VOL. 67 – NO. 49 NOVEMBER 27, 2020

# District of Columbia REGISTER

## HIGHLIGHTS

- D.C. Council enacts Act 23-484 to allow District qualified electors in the care or custody of the Department of Corrections to vote
- D.C. Council enacts Act 23-489 to require District government and independent agencies to develop continuity of operations plans
- D.C. Council enacts Act 23-498 to allow tenants impacted by the COVID-19 public health emergency to qualify for rental assistance from the Emergency Rental Assistance Program
- D.C. Council passes Resolution 23-598 to clarify returning citizens' eligibility to apply for financial assistance for District residents impacted by the public health emergency
- Department of Health Care Finance publishes Medicaid Fee Schedule updates for numerous services
- Department of Health (DC Health) establishes requirements and procedures for reporting severe maternal morbidity
- Public Employee Relations Board publishes Opinion 1762 regarding the case between Washington Teacher's Union, Local 6, American Federation of Teachers, AFL-CIO and the District of Columbia Public Schools
- Department of Small and Local Business Development announces funding availability for the FY21 Robust Retail Citywide Grant

The Mayor of the District of Columbia modifies requirements to combat escalation of the COVID-19 pandemic during Phase Two of Washington, DC reopening (Mayor's Order 2020-119)

# DISTRICT OF COLUMBIA REGISTER

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**MAYOR**

**VICTOR L. REID, ESQ.**
**ADMINISTRATOR**

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**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-480**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To approve, on an emergency basis, Contract No. DCAM-20-AE-0008, between the Department of General Services and Shinberg Levinas Architectural Design, Inc., and to authorize payment to Shinberg Levinas Architectural Design, Inc. for architectural and engineering services received and to be received under the contract.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Contract No. DCAM-20-AE-0008 with Shinberg Levinas Architectural Design, Inc. Approval and Payment Authorization Emergency Act of 2020".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Contract No. DCAM-20-AE-0008 between the Department of General Services and Shinberg Levinas Architectural Design, Inc. for architectural and engineering services, in the amount of $3,871,848 ("contract") and authorizes payment to Shinberg Levinas Architectural Design, Inc. for services received and to be received under the contract.

Sec. 3. Fiscal impact statement.

The Council adopts the fiscal statement of the Chief Financial Officer as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 6, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 4. Effective date.

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

**ENROLLED ORIGINAL**

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-481**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To approve, on an emergency basis, Modification Nos. 13, 14, 15, 16, and 17 to Contract No. CW46185 with Ramsell Corporation to provide a secure, web-accessible platform that integrates core AIDS Drug Assistance Program ("ADAP") pharmacy benefit managers, 340B inventory management, and insurance premium and co-pay management for both ADAP and the District-funded pre-exposure prophylaxis medication assistance programs, and to authorize payment for the goods and services received and to be received under the modifications.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Modifications to Exercise Option Year Four of Contract No. CW46185 with Ramsell Corporation Approval and Payment Authorization Emergency Act of 2020".

Sec. 2. Pursuant to section 451 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51), and notwithstanding section 202 of the Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-352.02), the Council approves Modification Nos. 13, 14, 15, 16, and 17 to Contract No. CW46185 with Ramsell Corporation to provide a secure, web-accessible platform that integrates core AIDS Drug Assistance Program ("ADAP") pharmacy benefit managers, 340B inventory management, and insurance premium and co-pay management for both ADAP and the District-funded pre-exposure prophylaxis medication assistance programs and authorizes payment in the amount of $7,800,000 for the goods and services received and to be received under the contract for the period from August 1, 2020, through July 31, 2021.

Sec. 3. Fiscal impact statement.

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

**ENROLLED ORIGINAL**

Sec. 4. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-482**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 17, 2020**

To amend, on an emergency basis, Title III of the CleanEnergy DC Omnibus Amendment Act of 2018 to revise the timeline for phase-in of smaller buildings into the Building Energy Performance Standards Program implemented by the Department of Energy and Environment, to require the Department of Energy and Environment to establish new building energy performance standards every 6 years instead of every 5 years, to clarify language requiring buildings to comply with the building energy performance standards, and to provide that the strategic energy management plan for District buildings shall be delivered by January 1, 2021; and to amend the District of Columbia Traffic Act, 1925 to provide that the rules revising the calculation of the vehicle excise tax shall be issued by January 1, 2021, and to provide that changes to the vehicle excise tax shall be revenue neutral or revenue positive.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "CleanEnergy DC Omnibus Technical Amendment Emergency Amendment Act of 2020".

Sec. 2. Title III of the CleanEnergy DC Omnibus Amendment Act of 2018, effective March 22, 2019 (D.C. Law 22-257; D.C. Official Code § 8-1772.21 *et seq.*), is amended as follows:

(a) Section 301 (D.C. Official Code § 8-1772.21) is amended as follows:

(1) Subsection (a) is amended as follow:

(A) Paragraph (2) is amended by striking the phrase "January 1, 2023" and inserting the phrase "January 1, 2027" in its place.

(B) Paragraph (3) is amended by striking the phrase "January 1, 2026" and inserting the phrase "January 1, 2033" in its place.

(2) Subsection (b)(1)(A) is amended to read as follows:

"(b)(1)(A) No later than January 1, 2021, and every 6 years thereafter, DOEE shall, by rulemaking or publication on the DOEE website, establish property types and building energy performance standards for each property type, or an equivalent metric for buildings that do not receive an ENERGY STAR score.".

(3) Subsection (c) is amended to read as follows:

"(c) All buildings below the energy performance standard for their property type, established pursuant to subsection (b)(1) and (2) of this section, shall have 5 years from the date

the performance standards are established to meet the building energy performance requirements established by DOEE.".

(b) The lead-in language in section 303 (D.C. Official Code § 8-1772.22) is amended by striking the phrase "January 1, 2020" and inserting the phrase "January 1, 2021" in its place.

Sec. 3. Section 6(j)(1A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1121; D.C. Official Code § 50-2201.03(j)(1A)), is amended as follows:

(a) Subparagraph (A) is amended by striking the phrase "January 1, 2020" and inserting the phrase "January 1, 2021" in its place.

(b) Subparagraph (E) is amended to read as follows:

"(E) Changes to the vehicle excise tax made pursuant to this paragraph shall be revenue neutral or revenue positive.".

Sec. 4. The CleanEnergy DC Omnibus Temporary Amendment Act of 2020, effective May 6, 2020 (D.C. Law 23-94; 67 DCR 3527), is repealed.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 17, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-483**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To require, on an emergency basis, employers to adopt and implement social distancing policies that adhere to Mayor's Order 2020-080 or subsequent Mayor's Order, to prohibit retaliation against an employee who refuses to work with or serve an individual who refuses to comply with Mayor's Order 2020-080 or subsequent Mayor's Order, to prohibit retaliation against an employee because the employee tests positive for or is quarantining because of COVID-19, or is caring for someone who has symptoms of or is quarantining because of COVID-19, and to prohibit retaliation against an employee who attempts to exercise any right or protection under Title I of this act or to stop or prevent a violation of the worker safety provisions of Title I of this act, to authorize the Mayor and Attorney General to administer and enforce workplace and employee protections in Title I of this act, to authorize the Attorney General to bring civil actions in a court of competent jurisdiction, to authorize the Chief Procurement Officer to enter into an indefinite duration/indefinite quantity contract to assist eligible businesses in the purchase of personal protective equipment and other supplies related to the containment of COVID-19, to permit federal laws, polices, and standards or a Mayor's Order that contains stricter personal protective equipment standards to preempt the terms of Title I of this act; to amend the District of Columbia Public Emergency Act of 1980 to authorize the Mayor to extend the public health emergency through December 31, 2020; and to amend the Small and Certified Business Enterprise Act of 2005 to authorize the Mayor to issue grants for small businesses to purchase or receive reimbursements for the purchase of personal protective equipment for their employees.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Protecting Businesses and Workers from COVID-19 Congressional Review Emergency Amendment Act of 2020".

TITLE I. COVID-19 WORKPLACE SAFETY PROTECTIONS

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Adverse employment action" means an action that an employer takes against an employee, including a threat, verbal warning, written warning, reduction of work hours, suspension, termination, discharge, demotion, harassment, material change in the terms or conditions of the employee's employment, or any action that is reasonably likely to deter the employee from attempting to secure any right or protection contained in this title or to prevent or stop a violation of this title.

(2) "Active COVID-19 infection" means an infection confirmed by a diagnostic test for COVID-19 and not an antibody test.

(3) "COVID-19" means the disease caused by the novel coronavirus SARS-CoV-2.

(4) "Employee" includes any person suffered or permitted to work by an employer.

(5) "Employer" includes every individual, partnership, firm, general contractor, subcontractor, association, corporation, the legal representative of a deceased individual, or the receiver, trustee, or successor of an individual, firm, partnership, general contractor, subcontractor, association, or corporation employing any person in the District of Columbia. The term "employer" shall include the District government or a quasi-governmental agency. The term "employer" shall not include the United States government or its agencies.

(6) "Face covering" means a cloth face covering, face mask, or similar textile barrier that covers an individual's nose and mouth and works to reduce the spray of respiratory droplets.

(7) "Face shield" means a form of personal protective equipment made of transparent, impermeable materials intended to protect the entire face or portions of it from droplets or splashes.

(8) "Personal protective equipment" includes face coverings, disposable gloves, eye protection, face shields, disposable gowns or aprons, and plexiglass barriers.

(9) "PPE" means personal protective equipment.

(10) "Public health emergency" means the Coronavirus (COVID-19) public health emergency declared pursuant to Mayor's Order 2020-045, on March 11, 2020, and all subsequent extensions.

(11) "Workplace" means any physical structure or space, over which an employer maintains control, wherein an employee performs work for an employer; workplace does not include the home of an employee who teleworks.

Sec. 102. Employer policies and workplace protections.

(a) Beginning 7 days after the effective date of this title and during the public health emergency, employers in the District shall adopt and implement social distancing and worker protection policies to prevent transmission of COVID-19 in the workplace that adhere to the requirements of Mayor's Order 2020-080, or subsequent Mayor's Order.

(b)(1) An employer may establish a workplace policy to require an employee to report to the employer a positive test for an active COVID-19 infection.

(2) An employer may not disclose the identity of an employee who tests positive except to the Department of Health or another District or federal agency responsible for and engaged in contact tracing and the containment of community spread of COVID-19.

Sec. 103. Retaliation prohibited.

(a) No employer or agent thereof may take an adverse employment action against an employee for the employee's refusal to serve a customer or client, or to work within 6 feet of an individual, who is not complying with the workplace protections established pursuant to section 102.

(b)(1) No employer or agent thereof may take an adverse employment action against an employee because:

(A) The employee tested positive for COVID-19; provided, that the employee did not physically report to the workplace after receiving a positive test result;

(B) The employee was exposed to someone with COVID-19 and needs to quarantine;

(C) The employee is sick and is waiting for a COVID-19 test result; or

(D) The employee is caring for or seeks to provide care for someone who is sick with COVID-19 symptoms or who is quarantined.

(2) Nothing in this title prohibits an employer from requiring an employee who has tested positive for COVID-19 to refrain from entering the workplace until a medical professional has cleared the employee to return to the workplace or until a period of quarantine recommended by the Department of Health or the U.S. Centers for Disease Control has elapsed.

(c) No employer or agent thereof may take an adverse employment action against an employee because of actions the employee takes to secure any right or protection contained in this title or to prevent or stop a violation of this title.

Sec. 104. Enforcement.

(a)(1) The Mayor may enforce and administer this title by conducting investigations (of the Mayor's own volition or after receiving a complaint), holding hearings, and assessing penalties. The Mayor shall have the power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, compel the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any proceedings before the Mayor.

(2) The Mayor may assess administrative penalties in the following amounts:

(A) For violations of section 102, up to $50 per violation per employee per day for a repeated or willful violation.

(B) For violations of section 103, up to $500 per violation.

(b)(1) The Attorney General may enforce this title by conducting investigations (of the Attorney General's own volition or after receiving a complaint) and instituting actions. The Attorney General shall have the power to administer oaths and examine witnesses under oath, issue subpoenas, compel the attendance of witnesses, compel the production of papers, books, accounts, records, payrolls, documents, and testimony, and to take depositions and affidavits in any investigation or proceeding conducted to enforce this title.

(2) The Attorney General, acting in the public interest, including the need to deter future violations, may enforce this title by commencing a civil action in the name of the District of Columbia in a court of competent jurisdiction on behalf of the District or one or more aggrieved employees.

(3) Upon prevailing in court after commencing a civil action as permitted by this subsection, the Attorney General shall be entitled to:

(A) Reasonable attorneys' fees and costs;

(B) Statutory penalties in an amount not greater than the maximum administrative penalties provided under subsection (a) of this section;

(C) On behalf of an aggrieved employee, the payment of lost wages; and

(D) Equitable relief as may be appropriate.

Sec. 105. Authority of Chief Procurement Officer.

(a)(1) The Chief Procurement Officer ("CPO"), or the CPO's designee, shall have the authority during the public health emergency, and for 90 days thereafter, to enter into an indefinite-delivery/indefinite quantity contract ("IDIQ contract") for PPE, sanitization and cleaning products, related equipment, or other goods or supplies in furtherance of the District's COVID-19 recovery efforts that permit an entity that is, or is similar to, a local business enterprise, as that term is defined in section 2302(12) of the Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.02(12)) ("CBE Act"), to place orders under the IDIQ contract at the prices specified in the IDIQ contract.

(2) Priority consideration for purchasing through the IDIQ contract shall be given to an eligible entity that is also:

(A) A small business enterprise, as that term is defined in section 2302(16) of the CBE Act;

(B) A Resident-owned business, as that term is defined in section 2302(15) of the CBE Act; or

(C) At least 51% owned by economically disadvantaged individuals, as that term is defined in section 2302(7) of the CBE Act, or owned by individuals who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as a member of a group without regard to their individual qualities.

(b) The CPO, or the CPO's designee, shall monitor and review, and may establish standards, procedures, or rules for IDIQ contracts entered into pursuant to subsection (a) of this section.

Sec. 106. Preemption.

(a) This title shall only apply to the conduct of employers and employees in the District to the extent it does not conflict with or is not preempted by federal law, regulation, or standard.

(b) To the extent a Mayor's Order issued pursuant to sections 5 and 5a of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149, D.C. Official Code §§ 7-2304, 7-2304.01), is related to the wearing of PPE and requires employers, employees, or other individuals to adhere to stricter safety standards, policies, or protocols than those required under section 102, the Mayor's Order shall control.

TITLE II. PERSONAL PROTECTIVE EQUIPMENT GRANT PROGRAM

Sec. 201. The Small and Certified Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*), is amended as follows:

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

"Sec. 2317. Personal Protective Equipment emergency grant program.".

(b) A new section 2317 is added to read as follows:

"Sec. 2317. Personal protective equipment grant program.

"(a)(1) Beginning October 1, 2020, during the public health emergency, and subject to the availability of funds, the Mayor may, notwithstanding the Grant Administration Act of 2013, effective December 24, 2013 (D.C. Law 20-61; D.C. Official Code § 1-328.11 *et seq.*), issue a grant to an eligible small business; provided, that the eligible small business:

"(A) Submits a grant application in the form and with the information required by the Mayor;

"(B) Submits a clear statement describing the type and quantities of PPE purchased or to be purchased; and

"(C) Demonstrates, to the satisfaction of the Mayor, financial distress caused by a reduction in business revenue due to the circumstances giving rise to or resulting from the public health emergency.

"(2) A grant issued pursuant to this section may be provided in an amount up to $1,000 per eligible small business for the purchase of or reimbursement for purchases of PPE made on or after the enacted date of the Protecting Businesses and Workers from COVID-19 Emergency Amendment Act of 2020, 2020, effective August 13, 2020 (D.C. Act 23-384; 67 DCR 9870).

"(b) The Mayor may issue one or more grants to a third-party grant-managing entity for the purpose of administering the grant program and making subgrants on behalf of the Mayor in accordance with the requirements of this section.

