerns.” (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)

94. ANC 3D and 3E both filed letters in support of the Application meeting the requirements of Subtitle Z § 406.2 and testified in support at the public hearing. (Ex. 26, 48.) ANC 3E also filed a signed Memorandum of Understanding, the terms of which have been included as conditions in this Order, to the extent appropriate. (Ex. 49.)
95. The Commission notes that the ANC 3D Report did raise two primary concerns regarding the Project's impacts on the District's Education and Transportation systems. However, the ANC 3D Report ultimately concluded that the Project would not result in adverse impacts to either and would in fact provide numerous benefits to the surrounding community in terms of new housing and affordable housing, transportation improvements, and the new grocery store use. The ANC 3D Report did also request that the Commission memorialize these benefits as well as some additional concerns as conditions of the Order (FF 138), and the Commission has done so with regards to the dedicated square footage for the grocery store use, the parking requirements, and the use of high-quality design materials.
96. The Commission also credits the conclusions of the ANC 3E Report, and its MOU with the Applicant, particularly with regards to its discussion of the various transportation improvements that the Applicant proposed in consultation with ANC 3E. The Commission also notes that the ANC 3E Report had detailed the Applicant's efforts to respond to community feedback by revising the design to be more compatible with the surrounding residential area.
97. Based on the foregoing and having considered the issues and concerns raised in both ANC Reports, the Commission agrees with the ANCs' recommendations to approve the Application.

DECISION

In consideration of the case record, and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission **ORDERS APPROVAL** of the application for a consolidated PUD for property located at Square 1499, Lots 802, 803, 806, and 807. This approval is subject to the following guidelines, conditions, and standards. Whenever compliance is required prior to, on or during a certain time, the timing of the obligation is noted in bold and underlined text.

A. PROJECT DEVELOPMENT

1. The PUD Site, including the Building and Townhomes (collectively, the "**Project**") as well as the existing MAPS and the AU Building, shall be developed in accordance with:
 - The architectural and landscape plans prepared by Torti Gallas Urban, dated September 17, 2019 (Ex. 28A);
 - As modified by the revised drawings dated October 3, 2019 (Ex. 151C); and
 - As modified by the revised drawings dated October 24, 2019 (Ex. 241A) (collectively, the "**Approved Plans**"), except that the Applicant shall have design flexibility from the Approved Plans as follows:

- a. Interior Components: To vary the location and design of all interior components, including partitions, structural slabs, doors, hallways, columns, stairways, atria, mechanical rooms, and elevators, provided that the variations do not change the exterior configuration of the buildings as shown on the plans approved by the order;
- b. Exterior Materials – Color: To vary the final selection of the colors of the exterior building materials based on availability at the time of construction, provided such colors are within the color ranges shown on the plans approved by the order;
- c. Exterior Details – Location and Dimension: To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the buildings or design shown on the plans approved by the order. Examples of exterior details would include, but are not limited to, doorways, canopies, railings, and skylights;
- d. Number of Units: To provide a range in the approved number of residential dwelling units of plus or minus 10%, except that:
 - i. The total square footage of residential dwelling units shall not be reduced; and
 - ii. The total square footage reserved for affordable dwelling units shall not be reduced;
- e. Affordable Units: To vary the number and location of affordable dwelling units, except that
 - i. The number of three-bedroom affordable dwelling units shall not be reduced;
 - ii. No affordable dwelling unit shall be located within a cellar, and
 - iii. No more than two affordable units shall be located directly above and below each other on any immediately successive floors;
- f. Retail Uses: To vary the types of uses designated as “retail” use in plans approved by the Order to include the following use categories:
 - i. Retail (Subtitle B § 200.2(cc));
 - ii. Services, General (Subtitle B § 200.2(dd));
 - iii. Services, Financial (Subtitle B § 200.2(ee)); and
 - iv. Eating and Drinking Establishments (Subtitle B § 200.2(j));
- g. Parking Layout: To make refinements to the approved parking configuration, including layout and number of parking spaces, provided the minimum number of spaces provided is not less than the number of spaces shown on the plans approved by the Order;