"(c) The Mayor, pursuant to section 105 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505), may issue rules to implement the provisions of this section.

"(d) For the purposes of this section, the term:

"(1) "Eligible small business" means a business enterprise eligible for certification as a small business enterprise under section 2332 or a nonprofit entity.

"(2) "Public health emergency" means the Coronavirus (COVID-19) public health emergency declared pursuant to Mayor's Order 2020-045, on March 11, 2020, and all subsequent extensions.

"(3) "PPE" means personal protective equipment, including face masks, disposable gloves, face shields, and plexiglass barriers.".

TITLE III. PUBLIC HEALTH EMERGENCY AUTHORITY

Sec. 301. (a) Section 7(c-1) of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981 (D.C. Law 3-149; D.C. Official Code § 7-2306(c-1)), is amended to read as follows:

"(c-1) Notwithstanding subsections (b) and (c) of this section, the Council authorizes the Mayor to extend the 15-day March 11, 2020, emergency executive order and public health emergency executive order ("emergency orders") issued in response to the coronavirus (SARS CoV-2) through December 31, 2020. After the extension authorized by this subsection, the Mayor may extend the emergency orders for additional 15-day periods pursuant to subsection (b) or (c) of this section.".

(b) This section shall expire on January 1, 2021.

TITLE IV. APPLICABILITY; FISCAL IMPACT; EFFECTIVE DATE

Sec. 401. Applicability.

This act shall apply as of November 10, 2020.

Sec. 402. Fiscal impact statement.

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

**ENROLLED ORIGINAL**

Sec. 403. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-484**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend the District of Columbia Election Code of 1955 to allow District residents, who are otherwise qualified, to vote while incarcerated for a felony conviction, to add the Department of Corrections as an automatic voter registration agency, to require the District of Columbia Board of Elections to provide every unregistered qualified elector in the Department of Corrections' care or custody, and endeavor to provide to every unregistered qualified elector in the Bureau of Prisons' care or custody, a voter registration form and postage-paid return envelope and educational materials about the right to vote, to require the District of Columbia Board of Elections to provide to every registered qualified elector in the Department of Corrections' care or custody, and endeavor to provide to every registered qualified elector in the Bureau of Prisons' care or custody, a voter guide, educational materials about the right to vote, and an absentee ballot with a postage-paid return envelope, and to require the District of Columbia Board of Elections and the Corrections Information Council, by July 1, 2021, and biennially thereafter, to jointly submit a report to the Mayor and the Council; to amend the Department of Youth Rehabilitation Services Establishment Act of 2004 to require the Department of Youth Rehabilitation Services to register to vote any committed youth who is a qualified elector, unless the youth opts out, and annually transmit to the District of Columbia Board of Elections and the Council a report including the number of youth who registered to vote and the number of youth who declined to register to vote; and to amend An Act To create a Department of Corrections in the District of Columbia to require the Department of Corrections to employ personnel whose sole responsibility is the civic engagement and enfranchisement of eligible individuals in its care or custody, to require the Department of Corrections to automatically register to vote individuals who are qualified electors, unless an individual opts out, and to require the Department of Corrections to transmit to the District of Columbia Board of Elections the voter registration information of each incarcerated individual who did not decline to register to vote.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Restore the Vote Amendment Act of 2020".

Sec. 2. The District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.01 *et seq.*), is amended as follows:

(a) Section 2 (D.C. Official Code § 1-1001.02) is amended as follows:

(1) Paragraph (2) is amended as follows:

(A) Subparagraph (C) is amended by striking the semicolon and inserting the phrase "; and" in its place.

(B) Subparagraph (D) is repealed.

(2) New paragraphs (32) and (33) are added to read as follows:

"(32) The term "DOC" means the Department of Corrections.

"(33) The term "automatic voter registration agency" means an agency designated under section 7(c)(1) to automatically register qualified electors to vote.".

(b) Section 5 (D.C. Official Code § 1-1001.05) is amended as follows:

(1) Subsection (a) is amended by adding a new paragraph (9B) to read as follows:

"(9B) Before any upcoming voter registration or absentee ballot deadlines and with reasonable time for qualified electors to return materials to the Board:

"(A) Provide to every unregistered qualified elector in the Department of Corrections' care or custody and endeavor to provide to every unregistered qualified elector in the Bureau of Prisons' care or custody:

"(i) A voter registration form and postage-paid return envelope; and

"(ii) Lay-friendly educational materials about the importance of voting and the right of an individual currently incarcerated or with a criminal record to vote in the District; and

"(B) Provide to every registered qualified elector in the Department of Corrections' care or custody and endeavor to provide to every registered qualified elector in the Bureau of Prisons' care or custody:

"(i) A voter guide;

"(ii) Lay-friendly educational materials about the importance of voting and the right of an individual currently incarcerated or with a criminal record to vote in the District; and

"(iii) Without first requiring an absentee ballot application to be submitted, an absentee ballot and postage-paid return envelope;".

(2) A new subsection (m) is added to read as follows:

"(m) By July 1, 2021, and biennially thereafter, the Board and the Corrections Information Council, established by section 11201a of the National Capital Revitalization and Self-Government Improvement Act of 1997, effective October 2, 2010 (D.C. Law 18-233; D.C. Official Code § 24-101.01), shall jointly submit a report to the Mayor and Council on the Restore the Vote Amendment Act of 2020, passed on 2nd reading on October 20, 2020 (Enrolled version of Bill 23-324) ("Act"), including:

"(1) The number of incarcerated qualified electors registered since the Act's effective date, or, beginning in the July 1, 2023 report, since the date of the previous report;

"(2) The number of incarcerated registered qualified electors who voted, for each election held since the Act's effective date or, beginning in the July 1, 2023 report, since the date of the previous report;

"(3) An analysis of the Act's implementation and any identifiable challenges; and

"(4) Any policy or legislative recommendations to ensure that all incarcerated qualified electors have a meaningful opportunity to register and vote.".

(c) Section 7 (D.C. Official Code § 1–1001.07) is amended as follows:

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

(A) The lead-in language is amended by striking the phrase "unless:" and inserting the phrase "unless the person:" in its place.

(B) Paragraph (1) is amended by striking the phrase "He or she meets the qualifications" and inserting the phrase "Meets the qualifications" in its place.

(C) Paragraph (2) is amended to read as follows:

"(2)(A) Executes an application to register to vote by signature or mark (unless prevented by physical disability) on a form approved pursuant to subsection (b) of this section or by the Election Assistance Commission attesting that the person meets the requirements of a qualified elector, and if the person desires to vote in party elections, indicating the person's political party affiliation; or

"(B) Automatically registers pursuant to subsection (c) of this section; and".

(D) Paragraph (3) is amended by striking the phrase "his or her" and inserting the phrase "the person's" in its place.

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

(A) Paragraph (2A) is amended by striking the phrase "No later than 180 days following the effective date of the Voter Registration Access and Modernization Amendment Act of 2014, passed on 2nd reading on September 23, 2014 (Enrolled version of Bill 20-264), the Board" and inserting the phrase "The Board" in its place.

(B) Paragraph (4) is amended by striking the phrase "indicate his or her interest" and inserting the phrase "indicate the applicant's interest" in its place.

(3) Subsection (c) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(1)(A) The following shall be automatic voter registration agencies, although the Board may designate additional automatic voter registration agencies by rulemaking:

"(i) DMV; and

"(ii) DOC.

"(B) Unless the applicant indicates that the applicant does not want to register to vote:

"(i) Each DMV application for a DMV-issued driver's license (including any renewal application) or nondriver's identification card shall automatically serve as an application to register to vote or update the applicant's voter registration information; and

"(ii) DOC shall automatically register each qualified elector in its care or custody in the Central Detention Facility or Correctional Treatment Facility to vote.

"(C) Each automatic voter registration agency and the Board shall jointly develop an application that captures:

"(i) If the automatic voter registration agency is the DMV, the necessary information for the issuance, renewal, or correction of the applicant's driver's license or nondriver's identification card; and

"(ii) The applicant's:

"(I) Mailing address, if mail is not received at the residence address;

"(II) Citizenship;

"(III) Choice of party affiliation (if any);

"(IV) Last address of voter registration (if known);

"(V) Whether the applicant would like information on serving as an election worker in the next election;

"(VI) Under penalty of perjury, an attestation that sets forth the requirements for voter registration and states that the applicant meets each of those requirements; and

"(VII) Ability to decline to register to vote, or, if already registered in the District, ability to decline to update the applicant's voter registration.

"(D) For each applicant who did not decline to register to vote or update the applicant's voter registration information under subparagraph (B) of this paragraph and stated that the applicant is a citizen of the United States, the automatic voter registration agency shall provide to the Board electronic records containing the applicant's:

"(i) Legal name;

"(ii) Date of birth;

"(iii) Residence;

"(iv) Mailing address;

"(v) Previous voter registration address;

"(vi) DMV-issued identification number or social security number;

"(vii) Party affiliation (if any);

"(viii) Response as to whether the applicant would like information on serving as a poll worker in the next election;

"(ix) Citizenship information; and

"(x) Electronic signature.

"(E) An application for voter registration submitted pursuant to this subsection shall be considered as an update to any previous voter registration.

"(F) Any application for the purpose of a change of address or name submitted pursuant to this subsection shall be considered notification to the Board of the change of address or name unless the applicant states on the application that the change of address or name is not for voter registration purposes.

"(G) The instructions on the application shall also include a statement that:

"(i) If an applicant declines to register to vote, the fact that the applicant has declined to register will remain confidential and will be used only for voter registration purposes; and

"(ii) If an applicant does register to vote, the automatic voter registration agency at which the applicant submits a voter registration application will remain confidential and will be used only for voter registration purposes.

"(H) The deadline for transmission of the voter registration information to the Board shall be not later than 10 days after the date of acceptance of the application by the automatic voter registration agency; except, that if an application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the Board not later than 5 days after the date of its acceptance.

"(I)(i) An application shall be considered received by the Board pursuant to subsection (e) of this section on the date it was accepted by the automatic voter registration agency.

"(ii) The Board shall consider an application that the automatic voter registration agency accepted for the purposes of voter registration on or before the voter registration deadline as timely received.

"(J) Any form issued by mail for the purposes of correcting or updating a driver's permit or nondriver's identification card shall be designed so that the individual may decline to correct or update the individual's address or name for voter registration purposes and provide a mailing address, if mail is not received at the residence address.

"(K) The Board and each automatic voter registration agency shall match information in their respective databases to enable each agency to verify the accuracy of the information on applications for voter registration.

"(L) Except as provided in this subsection, any citizenship information provided by an applicant for voter registration purposes shall not be otherwise retained, used, or shared by the automatic voter registration agency.".

(B) Paragraph (3)(B) is amended by striking the phrase "he or she" and inserting the phrase "the person" in its place.

(4) Subsection (d)(1)(B) is amended by striking the phrase "Department of Youth and Rehabilitative Services" and inserting the phrase "Department of Youth Rehabilitation Services" in its place.

(5) Subsection (e) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "the DMV" and inserting the phrase "an automatic voter registration agency" in its place.

(B) Paragraph (2) is amended as follows:

(i) Subparagraph (A) is amended by striking the phrase "her or his" and inserting the phrase "the applicant's" in its place.

(ii) Subparagraph (B) is amended by striking the phrase "the DMV" and inserting the phrase "an automatic voter registration agency" in its place.

(C) Paragraph (3) is amended by striking the phrase "his or her" and inserting the phrase "the voter's" in its place.

(D) Paragraph (5)(A) is amended by striking the phrase "he or she" both times it appears and inserting the phrase "the voter" in its place.

(6) Subsection (g) is amended by striking the phrase "his or her" both times it appears and inserting the phrase "the qualified elector's" in its place.

(7) Subsection (i) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "he or she" both times it appears and inserting the phrase "the person" in its place.

(B) Paragraph (2) is amended by striking the phrase "his or her" both times it appears and inserting the phrase "the registered voter's" in its place.

(C) Paragraph (3) is amended by striking the phrase "his or her" and inserting the phrase "the registered voter's" in its place.

(D) Paragraph (4) is amended by striking the phrase "his or her" and inserting the phrase "the registered voter's" in its place.

(E) Paragraph (5)(B) is amended by striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General" in its place.

(8) Subsection (j) is amended by striking the phrase "his or her" both times it appears and inserting the phrase "the registrant's" in its place.

(9) Subsection (k) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase "registrant, upon notification of a registrant's incarceration for a conviction of a felony" and inserting the word "registrant" in its place.

(B) A new paragraph (4A) is added to read as follows:

"(4A) At least monthly, the Board shall request from the Bureau of Prisons the name, location of incarceration, and contact information for each qualified elector in the Bureau of Prisons' care or custody.".

(10) Subsection (m) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

"(1) The Board, in conjunction with each automatic voter registration agency, shall develop and implement electronic transmission of voter registration information from that automatic voter registration agency.".

(B) Paragraph (2) is amended by striking the phrase "the DMV" both times it appears and inserting the phrase "the automatic voter registration agency" in its place.

Sec. 3. Section 104(18) of the Department of Youth Rehabilitation Services Establishment Act of 2004, effective April 12, 2005 (D.C. Law 15-335; D.C. Official Code § 2-1515.04(18)), is amended to read as follows:

"(18) In addition to any obligations imposed upon the Department due to its designation as a voter registration agency by section 7(d)(1)(B) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 700; D.C. Official Code § 1-1001.07(d)(1)(B)):

"(A) If a youth committed at the Department is a qualified elector, as that term is defined in section 2(2) in the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.02(2)), registering the youth to vote, unless the youth indicates that they do not want to register; and

"(B) Transmitting to the Board of Elections and the Council of the District of Columbia, on an annual basis, a report containing the number of youth the agency has registered to vote and the number of youth who declined to register to vote.".

Sec. 4. An Act To create a Department of Corrections in the District of Columbia, approved June 27, 1946 (60 Stat. 320; D.C. Official Code § 24-211.01 *et seq.*), is amended as follows:

(a) Section 2(b) (D.C. Official Code § 24-211.02(b)) is amended as follows:

(1) Paragraph (5) is amended by striking the phrase "; and" and inserting a semicolon in its place.

(2) Paragraph (9) is amended by striking the period and inserting the phrase "; and" in its place.

(3) A new paragraph (10) is added to read as follows:

"(10) Employ personnel whose sole responsibility shall be the civic engagement and enfranchisement of eligible individuals incarcerated in the Department of Corrections' care or custody, including those responsibilities in section 8 and designing and implementing a plan to facilitate voting for each election in the Central Detention Facility and Correctional Treatment Facility.".

(b) Section 8 (D.C. Official Code § 24-211.08) is amended as follows:

(1) The section heading is amended by striking the phrase "Voting assistance and notifications to inmates" and inserting the phrase "Automatic voter registration and voter assistance and notification to incarcerated individuals" in its place.

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

(A) The lead-in language is amended by striking the phrase "shall, during the inmate intake process and again when an inmate exits the Department's custody:" and inserting the phrase "shall:" in its place.

(B) Paragraph (1) is amended by striking the phrase "an inmate" and inserting the phrase "an incarcerated individual" in its place.

(C) Paragraph (2) is amended by striking the phrase "an inmate is a qualified elector, as that term is defined in section 2(2) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.02(2)), but is not registered to vote, provide that inmate with a voter registration application" and inserting the phrase "an incarcerated individual is a qualified elector, as that term is defined in section 2(2) in the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.02(2)), automatically register that incarcerated individual to vote pursuant to section 7(c)(1) of the District of Columbia Election Code of 1955, approved August 12, 1955 (69 Stat. 669; D.C. Official Code § 1-1001.07(c)(1)), unless the incarcerated individual indicates that they do not want to register" in its place.

(D) Paragraph (3) is amended by striking the phrase "each inmate of the right of an individual currently incarcerated" and inserting the phrase "each incarcerated individual of the right of an incarcerated individual" in its place.

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

"(a-1)(1) The Department shall transmit to the District of Columbia Board of Elections the voter registration information of each applicant who did not decline to register to vote no later than 10 days after the date of its acceptance by the Department; except, that if an application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the Board not later than 5 days after the date of its acceptance.

"(2) The information submitted pursuant to paragraph (1) of this subsection shall contain the applicant's:

"(A) Legal name;

"(B) Date of birth;

"(C) Residence;

"(D) Mailing address;

"(E) Previous voter registration address;

"(F) DMV-issued identification number or social security number;

"(G) Party affiliation (if any);

"(H) Response as to whether the applicant would like information on serving as a poll worker in the next election; and

"(I) Signature."

(4) Subsection (c) is amended by striking the phrase "of inmates" and inserting the phrase "of incarcerated individuals" in its place.

Sec. 5. Applicability.

(a) Section 4 of this act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

**ENROLLED ORIGINAL**

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provision identified in subsection (a) of this section.

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-485**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To authorize the issuance of tax increment financing bonds to support the development project on a portion of the land known as Reunion Square, located to the east of Martin Luther King Jr. Avenue S.E., to the north of Chicago Street S.E., to the west of Railroad Avenue S.E., and to the south of W Street S.E.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Reunion Square Tax Increment Financing Amendment Act of 2020".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) "Authorized Delegate" means the Deputy Mayor for Planning and Economic Development, the Chief Financial Officer, the Treasurer, or any officer or employee of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act.

(2) "Available Increment" shall have the same meaning as set forth in the Reserve Agreement.

(3) "Available Real Property Tax Revenues" means the revenues resulting from the imposition of the tax provided for in Chapter 8 of Title 47 of the District of Columbia Official Code, inclusive of any penalties and interest charges, exclusive of the special tax provided for in section 481 of the Home Rule Act pledged to payment of general obligation indebtedness of the District.

(4) "Available Sales Tax Revenues" means the revenues resulting from the imposition of the tax under Chapter 20 of Title 47 of the District of Columbia Official Code, including penalty and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Fund established pursuant to section 208 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.08), and any amounts to be made available to the Washington Metropolitan Transit Authority pursuant to section 7101 of the Revised Revenue Contingency List Act of 2017, effective December 13, 2017 (D.C. Law 22-33; 64 DCR 7652),

and section 2 of the Stable and Reliable Source of WMATA Revenues act of 1982, effective April 30, 1982 (D.C. Law 4-103; D.C. Official Code 9-1111.15(b)(2)(A)).

(5) "Available Tax Increment" means, with respect to any series of bonds, the sum of the Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Reunion Square TIF Area in any fiscal year of the District minus the sum of Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Reunion Square TIF Area in the base year.

(6) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(7) "Bonds" means the District of Columbia Class A Bonds, Class B Bonds, and any other revenue bonds, notes, or other obligations, in one or more series, authorized to be issued pursuant to this act. Unless otherwise specified, the term "Bonds" shall include Refunding Bonds.

(8) "Chairman" means the Chairman of the Council of the District of Columbia.

(9) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia established by section 424(a) of the Home Rule Act.

(10) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(11) "Council" means the Council of the District of Columbia.

(12) "Debt Service" means principal, premium, if any, and interest on the bonds.

(13) "Development Costs" has the same meaning as in section 2(13) of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01(13)), and may include any costs for District tenant improvements in the Project.

(14) "Development Sponsor" means Four Points LLC, Curtis Investment Group, and Blue Sky Housing LLC, or any other entity that undertakes the development of the Project with the approval of the Mayor.

(15) "District" means the District of Columbia.

(16) "Financing Documents" means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be affected through the issuance, sale, and delivery of the bonds, including any offering document, and any required supplements to any such documents.

(17) "Home Rule Act" means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(18) "Project" means the financing, refinancing, or reimbursing of Development Costs incurred within the Reunion Square TIF Area.

(19) "Refunding Bonds" means the District of Columbia bonds, notes, or other obligations, in one or more series, authorized to be issued pursuant to this act to refund the Bonds.

(20) "Reserve Agreement" means that certain Reserve Agreement, dated as of April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A., and Financial Security Assurance, Inc.

(21) "TIF" means tax increment financing.

Sec. 3. Creation of the Reunion Square TIF Fund.

(a) There is established as a nonlapsing fund the Reunion Square TIF Fund. The Chief Financial Officer shall deposit into the Reunion Square TIF Fund the Available Tax Increment and any other taxes or fees specifically designated by law for deposit in the Reunion Square TIF Fund.

(b) The Mayor may pledge and create a security interest in the funds in the Reunion Square TIF Fund, or any sub-account within the Reunion Square TIF Fund, for the payment of debt service on the bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The payment of debt service shall be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the bonds.

(c) If, at the end of any fiscal year of the District, the balance of cash and investments in the Reunion Square TIF Fund exceeds the amount of debt service (including prepayment of principal and interest), reserves on any bonds, and any approved bond-related administrative expenses during the upcoming fiscal year, 50% of the excess shall be used to prepay the principal of the bonds and the remaining 50% of the excess shall be transferred to the unrestricted balance of the General Fund of the District of Columbia.

Sec. 4. Creation of the Reunion Square TIF Area.

(a) There is created a TIF area designated as the Reunion Square TIF Area. The Reunion Square TIF Area is defined as: Lots 827, 829, 984, 1017, and 1020 in Square 5772; Lot 1018 in Square 5783; and Lots 899, 900, and 1101 in Square 5784.

(b) As provided under section 3, the Available Tax Increment from the Reunion Square TIF Area shall be deposited in the Reunion Square TIF Fund and may be used for the purposes set forth in section 3.

(c)(1) The base year for determination of Available Sales Tax Revenues from locations within the Reunion Square TIF Area shall be the tax year preceding the year in which this act becomes effective.

(2) The base amount for determination of Available Real Property Tax Revenues shall be:

(A) $121,881 in base year 2020;

(B) $121,881 in base year 2021;

(C) $121,881 in base year 2022;
(D) $129,193 in base year 2023;
(E) $136,945 in base year 2024; and
(F) $141,738 in base year 2025 and each base year thereafter.

(d) The Reunion Square Street TIF Area shall terminate on the earlier of:

(1) Twenty-five years after the issuance of the last Bonds issued pursuant to this act;

(2) The date on which the Bonds are paid in full or are defeased and are no longer outstanding; or

(3) September 30, 2025 if no Bonds are issued.

Sec. 5. Class A Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of Class A Bonds in an aggregate principal amount not to exceed $16.9 million to fund the Project. The Class A Bonds, which may be issued from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 7(a).

(b) The Mayor may pay from the proceeds of the Class A Bonds the financing costs and expenses of issuing and delivering the Class A Bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, credit enhancement, marketing, sale, and printing costs and expenses.

Sec. 6. Class B Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of Class B Bonds in an aggregate principal amount not to exceed $45.8 million, less the issued gross Class A Bond amount, to reimburse Development Costs of the Project and financing costs incurred by the District and to fund capitalized interest and required reserves. The Class B Bonds, which may be issued from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 7(b).

(b) The Mayor may pay from the proceeds of the Class B Bonds the financing costs and expenses of issuing and delivering the Class B Bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, credit enhancement, marketing, sale, and printing costs and expenses.

(c) The Class B Bonds also may be issued as a TIF note to the Development Sponsor and may be held and used as security for debt incurred or to be incurred by the Development Sponsor, an agent of the Development Sponsor, or another party selected by the Development sponsor and approved by the District.

Sec. 7. Payment and security.

(a) For the Class A Bonds:

(1) Except as may be otherwise provided in this act, the principal of, premium, if any, and interest on, the Class A Bonds, and the payment of ongoing administrative expenses related to the bond financing shall be payable solely from proceeds received from the sale of the bonds, income realized from the temporary investment of those proceeds, Available Tax Increment and any other taxes or fees deposited in the Reunion Square TIF Fund, income realized from the temporary investment of the monies in the Reunion Square TIF Fund prior to payment to the Class A Bondholders, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the bonds from sources other than the District, all as provided for in the Financing Documents.

(2) There is further allocated to the payment of debt service, on the Class A Bonds the Available Increment, subordinate to the allocation of Available Increment to the Budgeted Reserve, as defined in the Reserve Agreement, all as more fully described in the Reserve Agreement and to the extent that the Reserve Agreement continues to apply to the Available Increment, to be used for the payment of debt service on the Class A Bonds to the extent that the revenues allocated in paragraph (1) of this subsection are inadequate to pay debt service on the Class A Bonds. The allocation of Available Increment authorized by this subsection shall be made in compliance with all existing contractual obligations of the District with respect to the Available Increment and shall terminate on the date on which all of the Class A Bonds are paid or provided for and are no longer outstanding pursuant to their terms.

(3) Payment of the Class A Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Class A Bondholders of certain of its rights under the Financing Documents and Closing Documents to the trustee for the Class A Bonds pursuant to the Financing Documents.

(4) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the Class A Bonds pursuant to the Financing Documents.

(b) For the Class B Bonds:

(1) Except as may be otherwise provided in this act, the principal of, premium, if any, and interest on, the Class B Bonds, and the payment of ongoing administrative expenses related to the Class B Bond financing shall be payable solely from proceeds received from the sale of the subordinate Class B Bonds and income realized from the temporary investment of those proceeds, the Available Tax Increment, and any other taxes or fees deposited in the Reunion Square TIF Fund, income realized from the temporary investment of the monies in the Reunion Square TIF Fund prior to payment to the Class B Bondholders, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the subordinate Class B Bonds from sources other than the District, all as provided for in the Financing Documents.

(2) Payment of debt service on the Class B Bonds from monies deposited in the Reunion Square TIF Fund or income realized from the temporary investment of those monies shall be subordinate to:

(A) The payment of debt service on the Class A Bonds from monies deposited in the Reunion Square TIF Fund or income realized from the temporary investment of those monies; and

(B) Any reasonable reserves required by the District.

(3) Payment of the Class B Bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the Class B Bondholders of certain of its rights under the Financing Documents and Closing Documents to the trustee for the Class B Bonds pursuant to the Financing Documents.

(4) The trustee or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the Class B Bonds pursuant to the Financing Documents.

Sec. 8. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each class and series, including, but not limited to, determinations of:

(1) The final form, content, designation, and terms of the bonds, including a determination that the bonds may be issued in certificated or book-entry form;

(2) The principal amount of the bonds to be issued and denominations of the bonds;

(3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;

(4) The date or dates of issuance, sale, and delivery of, and the payment of interest on, the bonds, and the maturity date or dates of the bonds;

(5) The terms under which the bonds may be paid, optionally or mandatorily redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;

(8) The time and place of payment of the bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of any credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes and fees deposited in the Reunion Square TIF Fund), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee or paying agent to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The bonds are declared to be issued for essential public and governmental purposes. The bonds, the interest thereon, and the income therefrom, and all funds pledged or available to pay or secure the payment of the bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the revenues pledged to secure the bonds or the basis on which such revenues are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds, will not in any way impair the rights or remedies of the holders of the bonds, and will not modify, in any way, the exemptions from taxation provided for in this act, until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection constitutes a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Chapter 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the

security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 9. Issuance of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the bonds.

(c) The Mayor is authorized to deliver executed and sealed bonds, on behalf of the District, for authentication, and, after the bonds have been authenticated, to deliver the bonds to the original purchasers of the bonds upon payment of the purchase price.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the bonds of such series and, if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the bonds for purposes of federal income taxation.

(e) The Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*), and subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for the purposes of this act.

Sec. 10. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 11. Limited liability.

(a) The bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the Available Tax Increment, the Available Increment, and any other taxes or fees allocated to the Reunion Square TIF Fund), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The bonds shall not give rise to any pecuniary liability of the District, and the District shall have no obligation with respect to the purchase of the bonds.

(c) No person, including, but not limited to, any bond owner, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this act, the bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 12. District officials.

(a) Except as otherwise provided in section 11(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, the bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the bonds, the Financing Documents, or the Closing Documents.

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Sec. 13. Maintenance of documents.

Copies of the specimen bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 14. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 15. Expiration of issuance authority.

(a) The authority to issue the Class A Bonds shall expire on September 30, 2025, if no Bonds have been issued; provided, however, that the expiration of the authority shall have no effect on any Bonds issued prior to the expiration date or on the District's ability to issue Refunding Bonds on a future date.

(b) The authority to issue the Class B Bonds shall expire on September 30, 2030; provided, however, that the expiration of the authority shall have no effect on any Class B Bonds issued prior to the expiration date.

Sec. 16. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 17. Effective date.

This act shall take effect following the approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-486**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend the District of Columbia Traffic Act, 1925 to require the Mayor to create rules governing shared fleet devices, to require a shared fleet device permit for the operation of a SFD fleet, to require permitted operators to pay a performance bond to the District in order to pay for damage to public property and other costs, to require permitted operators to provide fleet and trip data and complaint statistics to the Director of the District Department of Transportation, to require permitted operators to maintain at least 3% of its fleet in each ward between 5:00a.m. and 7:00a.m. each day, to prohibit permitted operators from deploying electric mobility devices within 300 feet of elementary, middle schools, or senior wellness centers, unless that space is located on a block face adjacent to a metro rail station entrance, to require permitted operators to maintain a 24-hour toll-free customer service line for the public to report inoperable or illegally parked shared fleet devices and other complaints, to require permitted operators to move the shared fleet devices within 2 hours of being notified that they are parked illegally, to require permitted operators to provide optional, free virtual classes on how to safely operate the shared fleet devices, to require shared fleet devices to have proper lighting and reflectors, to require the Director of the District Department of Transportation to construct signage or create conspicuous pavement markings alerting shared fleet device users when they are entering the Central Business District, to require the Director of the District Department of Transportation to construct at least 1,000 racks a year until 2025 for parking of electric mobility devices, to prohibit the Director of the District Department of Transportation from permitting more than 20,000 electric mobility devices before October 1, 2023, and to require shared fleet device users to park devices in an upright position and, beginning October 1, 2021, locked to an object with at least 3 feet of unobstructed pedestrian walkway; to amend the Pedestrian Protection Amendment Act of 1987 to provide that riders of electric mobility devices shall have the same rights and duties as a pedestrian under the same circumstances; and to amend the Anti-Drunk Driving Act of 1982 to prohibit a person from operating or being in the physical control of any personal mobility device or electric mobility device while under the influence of alcohol or any drug or any combination thereof; and to make conforming amendments.

**ENROLLED ORIGINAL**

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Shared Fleet Devices Amendment Act of 2020".

TITLE I. SHARED FLEET DEVICES

Sec. 101. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 *passim*), is amended as follows:

(a) Section 2 (D.C. Official Code § 50-2201.02) is amended as follows:

(1) New paragraphs (2A) and (2B) are added to read as follows:

"(2A) "Block" means the 2 opposite sides of a street between 2 consecutive street intersections.

"(2B) "Block face" means one side of a block.".

(2) A new paragraph (5A) is added to read as follows:

"(5A) "Director" means the Director of the District Department of Transportation.".

(3) A new paragraph (6A) is added to read as follows:

"(6A)(A) "Electric mobility device" means a device weighing less than 60 pounds that:

"(i) Has an electric motor;

"(ii) Is solely powered by the electric motor or human power;

"(iii) Is designed to transport only one person in a standing or seated position, where the rider is not enclosed; and

"(iv) Is no greater than 24 inches wide and 48 inches long.

"(B) The term "electric mobility device" shall not include a motorized bicycle, personal mobility device, motorcycle, or moped.".

(4) A new paragraph (9A) is added to read as follows:

"(9A) "Lock-to mechanism" means a mechanism on shared fleet devices that locks the device to an object or infrastructure.".

(5) Paragraph (11) is amended by striking the phrase "personal mobility devices, as defined in paragraph (13) of this section," and inserting the phrase "electric mobility devices, personal mobility devices, motorized bicycles" in its place.

(6) A new paragraph (11A) is added to read as follows:

"(11A)(A) "Motorized bicycle" means a 2 or 3 wheeled vehicle with all of the following characteristics:

"(i) A post mounted seat or saddle for each person that the device is designed and equipped to carry;

"(ii) A vehicle with 2 or 3 wheels in contact with the ground, which are at least 16 inches in diameter;

"(iii) Fully operative pedals for human propulsion; and

"(iv) A motor incapable of propelling the device at a speed of more than 20 miles per hour on level ground.