- h. Streetscape Design: To vary the location, attributes, and general design of the approved streetscape to comply with the requirements of, and the approval by, the DDOT Public Space Division;
 - i. Signage: To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage shown on the plans approved by the Order and are compliant with the DC signage regulations, except that:
 - i. The content of the blade sign at the northwest corner of The Building shall be limited to directional signage only; and
 - ii. No more than two retail tenant signs are permitted along Yuma Street at the northwest corner of the Building; and
 - j. Sustainable Features: To vary the approved sustainable features of the project, provided the total number of LEED points achieved by the project does not decrease below the minimum required for the LEED standard required under the Order.
- And as modified by the guidelines, conditions, and standards herein.
2. In accordance with the Approved Plans,
- a. The Building shall have a maximum building height of 43.5 feet (not including penthouse) as measured from 48th Street, N.W;
 - b. The Building shall have approximately 214,094 square feet of GFA devoted to residential use; approximately 18,000 square feet devoted to retail use, of which a minimum of 13,000 shall be devoted to a full-service grocery store; and additional GFA devoted to parking, loading and building service areas;
 - c. The Building shall have approximately 219 residential units, in addition to the five Townhomes;
 - d. The Building shall have approximately 370 on-site parking spaces, in addition to individual “tuck-in” garages for each of the Townhomes; and
 - e. The PUD Site shall have a total FAR of 2.68, comprised of a 1.33 residential FAR and a 1.35 non-residential FAR, which includes the MAPS’ existing 16,922 square feet of non-residential uses and the AU Building’s existing 179,302 square feet of non-residential uses.
3. The Applicant shall be granted a special exception pursuant to Subtitle G § 1200.4 from the rear yard requirement of Subtitle G § 405.2 to allow a 10-foot rear yard for the Building as shown on the Approved Plans.

4. The Applicant shall be granted a special exception pursuant to Subtitle C § 1500.4 to allow a penthouse (roof hatch) on Townhomes 1-5, provided the penthouse (roof hatch) does not exceed a height of five feet above the roof.

B. PUBLIC BENEFITS

1. **Prior to the issuance of the first building permit for the Project**, the Applicant shall demonstrate that the roof of the Building has been designed to include conduit that will permit the installation of roof-mounted PV panels in the future.
2. **Prior to the issuance of the first building permit for the Project**, the Applicant shall demonstrate that it has registered the Project with the United States Green Building Council (“USGBC”) to commence the LEED certification process by furnishing a copy of its LEED certification application to the Zoning Administrator. The application shall indicate that the Project has been designed to include at least the minimum number of points necessary to achieve Gold certification under the USGBC’s LEED v.4 standards.
3. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Worked with ANC 3E to identify specific improvements to be installed within Windom Park, the Northwest Plaza, and/or other open spaces surrounding the PUD Site that are intended to activate these spaces;
 - b. Considered options for installing playable and interactive elements into the design of Windom Park, the Northwest Plaza, and/or other open spaces surrounding the PUD Site, and either committed to providing such playable elements or provided a reasonable justification for why they will not be provided; and
 - c. Dedicated \$15,000 for the purchase, installation, or permitting of the improvements identified under items (a) and (b) above. Evidence of the Applicant’s incurred costs of \$15,000 shall be demonstrated through the direct purchase of improvements (e.g., landscape materials, equipment, benches) or through contracts with third party(s) to purchase the improvements and/or undertake landscaping, installation, design, or permitting work.
4. **Prior to the issuance of the first certificate of occupancy for the project**, the Applicant shall demonstrate to the Zoning Administrator that it has executed and recorded a covenant in the Land Records of the District of Columbia demonstrating the amount of density that has been permanently transferred from the MAPS Site (Lots 802 and 803) to the Valor Lot, and the amount of density that remains on the MAPS Site following said transfer.

5. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall provide the Zoning Administrator with the updated status of its LEED Certification, including all credits obtained, and demonstrating that it is reasonably likely to achieve certification within two years.
6. **Prior to the issuance of the first certificate of occupancy and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided the following:
 - a. At least four electric vehicle charging stations (each capable of simultaneously charging two vehicles) in the parking garage that are Level 2 chargers or greater;
 - b. The capacity to increase the number of Level 2 electric vehicle charging stations in the garage in the future; and
 - c. At least five electrical outlets in each long-term bicycle storage room.
7. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has provided the following transportation-related benefits that are not needed to mitigate any potential adverse transportation impacts created by the Project:
 - a. Funded a new “HAWK” signal on Massachusetts Avenue, between 48th and 49th Streets, subject to DDOT approval. If approved by DDOT, evidence of funding may be in the form of a check to DDOT and/or to a third party responsible for installing the HAWK signal;
 - b. Committed \$100,000 to provide a means for connecting residents of the Project to the Tenleytown Metro station. The Applicant may satisfy this condition through either of the following options:
 - i. Provide the Zoning Administrator with a copy of an executed contract with a private shuttle service in the amount of at least \$100,000; or
 - ii. Provide the Zoning Administrator the following documentation:
 - A. Documentation that the Applicant or legal entity has established an account and/or contracted with a ride hailing company(s) that will allow Project residents to travel to/from the Tenleytown Metro station at no cost, up until the \$100,000 fund is depleted. Such documentation shall include a description of the steps required for residents to access the ride hailing account;