"(B) The term "motorized bicycle" shall not include electric mobility devices, personal mobility devices, or a battery-operated wheelchair when operated by a person with a disability.".

(7) New paragraphs (12A) and (12B) are added to read as follows:

"(12A) "Permitted operator" means a SFD operating company that has a SFD permit.

"(12B) "Personal information" means information that can reasonably be used to contact or distinguish a person, including internet protocol addresses, device identifiers, bank or credit card information, home addresses, email addresses, or phone numbers.".

(8) Paragraph (13) is amended to read as follows:

"(13)(A) "Personal mobility device" or "PMD" means a motorized propulsion device that is designed to transport only one person that:

"(i) Weighs 60 pounds or more; or

"(ii) Is a self-balancing, two non-tandem wheeled device.

"(B) The term "personal mobility device" shall not include:

"(i) A battery-operated wheelchair;

"(ii) An electric mobility device; or

"(iii) A motorized bicycle.".

(9) New paragraph (14A), (14B), (14C), and (14D) are added to read as follows:

"(14A) "SFD fleet" means all shared fleet devices of any single type of shared fleet device made available for rent by a permitted operator.

"(14B)(A) "SFD operating company" means a company that provides rental of shared fleet devices for use in the public right-of-way without requiring the installation of any infrastructure within the public right-of-way.

"(B) The term "SFD operating company" shall not include the District Department of Transportation or its contractors operating Capital Bikeshare.

"(14C) "SFD permit" means a public-right-of-way occupancy permit issued by the Director to a shared fleet device operating company to offer shared fleet devices for rental in the public right-of-way in the District.

"(14D) "Shared fleet device" means an electric mobility device, bicycle, or electrically-powered motorized bicycle that is available for short-term rental and is permitted for use in public space.".

(10) Paragraph (19)(D) is amended by striking the period and inserting the phrase ", but not including shared fleet devices." in its place.

(b) New sections 6b and 6c are added to read as follows:

"Sec. 6b. Regulations for shared fleet devices.

"(a) The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), shall issue rules implementing the provisions of section 6c, including establishing:

"(1) Terms and conditions for a SFD permit;

"(2) An application process for obtaining a SFD permit;

"(3) A process by which a permit may be revoked if the permitted operator does not comply with the terms and conditions of the SFD permit, section 6c, or regulations issued pursuant to this section;

"(4) The term for which a SFD permit lasts before requiring renewal;

"(5) Penalties and fines for violations of the terms and conditions of the SFD permit, section 6c, or regulations issued pursuant to this section;

"(6) The number of shared fleet devices each permitted operator may operate in the public right-of-way;

"(7) The process a permitted operator shall follow and the criteria a permitted operator shall meet, including an explanation of how each criterion is weighted, in order to increase its fleet size;

"(8) Insurance requirements for permitted operators, which:

"(A) Shall include liability insurance in an amount not less than $1 million per incident, that each permitted operator shall carry; and

"(B) May include a required minimum aggregate amount of liability insurance; and

"(9) The amount of the performance bond permitted operators shall provide to operate in the District.

"Sec. 6c. Operation of shared fleet devices.

"(a) No SFD operating company shall offer shared fleet devices for rental without a SFD permit issued by the Director.

"(b)(1) To obtain a SFD permit, a SFD operating company shall submit an application to the Director, in a form and manner determined by the Director by rule.

"(2) The Director shall require a separate SFD permit for each SFD fleet offered by a permitted operator in the District.

"(3) The Director may limit the number of permitted operators in the District to any number greater than 2.

"(4) The Director shall require permitted operators to provide a performance bond in an amount and form specified by the Director by rule, the funds of which shall be applied to costs including:

"(A) Damage to public property caused by a permitted operator's shared fleet devices;

"(B) Fines for violations of the terms and conditions of the SFD permit, this section, or regulations pursuant to section 6b; and

"(C) The relocation of a permitted operator's shared fleet device that is parked illegally.

"(c)(1) On the 7th day of each month, or the next business day if the 7th day of the month does not fall on a business day, a permitted operator shall collect and submit to the Director

information regarding its SFD fleet and trip activity within the District during the previous calendar month, including:

"(A) The time, route, starting location, and ending location of all trips;

"(B) A description of all complaints made against the permitted operator via the customer service phone number required by section 6c(f)(3) or online; and

"(C) Any other data the Director determines is pertinent to managing permitted operators or providing safe streets and infrastructure.

"(2)(A) The information required by paragraph (1)(A) of this subsection shall:

"(i) Constitute personal information;

"(ii) Be stored in a secure fashion with controlled access granted only to District Department of Transportation staff or third-party contractors essential to the implementation of this section and the rules issues pursuant to section 6b.

"(B) Any third-party contractors granted access to the information required by paragraph (1)(A) of this subsection shall be bound by non-disclosure agreements.

"(3) Except as provided in paragraph (4) of this subsection, the Director shall not disclose to the public personal information provided by a permitted operator under this subsection, including in response to a request pursuant to the Freedom of Information Act of 1976, effective March 13, 2004 (D.C. Law 15-105; D.C. Official Code § 2-531 *et seq.*).

"(4) The Director may enter into confidential data sharing agreements with researchers and research entities; except, that the Director shall only provide information in a quantity and at a level of detail that is reasonably necessary to conduct the analysis specified in the confidential data sharing agreement.

"(5) Within 48 hours after a permitted operator determines that a breach of its data system has occurred that has placed user personal information at risk, the permitted operator shall notify DDOT, and all past and present users of its shared fleet devices who may be affected by the breach, of the breach and the likely consequences of it.

"(d) The Director shall not permit the aggregate number of electric mobility devices available for rent from permitted operators in the District to increase above 20,000 before October 1, 2023.

"(e) The Director shall construct signage or create conspicuous pavement markings on major shared fleet device routes into and inside of the Central Business District, as that term is defined in section 9901 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 9901), alerting users that they may not operate shared fleet devices on sidewalks within the Central Business District and of the fine amount for such a violation.

"(f) By October 1 of each year, for the calendar years 2021, 2022, 2023, and 2024, the Director shall construct, at a minimum, 1000 racks across the District suitable for the parking of shared fleet devices.

"(g) A permitted operator shall:

"(1) Have at least 3% of its fleet deployed in each ward cumulatively between 5:00 a.m. and 7:00 a.m. each day and in any other priority areas identified by the Director;

except, that a permitted operator with less than 200 permitted shared fleet devices need not comply with this paragraph;

"(2) Refrain from deploying shared fleet devices within 300 feet of an elementary, middle school, or senior wellness center, unless that space is located on a block face adjacent to a metro rail station entrance;

"(3) Operate a 24-hour toll-free customer service phone number for users, the general public, and District officials to report shared fleet devices that are inoperable or suspected of being operated or parked in an apparent violation of the law, and to file complaints;

"(4) Remove or reposition its shared fleet devices that are parked illegally within 2 hours of being notified of a violation by DDOT, any other government agency, or the public;

"(5) By October 1, 2021, require users to use the lock-to mechanism on the shared fleet device in order to end a ride and make failure to do so subject to a penalty;

"(6) Leave a shared fleet device involved in an accident in which the police have been called at the scene of the accident until the police have consented to the removal of the device and, if necessary, allow the police to take the device as evidence.

"(7) Compile crash and injury data reported from the users of its shared fleet devices and share the data, which shall be aggregated so that identification of specific individuals is indeterminable, with the Director and the public on its website or mobile application;

"(8) Display a plainly visible logo or name on its shared fleet devices to assist the public in identifying which shared fleet devices belong to which permitted operator;

"(9) Display the customer service phone number required by paragraph (3) of this subsection on its shared fleet devices, including in braille, to inform the public whom to contact to reposition the device;

"(10) Provide the public with data via its website or mobile application regarding how much of its SFD fleet and what parts, if any, of its shared fleet devices are reused or recycled at the end of the shared fleet device's useful life;

"(11) Ensure its shared fleet devices are equipped with a headlight and taillight to be used when the safe operation of the device requires it;

"(12) Ensure its shared fleet devices are equipped with reflective markings on its sides;

"(13) Ensure its shared fleet devices are equipped with an audible signal to allow users to alert pedestrians to their presence while the device is in use;

"(14) Offer an optional free class, in person or virtually, at least once a month, to educate users regarding the law and safe practices applicable to operating and parking a shared fleet device;

"(15) By October 1, 2021, ensure its shared fleet devices are equipped with a lock-to mechanism for safe and legal parking;

"(16) Offer to ship a helmet to any user who requests it for a price determined by the Director after consultation with the permitted operator;

"(17) Ensure its electric mobility devices are equipped with a speed governor that does not allow the electric mobility devices to travel at a speed greater than the speed limit for electric mobility devices on a paved level surface as determined by the Director;

"(18) Not display third party advertising on its shared fleet devices; except, that a permitted operator may display the name and logo of its parent company;

"(19) Educate users regarding the law and safe practices applicable to operating and parking a shared fleet device by requiring each user to watch a video with closed captioning, or to participate in other media approved by the Director, through the permitted operator's mobile application when using the mobile application for the first time that explains:

"(A) Users must be at least 16 years of age, or any older age that a permitted operator may determine it would prefer to set as its own guidelines;

"(B) Users under 18 years of age shall wear helmets;

"(C) Users shall park legally, which includes using the lock-to mechanism after October 1, 2021;

"(D) Users shall not ride with passengers;

"(E) Users shall yield to pedestrians;

"(F) Users shall park electric mobility devices in corrals when available;

"(G) Users shall ride electric mobility devices in protected bike lanes when available; and

"(H) Users shall not ride on sidewalks within the Central Business District; and

"(20) Comply with all other requirements established by the Director for the operation of shared fleet devices.

"(h) A person shall not operate an electric mobility device in excess of the speed limit determined by the Director.

"(i) A person shall operate an electric mobility device in a protected bike lane if available and safe for operating the electric mobility device.

"(j) A person shall not operate a shared fleet device:

"(1) If the person is under 16 years of age;

"(2) Upon a sidewalk within the Central Business District, as the term is defined in section 9901 of Title 18 of the District of Columbia Municipal Regulations (18 DCMR § 9901);

"(3) With a passenger;

"(4) While carrying any package, bundle, or other article that hinders the person from keeping both hands on the handlebars; or

"(5) While the person is wearing a headset, headphone, or earphone, unless the device is used to improve the hearing of a person with a hearing impairment or the device covers or is inserted in one ear only.

"(k) A person shall park a shared fleet device:

"(1) In an upright position;

"(2) After October 1, 2021, using the lock-to mechanism; and

"(3) In such a manner as to:

"(A) Afford at least 3 feet of unobstructed pedestrian walkway;

"(B) Maintain unimpeded access to entrances to private property and driveways; and

"(C) Maintain unimpeded access to handicap accessible ramps or parking spots.".

Sec. 102. Section 2(b-1) of the Pedestrian Protection Amendment Act of 1987, effective October 9, 1987 (D.C. Law 7-34; D.C. Official Code § 50-2201.28(b-1)), is amended to read as follows:

"(b-1) A person on a bicycle, personal mobility device, or electric mobility device upon or along a sidewalk or while crossing a roadway in a crosswalk shall have the rights and duties applicable to a pedestrian under the same circumstances; provided, that:

"(1) The bicyclist, personal mobility device operator, or electric mobility device operator yields to pedestrians on the sidewalk or crosswalk; and

"(2) Riding a bicycle on the sidewalk is permitted.".

Sec. 103. The Anti-Drunk Driving Act of 1982, effective September 14, 1982 (D.C. Law 4-145; D.C. Official Code § 50-2206.01 *et seq.*), is amended as follows:

(a) Section 3a (D.C. Official Code § 50-2206.01) is amended as follows:

(1) A new paragraph (6A) is added to read as follows:

"(6A) "Electric mobility device" shall have the same meaning as provided in section 2(6A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01(6A)).".

(2) Paragraph (16) is amended to read as follows:

"(16) "Personal mobility device" shall have the same meaning as provided in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01(13)).".

(b) A new section 3g-1 is added to read as follows:

"Sec. 3g-1. Operating under the influence of alcohol or a drug; personal mobility device and electric mobility device.

"(a) No person shall operate or be in the physical control of any personal mobility device or electric mobility device while under the influence of alcohol or any drug or any combination thereof.

"(b) A person violating the provisions of this section shall, upon conviction, be fined not more than $150.".

TITLE II. CONFORMING AMENDMENTS

Sec. 201. Section 3(17) of the Compulsory/No Fault Motor Vehicle Insurance Act of 1982, effective September 18, 1982 (D.C. Law 4-155; D.C. Official Code § 31-2402(17)), is amended to read as follows:

"(17) The term "motor vehicle" means any device propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines used exclusively for drawing vehicles in fields, road rollers, vehicles propelled only upon rails and tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 202. Section 1(6) of An Act To provide for the regulation of finance charges for retail installment sales of motor vehicles in the District of Columbia, and for other purposes, approved April 22, 1960 (74 Stat. 69; D.C. Official Code § 50-601(6)), is amended to read as follows:

"(6) "Motor vehicle" means any automobile, mobile home, motorcycle, truck, truck tractor, trailer, semi-trailer, or bus. The term "motor vehicle" shall not include any boat trailer, any vehicle propelled or drawn exclusively by muscular power, any vehicle designed to run only on rails or tracks, a personal mobility device, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 203. Section 8 of An Act To provide for the annual inspection of all motor vehicles in the District of Columbia, effective March 15, 1985 (D.C. Law 5-176; D.C. Official Code § 50-1108), is amended to read as follows:

"Sec. 8. As used in this act, the term "motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925,

approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 204. Section 1(9) of An Act To provide for the recording and releasing of liens by entries on certificates of title for motor vehicles and trailers, and for other purposes, approved July 2, 1940 (54 Stat. 736; D.C. Official Code § 50-1201(9)), is amended to read as follows:

"(9) "Motor vehicle" means all vehicles propelled by internal-combustion engines, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 205. Section 2(4) of the Motor Vehicle Safety Responsibility Act of the District of Columbia, approved May 25, 1954 (68 Stat. 120; D.C. Official Code § 50-1301.02(4)), is amended to read as follows:

"(4) Motor vehicle" means every vehicle that is self-propelled and every vehicle that is propelled by electric power obtained from overhead trolley wires, but not operated upon rails. The term "motor vehicle" shall not include personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 206. Section 1(a) of Title IV of the District of Columbia Revenue Act of 1937, approved August 17, 1937 (50 Stat. 679; D.C. Official Code § 50-1501.01(1)), is amended as follows:

"(a) The term "motor vehicle" means any vehicle propelled by internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include a traction engine, road roller, vehicle propelled only upon rails or tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3,

1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 207. Section 2(b) of the Rental Vehicle Tax Reform Act of 1978, effective March 6, 1979 (D.C. Law 2-157; D.C. Official Code § 50-1505.01(2)), is amended to read as follows:

"(b) The term "motor vehicle" means any device propelled by an internal-combustion engine, and designed to carry passengers. The term "motor vehicle" shall not include road rollers, farm tractors, trucks, motorcycles, motorized bicycles, vehicles with a seating capacity of 10 or more persons, vehicles propelled only upon rails and tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 208. Section 1(14) of the District of Columbia Implied Consent Act, approved October 21, 1972 (86 Stat. 1016; D.C. Official Code § 50-1901(14)), is amended to read as follows:

"(14) The term "motor vehicle" means all vehicles propelled by internal combustion engines, electricity, or steam. The term "motor vehicle" shall not include personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)), or a battery-operated wheelchair when operated by a person with a disability.".

Sec. 209. Section 102(5A) of the District of Columbia Traffic Adjudication Act of 1978, effective September 12, 1978 (D.C. Law 2-104; D.C. Official Code § 50-2301.02(5A)), is amended to read as follows:

"(5A) The term "motor vehicle" means all vehicles propelled by an internal-combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon stationary rails or tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility

devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(11A)),or a battery-operated wheelchair when a person with a disability.".

Sec. 210. Section 2(5) of the District of Columbia Motor Vehicle Parking Facility Act of 1942, approved February 16, 1942 (56 Stat. 91; D.C. Official Code § 50-2602(5)), is amended to read as follows:

"(5) The term "motor vehicle" means any device propelled by an internal combustion engine, electricity, or steam. The term "motor vehicle" shall not include traction engines, road rollers, vehicles propelled only upon rails or tracks, personal mobility devices, as the term is defined in section 2(13) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)), electric mobility devices, as the term is defined in section 2(6A) of the District of Columbia Traffic Act, 1925 approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(6A)), motorized bicycles, as the term is defined in section 2(11A) of the District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.02(13)),or a battery-operated wheelchair when operated by a person with a disability.".

TITLE III. APPLICABILITY; FISCAL IMPACT STATEMENT; EFFECTIVE DATE

Sec. 301. Applicability

(a) The amendatory section 6c(f) within section 101(b) shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council for certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of the provision identified in subsection (a) of this section.

Sec. 302. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 303. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16,2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-487**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 17, 2020**

To amend the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000 to clarify the basis for the appointment of a receiver, to authorize the Office of the Attorney General to issue subpoenas for documents and testimony as part of a receivership investigation, to require the Court to monitor the execution of a landlord's plan to abate housing code violations, to authorize the Court to order an owner, member, or any person with charge, care, or control of the property to contribute funds in excess of the rents to abate violations, reimburse the District, relocate displaced tenants, fund up-front receivership costs, and maintain the upkeep, utilities, mortgages, back rent, and debts of the building while in receivership, to prohibit the termination of a receivership until the District is reimbursed in full for all expenses associated with the receivership, all abatement costs, and all fines, infractions, and penalties arising from code violations, and to clarify that the Court may enjoin a respondent from continuing actions, practices, or patterns of neglect at any rental accommodation owned, managed, or controlled by the respondent.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Abatement and Condemnation of Nuisance Properties Amendment Act of 2020".

Sec. 2. Title V of the Abatement and Condemnation of Nuisance Properties Omnibus Amendment Act of 2000, effective April 27, 2001 (D.C. Law 13-281; D.C. Official Code § 42-3651.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3651.01) is amended by striking the phrase "Nothing in this title shall be construed to limit or abrogate any other common law or statutory right to petition for receivership." and inserting the phrase "Nothing in this title shall be construed to limit or abrogate any other common law or statutory right to petition for receivership, nor shall anything in this title prevent a tenant or tenant association from asserting as a defense or counterclaim a housing provider's non-compliance with applicable housing regulations." in its place.

(b) Section 502 (D.C. Official Code § 42-3651.02) is amended as follows:

(1) Subsection (b) is amended by striking the phrase "security of the tenants. For purposes of this subsection, the term "pattern of neglect" includes all evidence that the owner, agent, lessor, or manager of the rental housing accommodation has maintained the premises in a serious state of disrepair, including vermin or rat infestation, filth or contamination, inadequate ventilation, illumination, sanitary, heating or life safety facilities, inoperative fire suppression or warning equipment, or any other condition that constitutes a hazard to its occupants or to the public." and inserting the phrase "security of the tenants." in its place.

(2) A new subsection (c) is added to read as follows:

"(c) For purposes of this section, the term:

"(1) "Pattern of neglect" includes evidence that the owner, agent, lessor, or manager of the rental housing accommodation has maintained the premises in a state of disrepair that constitutes a serious threat to the health, safety, or security of the tenants or to the public.

"(2) "Serious threat to the health, safety, or security of the tenants" includes violations that involve:

"(A) Vermin or rat infestation;

"(B) Filth or contamination;

"(C) Inadequate ventilation, illumination, sanitary, heating or life safety facilities;

"(D) Inoperative fire suppression or warning equipment;

"(E) Inoperative doors or window locks; or

"(F) Any other condition that constitutes a hazard to tenants, occupants or the public.".

(c) Section 503 (D.C. Official Code § 42-3651.03) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "Corporation Counsel" and inserting the phrase "Attorney General for the District of Columbia" in its place.

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

"(a-1)(1) The Attorney General for the District of Columbia shall have the authority to issue subpoenas related to any investigation when necessary to determine whether adequate grounds exist to file a petition to appoint a receiver or to determine if a person or party subject to a receivership is maintaining other rental accommodations in a state of disrepair that constitutes a serious threat to the health, safety, or security of the tenants or to the public. Such subpoenas shall be for:

"(A) The production of documents and materials;

"(B) The inspection of premises;

"(C) The attendance and testimony of witnesses under oath; and

"(D) Sworn written responses to questions.

"(2) Subpoenas issued pursuant to this subsection shall conform to the procedures established in section 108d of the Attorney General for the District of Columbia Clarification and

Elected Term Amendment Act of 2010, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 1-301.88d).".

(3) Subsection (b) is amended by striking the phrase "Corporation Counsel" both times it appears and inserting the phrase "Attorney General for the District of Columbia" in its place.

(d) Section 504(a)(3)(A) (D.C. Official Code § 42-3651.04(a)(3)(A)) is amended by striking the phrase "Corporation Counsel" both times it appears and inserting the phrase "Attorney General for the District of Columbia" in its place.

(e) Section 505 (D.C. Official Code § 42-3651.05) is amended as follows:

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

(A) Paragraph (1) is amended by striking the phrase "conditions alleged in the petition." and inserting the phrase "conditions alleged in the petition. As part of any order granting a receivership, the Court may also enjoin the respondent from continuing any of the actions, practices, or patterns of neglect at the rental housing accommodation and at any other rental accommodations owned, managed, or controlled by the respondent." in its place.

(B) Paragraph (2) is amended to read as follows:

"(2) Upon acceptance of a respondent's plan, the Court shall retain the case for purposes of monitoring respondent's execution of the plan. The monitoring shall continue until the Court, on its own motion or that of any party:

"(A) Dismisses the petition on grounds that all conditions that constituted a serious threat to the health, safety, or security of the tenants have been abated; or

"(B) Finds the respondent has not made sufficient progress to complete the plan, in which event it may order appointment of a receiver under this section.".

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

"(f)(1) As part of any proceeding commenced for the appointment of a receiver, or in any plan for abatement presented by a respondent, the Court shall order that the respondent or any owner of the subject rental housing accommodation, or both, contribute funds in excess of the rents collected from the rental housing accommodation for any or all of the following purposes:

"(A) Abating housing code violations;

"(B) Reimbursing the District of Columbia for any abatements undertaken;

"(C) Assuring that any conditions that are a serious threat to the health, safety, or security of the occupants or public are corrected;

"(D) Relocating and maintaining tenants displaced during the implementation of any abatement plan into comparable units including paying any difference in the rent due to relocation;

"(E) Satisfying the up-front receivership costs, including posting a bond

pursuant to subsection (d) of this section, reasonable up-front compensation to the receiver, and any costs associated with obtaining professional studies or evaluations of the property's condition and abatement needs;

"(F) Refunding prior rents paid of at least one-half of any month's rent up to 3 years prior to the date the receivership was granted for any period of time that the District of Columbia presents evidence that the rental housing accommodation suffered from a serious state of disrepair; and

"(G) For other purposes reasonably necessary in the ordinary course of business of the property, including maintenance and upkeep of the rental housing accommodation, payment of utility bills, mortgages and other debts, and payment of the receiver's fees.

"(2) For the purpose of this section, "owner" shall mean any person or entity who, alone or jointly or severally with others, meets either of the following criteria:

"(A) Has legal title to the subject rental housing accommodation; or

"(B) Has charge, care, or control of the subject rental accommodation, whether as owner or member, in whole or in part, of the legally titled owner, as agent of the legally titled owner, or as a fiduciary of the estate of the legally titled owner or any officer appointed by the court.".

(f) Section 506 (D.C. Official Code § 42-3651.06) is amended by striking the phrase "Corporation Counsel" both times it appears and inserting the phrase "Attorney General for the District of Columbia" in its place.

(g) Section 507 (D.C. Official Code § 42-3651.07) is amended as follows:

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

"(1) The Court determines that the receivership is no longer necessary because the grounds on which the appointment of the receiver was based no longer exist; the receiver has received proper compensation for the services provided; the District of Columbia has been reimbursed for all expenses related to the appointment of the receiver; the District of Columbia has been reimbursed for all expenses related to abatements performed by the District or on its behalf by any third-party; and all fines, infractions, and penalties arising from code violations at the property to date have been paid in full to the District of Columbia; or".

(2) Subsection (b)(1) is amended by striking the period at the end and inserting the phrase ", for all expenses related to abatements performed by the District or on its behalf by any third-party, and all fines, infractions and penalties arising from code violations at the property to date have been paid in full to the District of Columbia." in its place.

(3) A new subsection (d) is added to read as follows:

"(d) As part of any order terminating a receivership, the Court may also permanently enjoin the respondent from continuing any of the actions, practices, or pattern of neglect at the rental housing accommodation and at any other rental accommodations owned, managed, or controlled by the respondent.".

**ENROLLED ORIGINAL**

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(l) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(l)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 17,2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-488**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 17, 2020**

To symbolically designate the 2400 block of 4th Street, N.W., between College Street, N.W., and Howard Place, N.W., as Lucy Diggs Slowe Way.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Lucy Diggs Slowe Way Designation Act of 2020".

Sec. 2. Pursuant to sections 401, 403a, and 423 of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01, 9-204.03a, and 9-204.23), the Council symbolically designates the 2400 block of 4th Street, N.W., between College Street, N.W., and Howard Place, N.W., as "Lucy Diggs Slowe Way".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

**ENROLLED ORIGINAL**

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 17,2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-489**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes to require the Homeland Security and Emergency Management Agency to coordinate continuity of operations planning for the District government, to require subordinate and independent District government agencies to develop continuity of operations plans and update and conduct exercises of those plans, and to require the Inspector General to audit continuity of operations planning for the District government, including in relation to COVID-19.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "District Government Continuity of Operations Plans Amendment Act of 2020".

Sec. 2. Title II of An Act To authorize the District of Columbia government to establish an Office of Civil Defense, and for other purposes, effective March 14, 2007 (D.C. Law 16-262; D.C. Official Code § 7-2231.01 *et seq.*), is amended as follows:

(a) Section 202 (D.C. Official Code § 7-2231.02) is amended as follows:

(1) New paragraphs (1A), (1B), and (1C) are added to read as follows:

"(1A) "COOP" means the continuity of operations.

"(1B) "COOP Coordinator" means the District government agency employee designated pursuant to section 211(b)(1).

"(1C) "COOP Plan" means the living document containing specific policy and guidance for a District government agency to ensure the District government agency can continue to perform essential functions during short-term and long-term emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.".

(2) New paragraphs (2A), (2B), and (2C) are added to read as follows:

"(2A) "District COOP Program Manager" means the Agency employee designated pursuant to section 211(a)(1).

"(2B) "District government agency" means a subordinate or independent agency.

"(2C) "Independent agency" means any agency of the District of Columbia government that is not under the direct administrative control of the Mayor.".

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

"(3A) Subordinate agency" shall have the same meaning as provided in section 301(17) of the District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-603.01(17)).".

(b) A new section 211 is added to read as follows:

"Sec. 211. District government continuity of operations planning.

"(a) The Agency shall coordinate COOP planning for the District government, including by:

"(1) Designating a senior Agency employee to serve as the District COOP Program Manager, whose primary responsibility shall be to implement this section;

"(2) Developing internal policies and procedures, including after-action reviews, for the Agency to govern its implementation of this section;

"(3) Maintaining a complete and accurate list of COOP Coordinators and backup COOP Coordinators;

"(4) Developing, updating, and distributing a COOP Plan template and guidance for each District government agency;

"(5) Ensuring each District government agency develops, updates, and conducts exercises of its COOP Plan;

"(6) Consulting with each District government agency on after-action reviews of exercises of its COOP Plan;

"(7) Monitoring the status of each District government agency's COOP Plan and bringing the District government agency into compliance with subsection (b) of this section; and

"(8) Submitting an annual report to the City Administrator, Deputy Mayor for Public Safety and Justice, and Council Committee with jurisdiction over the Agency on COOP planning for the District government, including:

"(A) An after-action review of the Agency's implementation of this section; and

"(B) For each District government agency, a description of the:

"(i) Agency's implementation of this section, specifically with respect to that District government agency, since the submission of the last report; and

"(ii) District government agency's compliance or noncompliance with subsection (b) of this section.

"(b) Each District government agency shall work with the Agency to:

"(1) Within 30 days after the effective date of the District Government Continuity of Operations Plans Amendment Act of 2020, passed on 2nd reading on October 20, 2020 (Enrolled version of Bill 23-542), designate a senior employee to serve as its COOP Coordinator and an employee to serve as its backup COOP Coordinator, should the COOP Coordinator be unavailable at any time, and submit their names and contact information to the District COOP Program Manager;

"(2) By October 1, 2021, develop and submit a COOP Plan that conforms with the Agency's COOP Plan template and guidance to the District COOP Program Manager;

"(3) By July 1, 2022, and annually thereafter, conduct an exercise of its COOP Plan and an after-action review of the exercise, which shall include the preparation of a report, submitted to the District COOP Program Manager, describing any deficiencies in and necessary revisions to the COOP Plan identified through the exercise; and

"(4) By October 1, 2022, and annually thereafter, update its COOP Plan submitted pursuant to paragraph (2) of this subsection, in coordination with the District COOP Program Manager, and re-submit the updated COOP Plan to the District COOP Program Manager.

"(c) The COOP Coordinator and backup COOP Coordinator designated pursuant to subsection (b)(1) of this section shall work with the District COOP Program Manager to facilitate and ensure the District government agency's compliance with subsection (b) of this section.

"(d) By January 31, 2022, the Inspector General shall audit COOP planning for the District government, including in relation to COVID-19, and submit a report to the Mayor and Council on the Inspector General's findings.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided by section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-490**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend the Warehousing and Storage Eminent Domain Authority Act of 2019 to expand the lots that the Mayor is authorized to acquire by the exercise of eminent domain for the purposes of warehousing and storage.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Warehousing and Storage Eminent Domain Authority Amendment Act of 2020".

Sec. 2. Section 3 of the Warehousing and Storage Eminent Domain Authority Act of 2019, effective September 11, 2019 (D.C. Law 23-18; 66 DCR 9722), is amended to read as follows:

"Sec. 3. Exercise of eminent domain.

The Mayor may exercise eminent domain in accordance with the procedures set forth in subchapter II of Chapter 13 of Title 16 of the District of Columbia Official Code to acquire Lots 36, 41, and 0802 in Square 3942 and Parcels 0143/107 and 0143/110 for warehousing and storage purposes.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

**ENROLLED ORIGINAL**

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-491**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To symbolically designate 16th Street, N.W., between H Street, N.W., and K Street, N.W., as Black Lives Matter Plaza.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Black Lives Matter Plaza Designation Act of 2020".

Sec. 2. Pursuant to sections 401 and 403a of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code §§ 9-204.01 and 9-204.03a) ("Act"), and notwithstanding section 423 of the Act (D.C. Official Code § 9-204.23), the Council symbolically designates 16th Street, N.W., between H Street, N.W., and K Street, N.W., as "Black Lives Matter Plaza".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

**ENROLLED ORIGINAL**

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16,2020

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-492**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend the District of Columbia Public Postsecondary Education Reorganization Act to clarify the terms of service of elected and appointed members of the Board of Trustees of the University of the District of Columbia and to make accompanying technical amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "UDC Board of Trustees Term Limit Amendment Act of 2020".

Sec. 2. Section 201(d), (e), and (f) of The District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1423; D.C. Official Code § 38-1202.01(d), (e), and(f)), are amended to read as follows:

"(d) All terms on the Board of Trustees shall begin on May 15. The student member elected pursuant to subsection (c)(2) of this section shall serve for a term of one year. The term for all of the other members shall be 5 years. Depending on the date of his or her election or appointment, a member of the Board may actually serve a partial term.