- B. An executed agreement between the Applicant and the above-mentioned legal entity requiring that the \$100,000 commitment made pursuant to this condition shall be used solely for the purpose of paying a ride hailing company(s) to connect residents of the Project to the Tenleytown Metro station; and
 - C. A copy of a check in the amount of \$100,000 made payable to the proper legal entity responsible for managing the residential component of the Project.
- c. Restricted residents of the Building from obtaining an RPP by placing a clause in emphasized type in all residential leases that prohibits residents from applying for or obtaining RPPs, upon penalty of mandatory lease termination to the full extent permitted by law;
 - d. Consolidated the trash receptacles associated with the MAPS Site located in the north-south alley and in public space along Yuma Street to a new enclosure along the north-south alley, consistent with DDOT public space approval;
 - e. Improved the existing alley system by:
 - i. Widening the north-south public alley by seven feet onto private property along the west side of the Building, between Yuma Street and the intersection with the east-west public alley to maintain a 20-foot vehicle travel way and provide a new three-foot pedestrian path;
 - ii. Providing a new six-foot sidewalk on private property along the east-west alley on the south side of the Building, between 48th Street and the intersection with the north-south public alley;
 - iii. Constructing a five- to six-foot sidewalk along the western side of the north-south public alley at the entrance from Massachusetts Avenue; and
 - iv. Constructing improvements to the alley intersection to increase pedestrian safety and visibility;
 - f. The improvements shall be consistent with those shown on the Approved Plans, as modified to obtain DDOT's approval during public space permitting;
 - g. Donated \$15,000 to DDOT and/or a third-party transportation consultant toward studying the potential to open the median on Massachusetts Avenue to improve porosity and turning movements at the MAPS Site and/or studying the installation of a "pork chop" near Massachusetts Avenue and 49th Street;
 - h. Established the building entrance on Yuma Street as the preferred pick-up and drop-off location for ride-hailing services; and

- i. Submitted an application to DDOT for a public space permit to dedicate an area along the west side of 48th Street between Yuma Street and Warren Street as an “alternative transportation block” where alternative transportation options such as electric scooters, bikes, and mopeds; bike shares; and/or car shares can be co-located as approved by DDOT, this “alternative transportation block” shall be demarcated with striping and/or signage.
8. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has planted a tree in any vacant tree box located along the east side of 48th Street between Yuma Street and Massachusetts Avenue, and along the north side of Yuma Street between 48th and 49th Streets.
9. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has dedicated a minimum of 13,000 square feet of retail space to a full-service grocery store as defined by the alcoholic beverage statutes. (D.C. Code § 25-101.)
10. **For the first 10 years after the certificate of occupancy for the grocery store**, the Applicant shall dedicate a minimum of 13,000 square feet of retail space to a full-service grocery store that meets the definition of a “Full-service grocery store” under D.C. Code §25-101. The 10-year time period required under this condition shall commence upon the date of issuance of the first certificate of occupancy for the full-service grocery store.
11. **For the life of the Project**, the Applicant shall provide the housing and affordable housing set forth in Sheet G09 of Ex 241A, dated October 24, 2019, and the following chart, subject to flexibility granted by the Commission; provided that the affordable housing provided shall be no less than 12% of the residential GFA (including cellar floor area dedicated to dwelling units, projections dedicated to residential use, and non-communal penthouse space in the Project), as determined by the Zoning Administrator to be compliant with the Inclusionary Zoning requirements at permit issuance.

Residential Unit Type	Residential GSF ¹⁰ / Percentage of Total	Units	Reserved for Household Earning Equal to or Less Than	Affordable Control Period	Tenure Type
Total	272,057/100%	219			
Market Rate	239,410/88.0%	189	Market Rate		
IZ¹¹	29,008/10.7%	26	60%	Life of the Project	Rental
	3,639/1.3%	4	50%		
Affordable/ Non-IZ	0 / 0%	0	N/A	N/A	N/A

C. TRANSPORTATION DEMAND MANAGEMENT MEASURES

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has upgraded substandard curb ramps, striped missing crosswalks, and installed curb extensions at the following intersections, as modified and approved by DDOT during public space permitting:
 - a. 49th Street and Yuma Street, N.W.;
 - b. 48th Street and Yuma Street, N.W.;
 - c. 48th Street and Windom Place, N.W.; and
 - d. 48th Street and Warren Street, NW.

2. **Prior to the issuance of the first certificate of occupancy and for the life of the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has implemented the following TDM measures:
 - a. Installed more than the minimum number of bicycle parking/storage facilities required by the Zoning Regulations, which include secure long-term bicycle storage rooms located within the Building and short-term bicycle parking located around the perimeter of the PUD Site;
 - b. Installed a bicycle repair station in each of the long-term bicycle storage rooms located within the Building;

¹⁰ Square footages shown represent gross square feet (“GSF”) of residential use within the project. GSF is inclusive of building area devoted to residential use that meets the definition of “gross floor area” as defined in Subtitle B §§ 100.2 and 304, including building area devoted to residential dwelling units within a penthouse, and to dwelling units located within a cellar, and to areas devoted to residential use within building projections into public space as required by Subtitle C § 1003.