"(e) A member of the Board of Trustees who is elected as an alumnus or alumna pursuant to subsection (c)(3) of this section, including for a partial term, may be re-elected to serve one additional term, after which the individual may not again be elected pursuant to subsection (c)(3) of this section until 5 years have passed since his or her last day of service on the Board.

"(f) A member of the Board of Trustees who is appointed pursuant to subsection (c)(1) of this section may serve 3 consecutive terms, including partial terms. No member shall serve more than 15 consecutive years regardless of whether elected or appointed, or both, and shall not serve thereafter until 5 years have passed since his or her last day of service on the Board.".

Sec. 3. Fiscal impact statement.

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

**ENROLLED ORIGINAL**

Sec. 4. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code §1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-493**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

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

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Community Harassment Prevention Temporary Amendment Act of 2020".

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

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

(b) Paragraph (3) is amended by striking the word "person" and inserting the phrase "person or property" in its place.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 60-day period of congressional review

**ENROLLED ORIGINAL**

as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of Columbia Register.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-494**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend, on a temporary basis, the Legalization of Marijuana for Medical Treatment Initiative of 1999 to eliminate the limit on the number of plants that a cultivation center may grow.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Medical Marijuana Plant Count Elimination Temporary Amendment Act of 2020".

Sec. 2. Section 7(e)(2) of the Legalization of Marijuana for Medical Treatment Initiative of 1999, effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code § 7-1671.06(e)(2)), is repealed.

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

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

**ENROLLED ORIGINAL**

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

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16,2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-495**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend, on a temporary basis, the Coronavirus Support Temporary Amendment Act of 2020, and the Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020 to modify the expiration date of the District's Streatery Program; to make the permitted hours of alcohol sales under the Streatery and Pop Up Locations Programs consistent with the Fiscal Year 2021 Budget Support Act of 2020; and to provide clarity to licensees and the public with regard to the requirements for operating under the Streatery and Pop Up Locations Programs.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Revised Streatery and Pop Up Locations Programs Clarification Temporary Amendment Act of 2020".

Sec. 2. The amendatory language of § 25-113(a) in section 204(a)(2) of the Coronavirus Support Temporary Amendment Act of 2020, enacted on July 7, 2020 (D.C. Act 23-334; 67 DCR 8622), is amended as follows:

(1) Subparagraph (3)(D) is amended to read as follows:

"(3)(D)(i) An on-premises retailer's licensee, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, that is registered with the Board under subparagraph (C) of this paragraph may also register with the Board to sell, on a temporary basis, beer, wine, or spirits for on-premises consumption indoors and to sell beer, wine, or spirits in closed containers accompanied by one or more prepared food items for off-premises consumption from up to 2 additional locations other than the licensed premises.

"(ii) Board approval shall not be required for the additional registration under this subparagraph; provided, that:

"(I) The licensee separately registers with the Board and receives written authorization from ABRA prior to offering beer, wine, or spirits for carryout or delivery or on-premises consumption indoors at the additional location;

"(II) For carry-out and delivery, the licensee, the additional location's owner, or a prior tenant at the additional location possesses a valid certificate of occupancy for the building used as the additional location, unless the additional location is located on outdoor private space;

"(III) For on-premises consumption indoors, the additional location's owner or a prior tenant at the additional location possesses a valid certificate of occupancy for a restaurant or other eating or drinking establishment;

"(IV) The licensee has been legally authorized by the owner of the building or the property utilized as the additional location to utilize the space for carryout and delivery, or indoor dining;

"(V) The licensee agrees to follow all applicable District laws, regulations, guidance documents, administrative orders, including Mayor's Orders, and permit requirements or conditions, which may contain requirements that supersede provisions contained in this section; and

"(VI) The additional location from which the licensee intends to offer alcoholic beverages for carryout or delivery or on-premises consumption for indoor dining is located in a commercial or mixed-use zone as defined in the zoning regulations for the District.

"(iii) An on-premises retailer's license, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, may sell, serve, and allow the consumption of beer, wine, or spirits indoors on the premises of the additional location pursuant to sub-subparagraph (i) of this paragraph; provided, that the licensee shall:

"(I) Limit its indoor capacity to no more than 50% of the lowest indoor occupancy load or seating capacity on its certificate of occupancy, excluding employees and any separately registered outdoor seating;

"(II) Place indoor tables serving separate parties at least 6 feet apart from one another;

"(III) Ensure for non-movable communal tables that parties are seated at least 6 feet apart from one another and that the communal table is marked with 6 foot divisions, such as with tape or signage;

"(IV) Ensure that all indoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

"(V) Prohibit events and activities that would require patrons to be standing, cluster, or be in close contact with one another, including dancing, playing darts, bowling, ping pong, pool, throwing axes, or indoor playgrounds;

"(VI) Prohibit patrons from bringing their own alcoholic beverages;

"(VII) Prohibit self-service buffets;

"(VIII) Have a menu in use containing a minimum of 3 prepared food items available for purchase by patrons;

"(IX) Require the purchase of one or more prepared food items per table;

"(X) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District of Columbia Department of Health ("DC Health");

"(XI) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages indoors for on-premises consumption to the hours between 6:00 a.m. and midnight, Sunday through Saturday, effective October 1, 2020;

"(XII) Not have more than 6 individuals seated at a table or a joined table;

"(XIII) Require patrons to wait outside at least 6 feet apart until they are ready to be seated or make an on-site reservation;

"(XIV) Not provide live music or entertainment on the registered indoor space without a waiver from the District of Columbia Homeland Security and Emergency Management Agency; except, that background or recorded music played at a conversational level that is not heard in the homes of District residents shall be permitted;

"(XV) Not serve alcoholic beverages or food to standing patrons;

"(XVI) Prohibit standing at indoor bars and only permit seating at indoor bars that are not being staffed or utilized by a bartender;

"(XVII) Require a minimum of 6 feet between parties seated at indoor bars, rail seats, or communal tables;

"(XVIII) Provide and require that wait staff wear masks;

"(XIX) Require that patrons wear masks or face coverings when waiting in line outside of the establishment or while traveling to use the restroom or until they are seated and eating or drinking;

"(XX) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health;

"(XXI) Implement sanitization and disinfection protocols including the provision of single use condiment packages; and

"(XXII) Have its own clearly delineated indoor space and not share tables and chairs with another business.

"(iv) An on-premises retailer licensee shall not offer beer, wine, or spirits for carryout and delivery on public space; except, that an additional location under this subparagraph may include a sidewalk café that has been issued a public space permit by the District Department of Transportation ("DDOT").

"(v) An on-premises retailer's licensee who has been registered to offer beer, wine, or spirits for carryout or delivery in accordance with this subparagraph shall do so only at the additional location.

"(vi) An on-premises retailer licensee who has been registered to

offer beer, wine, or spirits for carryout or delivery or on-premises alcohol consumption for indoor dining in accordance with this subparagraph may do so for no longer than 60 calendar days. The Board may approve a written request from an on-premises retailer's licensee to extend carryout or delivery alcohol sales or on-premises alcohol sales and consumption for indoor dining from an additional location pursuant to this subparagraph for one additional 30 calendar-day period. A licensee shall not offer beer, wine, or spirits for carryout or delivery for off-premises consumption or on-premises alcohol sales and consumption for indoor dining from the additional location for more than 90 calendar days unless a completed application to do so has been filed with the Board with notice provided to the public in accordance with § 25-421.

"(vii) The on-premises retailer licensee may sell and deliver alcoholic beverages for carryout and delivery from an additional location in accordance with this subparagraph only between the hours of 6:00 a.m. and 1:00 a.m., 7 days a week, effective October 1, 2020.

"(viii) The Board may fine, suspend, cancel, or revoke an on-premises retailer's license, and shall revoke its registration to offer beer, wine, or spirits for carryout or delivery or on-premises alcohol sales and consumption of the indoor location at the additional location if the licensee fails to comply with sub-subparagraphs (i) through (vi) of this subparagraph.".

"(ix) Notwithstanding sub-subparagraph (iii) of this subparagraph, if an on-premises retailer's license, class C or D, has a settlement agreement governing its operations, the Board shall interpret the settlement agreement language that restricts the indoor sale, service, and consumption of beer, wine, or spirits to on-premises as applying only to indoor sales, service, or consumption of beer, wine, or spirits at the licensed premises and not the additional location on a temporary basis because prior to the Coronavirus pandemic this new registration process was not available to eligible licensees.".

(2) Paragraph (6) is amended to read as follows:

"(6)(A) An on-premises retailer's licensee, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, or a manufacturer's licensee, class A or B, with an on-site sales and consumption permit, or a Convention Center food and alcohol business may register with the Board at no cost to sell, serve, and permit the consumption of beer, wine, or spirits on new or expanded temporary ground floor or street level outdoor public or private space not listed on its existing license. Upon registration, Board approval shall not be required; provided, that the licensee:

"(i) Registers with the Board and receives written authorization from ABRA prior to selling, serving, or permitting the consumption of beer, wine, or spirits on the proposed outdoor public or private space;

"(ii) Registers with DDOT prior to operating on any proposed outdoor public space or receives written approval from the property owner prior to utilizing any proposed outdoor private space; and

"(iii) Agrees to follow all applicable District laws, regulations,

guidance documents, administrative orders, including Mayor's Orders and permit requirements or conditions, which may contain requirements that supersede provisions contained in this section.

"(B) An on-premises retailer's license, class C or D, or a manufacturer's license, class A or B, with an on-site sales and consumption permit, or a Convention Center food and alcohol business that has registered with the Board to sell, serve, and permit the consumption of beer, wine, and spirits to seated patrons on outdoor public or private space not listed on its existing license in accordance with subparagraph (A) of this paragraph shall:

"(i) Place tables on the outdoor public or private space so that patrons in separate parties are at least 6 feet apart from one another;

"(ii) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

"(iii) Prohibit events and activities that would require patrons to cluster or be in close contact with one another, including dancing, playing darts, video games, or other outdoor games;

"(iv) Prohibit patrons from bringing their own alcoholic beverages;

"(v) Prohibit self-service buffets;

"(vi) Have a menu in use containing a minimum of 3 prepared food items available for purchase by patrons;

"(vii) Require the purchase of one or more prepared food items per table;

"(viii) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by DC Health;

"(ix) Ensure that the proposed outdoor public or private space is located in a commercial or mixed-use zone as defined in the District's zoning regulations;

"(x) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 6:00 a.m. and midnight, Sunday through Saturday, effective October 1, 2020;

"(xi) Not have more than 6 individuals seated at a table;

"(xii) Require patrons to wait outside at least 6 feet apart until they are ready to be seated or make an on-site reservation;

"(xiii) Not provide live music or entertainment, except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

"(xiv) Not serve alcoholic beverages or food to standing patrons;

"(xv) Prohibit standing at outdoor bars and only permit seating at outdoor bars that are not being staffed or utilized by a bartender;

"(xvi) Abide by the terms of their public space permit with regard

to the allowable placement of alcohol advertising, if any, in outdoor public space;

"(xvii) Provide and require that wait staff wear masks;

"(xviii) Require that patrons wear masks or face coverings while waiting in line outside of the restaurant or while traveling to use the restroom or until they are seated and eating or drinking;

"(xix) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health;

"(xx) Implement sanitization and disinfection protocols including the provision of single-use condiment packages; and

"(xxi) Have its own clearly delineated outdoor space and not share tables and chairs with another business.

"(C) Registration under subparagraph (A) of this paragraph shall be valid until December 31 2021.

"(D) The Board may fine, suspend, or revoke an on-premises retailer's licensee, class C or D, or a manufacturer's licensee, class A or B, with an on-site sales and consumption permit, and shall revoke the registration to sell, serve, or permit the consumption of beer, wine, or spirits on outdoor public or private space not listed on the license, if the licensee fails to comply with subparagraph (A) or (B) of this paragraph.

"(E)(i) Notwithstanding subparagraph (B) of this paragraph, the Board shall interpret settlement agreement language that restricts sidewalk cafés or summer gardens as applying only to those outdoor spaces that are currently licensed by the Board as sidewalk cafés or summer gardens.

"(ii) The Board shall not interpret settlement agreement language that restricts or prohibits sidewalk cafés or summer gardens to apply to new or extended outdoor space, the use of which is now permitted under this paragraph.

"(iii) The Board shall not interpret settlement agreement language that restricts or prohibits the operation of permanent outdoor space to mean prohibiting the temporary operation of sidewalk cafés or summer gardens.

"(iv) The Board shall require all on-premises retailer licenses, class C or D, or manufacturer licenses, class A or B, with an on-site sales and consumption permit, to delineate or mark currently licensed outdoor space from new or extended outdoor space authorized by the DDOT or the property owner.

"(v) With regard to existing outdoor public or private space, parties to a settlement agreement shall be permitted to waive provisions of settlement agreements that address currently licensed outdoor space for a period not to exceed 180 days.

"(E) For purposes of this paragraph, ground floor or street level sidewalk cafés or summer gardens enclosed by awnings or tents having no more than one side shall be considered outdoor space. Areas enclosed by retractable glass walls and other forms of operable walls shall not be considered outdoor dining. Temporary unlicensed rooftops and summer gardens not located on the ground floor or street level are not eligible for registration under

subparagraph (A) of this paragraph.

"(F) A manufacturer's licensee, class A or B, with an on-site sales and consumption permit or a retailer's licensee class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the requirement of subparagraph (B)(vi) of this paragraph; provided, that patrons are seated when ordering and ordered food is delivered by the licensee or the food vendor to the seated patron.".

Sec. 3. The amendatory language of § 25-113(a) in section 204(a)(2) of the Coronavirus Support Second Congressional Review Emergency Amendment Act of 2020, effective August 19, 2020 (D.C. Act 23-405; 67 DCR 10235), is amended as follows:

(1) Subparagraph (3)(D) is amended to read as follows:

"(3)(D)(i) An on-premises retailer's licensee, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, that is registered with the Board under subparagraph (C) of this paragraph may also register with the Board to sell, on a temporary basis, beer, wine, or spirits for on-premises consumption indoors and to sell beer, wine, or spirits in closed containers accompanied by one or more prepared food items for off-premises consumption from up to 2 additional locations other than the licensed premises.

"(ii) Board approval shall not be required for the additional registration under this subparagraph; provided, that:

"(I) The licensee separately registers with the Board and receives written authorization from ABRA prior to offering beer, wine, or spirits for carryout or delivery or on-premises consumption indoors at the additional location;

"(II) For carry-out and delivery, the licensee, the additional location's owner, or a prior tenant at the additional location possesses a valid certificate of occupancy for the building used as the additional location, unless the additional location is located on outdoor private space;

"(III) For on-premises consumption indoors, the additional location's owner or a prior tenant at the additional location possesses a valid certificate of occupancy for a restaurant or other eating or drinking establishment;

"(IV) The licensee has been legally authorized by the owner of the building or the property utilized as the additional location to utilize the space for carryout and delivery, or indoor dining;

"(V) The licensee agrees to follow all applicable District laws, regulations, guidance documents, administrative orders, including Mayor's Orders, and permit requirements or conditions, which may contain requirements that supersede provisions contained in this section; and

"(VI) The additional location from which the licensee intends to offer alcoholic beverages for carryout or delivery or on-premises consumption for indoor dining is located in a commercial or mixed-use zone as defined in the zoning regulations for the District.

"(iii) An on-premises retailer's license, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, may sell, serve, and allow the consumption of beer, wine, or spirits indoors on the premises of the additional location pursuant to sub-subparagraph (i) of this paragraph; provided, that the licensee shall:

"(I) Limit its indoor capacity to no more than 50% of the lowest indoor occupancy load or seating capacity on its certificate of occupancy, excluding employees and any separately registered outdoor seating;

"(II) Place indoor tables serving separate parties at least 6 feet apart from one another;

"(III) Ensure for non-movable communal tables that parties are seated at least 6 feet apart from one another and that the communal table is marked with 6 foot divisions, such as with tape or signage;

"(IV) Ensure that all indoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

"(V) Prohibit events and activities that would require patrons to be standing, cluster, or be in close contact with one another, including dancing, playing darts, bowling, ping pong, pool, throwing axes, or indoor playgrounds;

"(VI) Prohibit patrons from bringing their own alcoholic beverages;

"(VII) Prohibit self-service buffets;

"(VIII) Have a menu in use containing a minimum of 3 prepared food items available for purchase by patrons;

"(IX) Require the purchase of one or more prepared food items per table;

"(X) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District of Columbia Department of Health ("DC Health");

"(XI) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages indoors for on-premises consumption to the hours between 6:00 a.m. and midnight, Sunday through Saturday, effective October 1, 2020;

"(XII) Not have more than 6 individuals seated at a table or a joined table;

"(XIII) Require patrons to wait outside at least 6 feet apart until they are ready to be seated or make an on-site reservation;

"(XIV) Not provide live music or entertainment on the registered indoor space without a waiver from the District of Columbia Homeland Security and

Emergency Management Agency; except, that background or recorded music played at a conversational level that is not heard in the homes of District residents shall be permitted;

"(XV) Not serve alcoholic beverages or food to standing patrons;

"(XVI) Prohibit standing at indoor bars and only permit seating at indoor bars that are not being staffed or utilized by a bartender;

"(XVII) Require a minimum of 6 feet between parties seated at indoor bars, rail seats, or communal tables;

"(XVIII) Provide and require that wait staff wear masks;

"(XIX) Require that patrons wear masks or face coverings when waiting in line outside of the establishment or while traveling to use the restroom or until they are seated and eating or drinking;

"(XX) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health;

"(XXI) Implement sanitization and disinfection protocols including the provision of single use condiment packages; and

"(XXII) Have its own clearly delineated indoor space and not share tables and chairs with another business.

"(iv) An on-premises retailer licensee shall not offer beer, wine, or spirits for carryout and delivery on public space; except, that an additional location under this subparagraph may include a sidewalk café that has been issued a public space permit by the District Department of Transportation ("DDOT").

"(v) An on-premises retailer's licensee who has been registered to offer beer, wine, or spirits for carryout or delivery in accordance with this subparagraph shall do so only at the additional location.

"(vi) An on-premises retailer licensee who has been registered to offer beer, wine, or spirits for carryout or delivery or on-premises alcohol consumption for indoor dining in accordance with this subparagraph may do so for no longer than 60 calendar days. The Board may approve a written request from an on-premises retailer's licensee to extend carryout or delivery alcohol sales or on-premises alcohol sales and consumption for indoor dining from an additional location pursuant to this subparagraph for one additional 30 calendar-day period. A licensee shall not offer beer, wine, or spirits for carryout or delivery for off-premises consumption or on-premises alcohol sales and consumption for indoor dining from the additional location for more than 90 calendar days unless a completed application to do so has been filed with the Board with notice provided to the public in accordance with § 25-421.

"(vii) The on-premises retailer licensee may sell and deliver alcoholic beverages for carryout and delivery from an additional location in accordance with this subparagraph only between the hours of 6:00 a.m. and 1:00 a.m., 7 days a week, effective October 1, 2020.

"(viii) The Board may fine, suspend, cancel, or revoke an on-

premises retailer's license, and shall revoke its registration to offer beer, wine, or spirits for carryout or delivery or on-premises alcohol sales and consumption of the indoor location at the additional location if the licensee fails to comply with sub-subparagraphs (i) through (vi) of this subparagraph.".

"(ix) Notwithstanding sub-subparagraph (iii) of this subparagraph, if an on-premises retailer's license, class C or D, has a settlement agreement governing its operations, the Board shall interpret the settlement agreement language that restricts the indoor sale, service, and consumption of beer, wine, or spirits to on-premises as applying only to indoor sales, service, or consumption of beer, wine, or spirits at the licensed premises and not the additional location on a temporary basis because prior to the Coronavirus pandemic this new registration process was not available to eligible licensees.".

(2) Paragraph (6) is amended to read as follows:

"(6)(A) An on-premises retailer's licensee, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, or a manufacturer's licensee, class A or B, with an on-site sales and consumption permit, or a Convention Center food and alcohol business may register with the Board at no cost to sell, serve, and permit the consumption of beer, wine, or spirits on new or expanded temporary ground floor or street level outdoor public or private space not listed on its existing license. Upon registration, Board approval shall not be required; provided, that the licensee:

"(i) Registers with the Board and receives written authorization from ABRA prior to selling, serving, or permitting the consumption of beer, wine, or spirits on the proposed outdoor public or private space;

"(ii) Registers with DDOT prior to operating on any proposed outdoor public space or receives written approval from the property owner prior to utilizing any proposed outdoor private space; and

"(iii) Agrees to follow all applicable District laws, regulations, guidance documents, administrative orders, including Mayor's Orders and permit requirements or conditions, which may contain requirements that supersede provisions contained in this section.

"(B) An on-premises retailer's license, class C or D, or a manufacturer's license, class A or B, with an on-site sales and consumption permit, or a Convention Center food and alcohol business that has registered with the Board to sell, serve, and permit the consumption of beer, wine, and spirits to seated patrons on outdoor public or private space not listed on its existing license in accordance with subparagraph (A) of this paragraph shall:

"(i) Place tables on the outdoor public or private space so that patrons in separate parties are at least 6 feet apart from one another;

"(ii) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

"(iii) Prohibit events and activities that would require patrons to cluster or be in close contact with one another, including dancing, playing darts, video games, or

other outdoor games;

"(iv) Prohibit patrons from bringing their own alcoholic beverages;

"(v) Prohibit self-service buffets;

"(vi) Have a menu in use containing a minimum of 3 prepared food items available for purchase by patrons;

"(vii) Require the purchase of one or more prepared food items per table;

"(viii) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by DC Health;

"(ix) Ensure that the proposed outdoor public or private space is located in a commercial or mixed-use zone as defined in the District's zoning regulations;

"(x) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 6:00 a.m. and midnight, Sunday through Saturday, effective October 1, 2020;

"(xi) Not have more than 6 individuals seated at a table;

"(xii) Require patrons to wait outside at least 6 feet apart until they are ready to be seated or make an on-site reservation;

"(xiii) Not provide live music or entertainment, except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

"(xiv) Not serve alcoholic beverages or food to standing patrons;

"(xv) Prohibit standing at outdoor bars and only permit seating at outdoor bars that are not being staffed or utilized by a bartender;

"(xvi) Abide by the terms of their public space permit with regard to the allowable placement of alcohol advertising, if any, in outdoor public space;

"(xvii) Provide and require that wait staff wear masks;

"(xviii) Require that patrons wear masks or face coverings while waiting in line outside of the restaurant or while traveling to use the restroom or until they are seated and eating or drinking;

"(xix) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health;

"(xx) Implement sanitization and disinfection protocols including the provision of single-use condiment packages; and

"(xxi) Have its own clearly delineated outdoor space and not share tables and chairs with another business.

"(C) Registration under subparagraph (A) of this paragraph shall be valid until December 31 2021.

"(D) The Board may fine, suspend, or revoke an on-premises retailer's

licensee, class C or D, or a manufacturer's licensee, class A or B, with an on-site sales and consumption permit, and shall revoke the registration to sell, serve, or permit the consumption of beer, wine, or spirits on outdoor public or private space not listed on the license, if the licensee fails to comply with subparagraph (A) or (B) of this paragraph.

"(E)(i) Notwithstanding subparagraph (B) of this paragraph, the Board shall interpret settlement agreement language that restricts sidewalk cafés or summer gardens as applying only to those outdoor spaces that are currently licensed by the Board as sidewalk cafés or summer gardens.

"(ii) The Board shall not interpret settlement agreement language that restricts or prohibits sidewalk cafés or summer gardens to apply to new or extended outdoor space, the use of which is now permitted under this paragraph.

"(iii) The Board shall not interpret settlement agreement language that restricts or prohibits the operation of permanent outdoor space to mean prohibiting the temporary operation of sidewalk cafés or summer gardens.

"(iv) The Board shall require all on-premises retailer licenses, class C or D, or manufacturer licenses, class A or B, with an on-site sales and consumption permit, to delineate or mark currently licensed outdoor space from new or extended outdoor space authorized by the DDOT or the property owner.

"(v) With regard to existing outdoor public or private space, parties to a settlement agreement shall be permitted to waive provisions of settlement agreements that address currently licensed outdoor space for a period not to exceed 180 days.

"(E) For purposes of this paragraph, ground floor or street level sidewalk cafés or summer gardens enclosed by awnings or tents having no more than one side shall be considered outdoor space. Areas enclosed by retractable glass walls and other forms of operable walls shall not be considered outdoor dining. Temporary unlicensed rooftops and summer gardens not located on the ground floor or street level are not eligible for registration under subparagraph (A) of this paragraph.

"(F) A manufacturer's licensee, class A or B, with an on-site sales and consumption permit or a retailer's licensee class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the requirement of subparagraph (B)(vi) of this paragraph; provided, that patrons are seated when ordering and ordered food is delivered by the licensee or the food vendor to the seated patron.".

Sec. 4. Fiscal impact statement.

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

Sec. 5. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by

**ENROLLED ORIGINAL**

the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1) and published in the D.C. Register.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia
APPROVED
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-496**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 16, 2020**

To amend, on temporary basis, Title 25 of the District of Columbia Official Code to authorize, define, and regulate games of skill.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Revised Game of Skill Machines Consumer Protections Temporary Amendment Act of 2020".

Sec. 2. The Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, effective March 10, 1981 (D.C. Law 3-172; D.C. Official Code §§ 22-1716 to 22-1718 and 36-601.01 *et seq.*), is amended as follows:

(a) Section 4 (D.C. Official Code § 36-601.12) is amended as follows:

(1) The section heading is amended to read as follows:

"Sec. 4. Lottery, Gambling, and Gaming Fund.".

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

"(a) There is established as an enterprise fund the Lottery, Gambling, and Gaming Fund ("Fund"), which shall be administered by the Chief Financial Officer. Revenue from the following sources shall be deposited into the Fund or a division of the Fund, as established by the Chief Financial Officer:

"(1) All funds generated by gambling activities operated or licensed by the Chief Financial Officer; and

"(2) All fees collected pursuant to sections 406 through 408.".

(3) Subsection (c) is amended by striking the word "gambling" and inserting the phrase "gambling and gaming" in its place.

(b) A new Title IV is added to read as follows:

"TITLE IV. GAME OF SKILL MACHINES.

"Sec. 401. Definitions

"For purposes of this title, the term:

"(1) "ABC Board" means the Alcoholic Beverage Control Board, established by D.C. Official Code §25-201.

"(2) "ABRA" means the Alcoholic Beverage Regulation Administration, established by D.C. Official Code § 25-202.

"(3) "CFO" means the Chief Financial Officer of the District of Columbia.

"(4) "Centralized accounting system" means the accounting system linked by a communications network as described in sections 409 and 413.

"(5) "Distributor" means a person licensed under this title to:

"(A) Buy or lease game of skill machines, or any major components or parts of a game of skill machine, from manufacturers for sale or lease and distribution to retailers; or

"(B) To maintain or service a retailer's game of skill machine, or any major component or part of a game of skill machine.

"(6) "Game of skill machine" means a mechanical or electronic gaming device that rewards the winning player or players with cash, a gift card, or a voucher that can be redeemed for cash. A mechanical or electronic gaming device shall not be considered a game of skill machine if:

"(A) The ability of a player to succeed at the game is impacted by the number or ratio of prior wins to prior losses of players playing the game;

"(B) The outcome of the game can be controlled by a source other than a player playing the game;

"(C) The success of a player is or may be determined by a chance event that cannot be altered by the player's actions;

"(D) The ability of a player to succeed at the game is impacted by game features not visible or known to a reasonable player; or

"(E) The ability of a player to succeed at the game is impacted by the exercise of skill that no reasonable player could exercise.

"(7) "Game of skill machine gross revenue" means the total of cash or cash equivalents received from a game of skill machine minus the total of:

"(A) Cash or cash equivalents paid to players as a result of a game of skill machine;

"(B) Cash or cash equivalents paid to purchase annuities to fund prizes payable to players over a period of time as a result of a game of skill machine; and

"(C) The actual cost paid by the license holder for personal property distributed to a player as a result of a game of skill machine, excluding travel expenses, food, refreshments, lodging, and services.

"(8) "Licensed establishment" means an on-premises retail establishment licensed by the ABC Board to sell, serve, and allow for the consumption of alcoholic beverages.

"(9) "Licensed premises" means the physical location of a licensed establishment that is authorized by the Office to offer game of skill machines.

"(10) "Licensee" means a person who possesses a game of skill manufacturer, distributor, or retailer license issued by the Office.

"(11) "Manufacturer" means a person that is licensed under this title that manufactures or assembles game of skill machines for sale or lease to distributors or provides to distributors major components or parts of game of skill machines for the repair or maintenance of game of skill machines.

"(12) "Office" means the Office of Lottery and Gaming.

"(13) "Retailer" means a person that is licensed under this title to offer game of skill machines on its licensed premises.

"Sec. 402. Authorization of game of skill machines.

"The operation of game of skill machines shall be lawful in the District if conducted in accordance with this title and the rules issued pursuant to this title.

"Sec. 403. Game of skill machine license requirements; prohibition.

"(a) No person may carry out a function of a manufacturer, distributor, or retailer after March 31, 2021, unless the person has obtained the applicable license or licenses required by this title, or by rules issued pursuant to this title.

"(b)(1) The Office shall issue the following categories of game of skill machine licenses:

"(A) Manufacturer;

"(B) Distributor; and

"(C) Retailer.

"(2) The Office shall not grant a license listed in paragraph (1) of this subsection until it has determined that each person that possesses 10% or greater beneficial or proprietary interest in the applicant has been approved for licensure in accordance with this title and rules issued pursuant to this title; provided, that the Office shall not be required to make such a determination with respect to a person that is an institutional investor unless the institutional investor possesses 25% or greater beneficial or proprietary interest in the applicant.

"(c)(1) An applicant for an initial manufacturer or distributor license shall be subject to District and national criminal history background checks.

"(2) The applicant shall submit an application to the Office, in a form determined by the Office, for fingerprints for a national criminal records check by the Metropolitan Police Department and the Federal Bureau of Investigation of all individuals required to be named in the application and a signed authorization of each individual submitting fingerprints for the release of information by the Metropolitan Police Department and the Federal Bureau of Investigation.

"(3) In the case of an application for license renewal, the Office may require additional background checks.

"(d) The Office shall require proof of good standing pursuant to D.C. Official Code § 29-102.08 of an applicant for a license pursuant to this title and may, in addition, require

certification that the Citywide Clean Hands Database indicates that the proposed licensee is current with its District taxes.

"(e) Proprietary information, trade secrets, financial information, and personal information about a person in an application submitted to the Office pursuant to this title shall not be a public record and shall not be made available under the Freedom of Information Act of 1976, effective March 29, 1977 (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*), or any other law.

"(f)(1) A retailer shall display its license as required by section 410(e) and shall make the license immediately available for inspection upon request by an employee of the Office, the Metropolitan Police Department, or ABRA.

"(2) When present at a licensed establishment, an employee of a distributor shall carry a copy of its license and make it readily available for inspection by an employee of the Office, the Metropolitan Police Department, or ABRA.

"Sec. 404. License prohibitions; suspensions and revocation of licenses.

"(a) An applicant convicted of a disqualifying offense shall not be licensed. The Office shall define disqualifying offenses by a rule issued pursuant to this title.

"(b) No employee of the Office or ABRA or member of the ABC Board, or immediate family member of an employee of the Office or ABRA or member of the ABC Board, may be an applicant for, have an interest in, or obtain a license issued pursuant to this title.

"(c) Failure of an applicant or licensee to notify the Office of a change to the information provided in its application for license or renewal within 10 days after the change may result in the Office suspending or revoking the licensee's license, denying the applicant's license, and issuing a fine.