¹¹ The number of IZ units is approximate based on the current dwelling unit count and layout. The number, location, and mix of IZ units may change if the total number of dwelling units changes in accordance with flexibility granted by the Commission (Decision A1). However, a minimum of four, three-bedroom IZ units shall be provided.

- c. Unbundled the cost of residential parking from the cost of lease or purchase of each residential unit in the Building. The Applicant shall demonstrate that the unbundled cost of parking is at a minimum equal to the average market rate for a parking space within a quarter mile of the PUD Site;
- d. Offered parking rates only for daily, weekly, and/or monthly subscriptions for purchase only, with no free parking offered to residents, employees, students, or otherwise;
- e. Identified TDM leaders (for planning, construction, and operations) who will work with residents and grocery/retail employees to distribute and market various transportation alternatives and options;
- f. Worked with DDOT and goDCgo to implement TDM measures;
- g. Shared the full contact information of the TDM leaders with DDOT and goDCgo;
- h. Posted all TDM commitments online for easy reference;
- i. Created a Resident Welcome Package that includes TDM materials;
- j. Provided residents and grocery/retail employees who wish to carpool with detailed carpooling information, including a reference to other carpool matching services sponsored by MWCOG;
- k. Installed a Transportation Information Center Display (electronic screen) within the residential lobby of the Building containing information related to local transportation alternatives;
- l. Purchased or secured either a one-year membership to Capital Bikeshare and/or to a car-sharing service to be provided to each residential unit during the initial lease of each unit;
- m. Dedicated four vehicle parking spaces in the parking garage for car-sharing services to use with right of first refusal. If an agreement has not been reached with a carsharing service to occupy all of the four spaces prior to issuance of the first certificate of occupancy, then the Applicant shall demonstrate that it has purchased a one-year membership to Capital Bikeshare for each residential unit; and
- n. Purchased and provided one shopping cart for grocery shopping and running errands for every 30 residential units in the Building.

D. LOADING MANAGEMENT PLAN

1. **For the life of the Project**, the Applicant shall implement the LMP, as set forth in the Comprehensive Transportation Review at Ex. 25A.

E. ADDITIONAL COMMITMENTS TO ANC 3E

1. **Prior to the issuance of the first certificate of occupancy for the Project**, the Applicant shall demonstrate to the Zoning Administrator that it has:
 - a. Offered, on a right of first refusal basis, any retail space not leased to the full-service grocery store to tenants in operation on the PUD Site as of September 25, 2019 (date of Applicant's MOU with ANC 3E);
 - b. Retained the Heritage Tree along the west side of 48th Street;
 - c. Worked with DDOT to install a Capital Bikeshare station in the vicinity of the Project;
 - d. Worked with DDOT and JUMP, or another provider of electric bicycles and/or scooters, to include electric bicycles and/or scooters either in the pursued Capital Bikeshare station or in close proximity to the PUD Site;
 - e. Developed a written RPP-exclusion enforcement plan in concert with residents of SMD 3E01, 3E02, 3E05, and DDOT, and presented the plan to ANC 3E **at least two months prior to the first certificate of occupancy for the Project**;
 - f. Run any kitchen exhaust venting from the grocery store and any eating and drinking establishments in the Project to the highest roof of the Project; and
 - g. Restricted events on the outdoor rooftop terrace of the Building to between the hours of 8:00 a.m. and 10:00 p.m. Sunday through Thursday, and 8:00 a.m. to 12:00 a.m. Friday and Saturday. Amplified music shall not be permitted on the outdoor rooftop terrace **for the life of the Project**.
2. **During and prior to construction of the Project, as applicable**, the Applicant shall abide by the terms of the "Mitigation Efforts: Construction Agreement" section of its MOU with ANC 3E. (Ex. 49 at 6-7.)
3. **For the life of the Project**, the Applicant shall not negotiate a master lease with American University for student housing within the Project. This condition is not intended to limit students from independently renting units at the Project, but instead to preclude negotiations with AU.

F. MISCELLANEOUS

1. No building permit shall be issued for the Project until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, Department of Consumer and Regulatory Affairs. Such covenant shall bind the Applicant and all successors in title to construct and use the PUD Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of the Office of Zoning.
2. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
3. The Applicant shall file with the Zoning Administrator a letter identifying how it is in compliance with the conditions of this Order at such time as the Zoning Administrator requests and shall simultaneously file that letter with the Office of Zoning.

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

In accordance with the provisions of Subtitle Z § 604.9, this Order shall become final and effective upon publication in the *D.C. Register*; that is, on July 3, 2020.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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