"(d)(1) The Office shall not grant a license pursuant to this title, and shall revoke a license previously granted, if evidence satisfactory to the Office exists that the applicant or licensee has:

"(A) Knowingly made a false statement of a material fact to the Office;

"(B) Had a license revoked by a governmental authority responsible for regulation of games of skill;

"(C) Been convicted of a felony and has not received a pardon or been released from parole or probation for at least 5 years; or

"(D) Been convicted of a gambling-related offense or a theft or fraud offense.

"(2) The Office may deny a license to an applicant or suspend or revoke a license of a licensee if the applicant or licensee:

"(A) Has not demonstrated, to the satisfaction of the Office, financial responsibility sufficient to adequately meet the requirement of the proposed activity;

"(B) Is not the true owner of the licensed business or has not disclosed the existence or identity of another individual or entity that has an ownership interest in the business; or

"(C) Is an entity that sells more than 10% of a licensee's voting interests, more than 10% of the voting interests of an entity that controls the licensee, or sells a licensee's assets to an individual or entity not already determined by the Office to have met the qualifications of a licensee pursuant to this title.

"Sec. 405. Conflicts of interest.

"(a) Before issuing, authorizing the transfer to a new owner of, or renewing a license, the Office shall determine that the applicant is not disqualified because of a conflicting interest in another license.

"(b) In making a determination regarding a conflicting interest, the following standards shall apply:

"(1) No licensee under a distributor's license shall hold a license in another license issued under this title; except, that the holder of a distributor's license may also hold a manufacturer's license.

"(2) No licensee under a manufacturer's license shall hold another license issued under this title; except, that the holder of a manufacturer's license may also hold a distributor's license.

"Sec. 406. Manufacturer licensure.

"(a)(1) A person may not, after March 31, 2021, manufacture a game of skill machine in the District or manufacture and cause to be delivered into the District a game of skill machine, unless the person has a valid manufacturer's license issued under this title.

"(2) A manufacturer may, after March 31, 2021, only sell or lease game of skill machines for use in the District to persons having a valid distributor's license.

"(b) A person applying for a manufacturer's license shall do so on a form prescribed by the Office. The form shall require:

"(1) The name of the applicant;

"(2) The mailing address of the applicant and, if the applicant is a corporation, the name of the state in which it is incorporated, the location of its principal place of business, and the names and addresses of its directors;

"(3) A report of the applicant's financial activities, including evidence of financial stability, such as bank statements, business and personal income and disbursement schedules, and tax returns; and

"(4) Such other information as the Office may require by rule.

"(c) In considering whether to approve an application for a manufacturer's license, the Office may consider, among such other evidence as may come before the Office, evidence of the applicant's licensure, conduct, and activities in another jurisdiction.

"(d) An applicant for a manufacturer's license shall pay a nonrefundable application fee of $10,000 with the application.

"(e) A manufacturer's license shall be renewed annually; provided, that the licensee has continued to comply with all statutory and regulatory requirements and pays upon submission of its renewal application a $5,000 renewal fee.

"Sec. 407. Distributor licensure.

"(a) A person may not, after March 31, 2021, engage in any of the following activities unless the person has a valid distributor's license issued by the Office:

"(1) Buy or lease from a manufacturer a game of skill machine for distribution in the District;

"(2) Sell, lease, or distribute a game of skill machine in the District or market for sale, lease, or distribution a game of skill machine in the District; or

"(3) Repair, replace, maintain, or service a game of skill machine or a major component or part of a game of skill machine in the District or market the repair, replacement, or maintenance of a game of skill machine or a major component or part of a game of skill machine in the District.

"(b) A licensed distributor may sell, lease, or distribute a game of skill machine, or repair, replace, maintain, or service a game of skill machine or any major component or part of a game of skill machine in the District to a licensed establishment that possesses a game of skill machine endorsement from the ABC Board pursuant to D.C. Official Code § 25-113.01(e), and after March 31, 2021, a retailer's license from the Office. No distributor may give anything of value, including a loan or financing agreement, to a licensed establishment as an incentive or inducement to locate a game of skill machine in the establishment; provided, that a distributor may provide funding to a licensed establishment for the payment of winnings to players of the distributor's game of skill machines in the licensed establishment.

"(c) A person applying for a distributor's license shall do so on a form prescribed by the Office. The form shall require:

"(1) The name of the applicant;

"(2) The mailing address of the applicant and, if the applicant is a corporation, the name of the state in which it is incorporated, the location of its principal place of business, and the names and addresses of its directors;

"(3) A report of the applicant's financial activities, including evidence of financial stability, such as bank statements, business and personal income and disbursement schedules, and tax returns; and

"(4) Such other information as the Office may require by rule.

"(d) In considering whether to approve an application for a distributor's license, the Office may consider, among such other evidence that may come before the Office, evidence of the applicant's licensure, conduct, and activities in another jurisdiction.

"(e) An applicant for a distributor's license shall demonstrate that the equipment, system, or device that the applicant plans to offer to retailers conforms to standards established pursuant to this title, the rules issued pursuant to this title, and other applicable law.

"(f) An applicant for a distributor's license shall pay a nonrefundable application fee of $10,000 with the application.

"(g) A distributor's license shall be renewed annually; provided, that the licensee has continued to comply with all statutory and regulatory requirements and pays upon submission of its renewal application a $5,000 renewal fee.

"(h) A distributor shall submit to the Office, at such times as are established by the Office by rule, a list of all models and versions of game of skill machines sold, delivered, or offered to a retailer. All such equipment shall be tested and approved by an independent testing laboratory approved as provided in section 409.

"Sec. 408. Retailer licensure.

"(a) A person may not offer or allow for play a game of skill machine at the location in the District unless the location:

"(1) Is a licensed establishment;

"(2) Possesses a game of skill machine endorsement from ABRA in accordance with D.C. Official Code § 25-113.01(e), and, after March 31, 2021, a retailer's license from the Office; and

"(3) Has entered into a written use agreement with a licensed distributor (or before April 1, 2021, with a distributor) for the placement or installation of a game of skill machine or machines on the licensed premises.

"(b) A person shall apply for a retailer's license on a form prescribed by the Office. The form shall require:

"(1) The name of the applicant;

"(2) The mailing address of the applicant and, if the applicant is a corporation, the name of the state in which it is incorporated, the location of its principal place of business, and the names and addresses of its directors;

"(3) At the discretion of the Office, a report of the applicant's financial activities, including evidence of financial stability, such as bank statements, business and personal income and disbursement schedules, and tax returns; and

"(4) Any other information the Office considers necessary.

"(c) An applicant for a retailer's license shall pay a nonrefundable application fee of $300 with the application.

"(d) A retailer's license shall be renewed annually; provided, that the licensee continued to comply with the statutory and regulatory requirements and pays upon submission of its renewal application a $300 renewal fee.

"(e) The Office may require a retailer to be bonded, in such amounts and in such manner as determined by the Office.

"(f) Game of skill machines shall not be offered or allowed to be played in the District other than at an establishment licensed as a retailer.

"Sec. 409. Minimum requirements of game of skill machines.

"(a)(1) ) No model or version of a game of skill machine shall be offered for distribution or play in the District unless the model or version of the game of skill machine has first been tested and approved as a game of skill machine pursuant to this title and the rules issued pursuant to this title; except, that:

"(A) A model or version of a game of skill machine for which an endorsement was approved by the ABC Board under D.C. Official Code § 25-401 before October 1, 2020, shall not be subject to testing or approval under this section unless required by the Office by rule; provided, that each such game of skill machine shall be required to comply with subsection (b)(12) of this section.

"(B) A model or version of a game of skill machine may be approved by the Office before January 1, 2021, if it meets the requirements of subsection (b)(1) through (12) of this section, regardless of whether the Office has issued minimum standard rules pursuant to subsection (b) of this section, and the game of skill machine shall not be required to come into compliance with the minimum standard rules issued by the Office pursuant to subsection (b) of this section until such date as shall be set forth by the Office in such rules.

"(2) The Office, or the applicant at the direction of the Office, shall utilize the services of an Office-approved independent outside testing laboratory to test and assess the model or version of the game of skill machine.

"(3) The applicant shall be responsible for paying the costs associated with testing the model or version of the game of skill machines.

"(b) Except as otherwise provided in subsection (a)(1)(A) and (B) of this section, every game of skill machine offered in the District shall meet the minimum standards established by the Office by rule. The minimum standards shall, include the following:

"(1) The game of skill machine shall conform to all requirements of federal law and regulations, including the Federal Communications Commission's Class A emissions standards.

"(2) The game of skill machine shall display an accurate representation of the game outcome.

"(3) The game of skill machine shall not automatically alter pay tables or any function of the game of skill machine based on an internal computation of a hold percentage or have a means of manipulation that affects the random selection process or probabilities of winning a game.

"(4) The game of skill machine shall not be negatively affected by static discharge or other electromagnetic interference.

"(5) The game of skill machine shall be capable of displaying the following during idle status: "power reset"; "door open"; or "door closed".

"(6) The game of skill machine shall be able to detect and display the game's complete play history and winnings for the previous 10 games.

"(7) The theoretical payback percentage of a game of skill machine shall not be capable of being changed without making a hardware or software change in the machine itself.

"(8) The game of skill machine shall be designed so that the replacement of parts or modules required for normal maintenance does not necessitate replacement of the electromechanical meters.

"(9) The game of skill machine shall contain a non-resettable meter, which shall be located in a locked area of the machine that is accessible only by a key.

"(10) The game of skill machine shall be capable of storing the meter information required by paragraph (9) of this subsection for a minimum of 180 days after a power loss to the machine.

"(11) The game of skill machine shall have accounting software that keeps an electronic record that includes:

"(A) Total cash or other value inserted into the game of skill machine;

"(B) The value of winning tickets awarded to players by the game of skill machine;

"(C) The total credits played on the game of skill machine;

"(D) The total credits awarded by the game of skill machine; and

"(E) The payback percentage credited to players of the game of skill machine.

"(12) The game of skill machine shall be connected to a centralized accounting system in accordance with section 413 for the purposes set forth in section 413; except, that a game of skill machine that has been approved for operation or distribution in the District by ABRA or the Office before the date designated by the Office pursuant to section 413(a)(2)(B) shall be allowed until the date designated by the Office pursuant to section 413(a)(2)(B) to come into compliance with this paragraph.

"(c) The Office may issue rules to establish additional licensing and registration requirements for the purposes of preserving the integrity and security of game of skill machines in the District, including by prohibiting game of skill machines that approximate the look or feel of a gambling device.

"Sec. 410. Registration; display of registration sticker, license, and warning sign; locations of game of skill machines.

"(a) After March 31, 2021, no distributor shall distribute a game of skill machine to a retailer or allow the continued distribution of its game of skill machine at a retailer's licensed establishment, and no retailer shall allow the distribution of a game of skill machine to the retailer or allow the installation or operation of a game of skill machine at its licensed establishment, unless:

"(1) The game of skill machine is registered with the Office; and

"(2) A registration sticker issued by the Office is affixed to and maintained on the game of skill machine.

"(b) The Office shall issue to a distributor or retailer, after approval of an application for registration of a game of skill machine filed by the distributor or retailer with the Office, a registration sticker for placement on the registered game of skill machine. The registration fee for each game of skill machine shall be $100. If the registration sticker is damaged, destroyed, lost, or removed, the retailer shall pay the Office $75 for a replacement registration sticker.

"(c)(1) A distributor shall not distribute more than 5 game of skill machines to a licensed establishment at any time.

"(2) A retailer shall not allow more than 5 game of skill machines to be operated or located on a licensed premises at any time.

"(d) A retailer shall locate its game of skill machines for play only in specific locations approved by ABRA within the retailer's licensed establishment.

"(e) A retailer shall post a warning sign and, after March 31, 2021, its retailers license, both maintained in good repair and in a place clearly visible at the point of entry to the designated areas where the game of skill machines are located. The warning sign shall include:

"(1) The minimum age required to play a game of skill machine;

"(2) The contact information for the District's gambling hotline; and

"(3) The contact information for the Office of Lottery and Gaming for purposes of filing a complaint against the manufacturer, distributor, or retailer.

"(f) Failure to display the registration sticker, license, or warning sign may result in the Office revoking or suspending the license or issuing a fine against the licensed establishment pursuant to section 415.

"Sec. 411. Cash award.

"(a) A game of skill machine shall not directly dispense cash awards to a player. If, at the conclusion of the game, a player is entitled to a cash award, the game of skill machine shall dispense a ticket or voucher to the player. The ticket or voucher shall indicate:

"(1) The total amount of the cash award;

"(2) The time of day that the cash award was issued in a 24-hour format showing hours and minutes, the date, the terminal serial number, and the sequential number of the ticket or voucher; and

"(3) An encrypted validation number from which the validity of the cash award may be determined.

"(b) A retailer shall allow a player to take the ticket or voucher to the owner of the licensed establishment or the owner's designee, who shall be located at the licensed establishment, for payment of the cash award.

"Sec. 412. Game of skill machine use by minors prohibited.

"(a) A licensee shall not permit a person under the age of 18 to use or play a game of skill machine.

"(b) The Office may suspend or revoke a license and issue a fine, in accordance with section 415, against a licensee that knowingly allows a person under the age of 18 to use or play a game of skill machine.

"Sec. 413. Centralized accounting system.

"(a)(1) Within 365 days after the effective date of this title, the Office shall procure a centralized accounting system for games of skill machines, which shall be linked to a communications networks. All games of skill machines registered in the District shall connect to the centralized accounting system through the communications network. The centralized accounting system shall be administered by the Office and shall allow for the accounting, reporting, monitoring, and reading of game of skill machine activities by the District for the purposes of assisting the Office in determining compliance with, and enforcing, the provisions of this title and the rules issued pursuant to this title. The centralized accounting system shall also allow for game of skill machines to be activated and deactivated remotely by the Office.

"(2) When the Office is satisfied with the operation of the centralized accounting system, it shall:

"(A) Certify the effective status of the system; and

"(B) Notify all retailers of the date by which the distributor's and retailer's game of skill machines must be linked to the centralized accounting system, which date shall not be less than 90 days after the date of the effective status of the centralized accounting system.

"(b) The centralized accounting system shall not provide for the monitoring or reading of personal or financial information concerning patrons of game of skill machines.

"(c) An employee or agent of a contractor or subcontractor of the Office that is engaged in building, operating, maintaining, or contracting to build, operate, or maintain the centralized accounting system, and the immediate family members of such employee or agent, shall be prohibited from obtaining a license under this title.

"(d) Unless a retailer's license is canceled, suspended, or revoked, nothing in this section shall authorize the Office to limit or eliminate a registered game of skill from the centralized accounting system.

"Sec. 414. Insurance.

"The Office may require by rule issued pursuant to this title that a distributor maintain liability insurance on the game of skill machines that it places in licensed establishments or that a retailer maintain liability insurance on the game of skill machines that are located in its licensed establishment.

"Sec. 415. Penalties.

"(a) In the event of a violation of this title or a rule issued pursuant to this title, the Office may:

"(1) Impose a fine of not more than $50,000;

"(2) Revoke a licensee's license; or

"(3) Suspend the licensee's license for up to one year.

"(b) A person that has been fined or whose application has been denied, revoked, or suspended pursuant to this section shall have a right to a hearing before the Office and, in the event of the Office's affirmation of the fine, denial, revocation, or suspension, the right to appeal the decision of the Office to the Superior Court of the District of Columbia.

"(c) The Office shall notify ABRA within 48 hours after the Office suspends or revokes a retailer's license.

"Sec. 416. Authority of the Office.

"(a) The Office may enforce the provisions of this title with respect to licensees and with respect to any individual or entity not holding a license and offering a game of skill machine in violation of the provisions of this title or rules issued pursuant to this title.

"(b) Subject to subsection (c) of this section, the Office and the Metropolitan Police Department may issue citations for civil violations of this title as set forth in rules issued pursuant to this title.

"(c) A citation for a violation for which the penalty includes the suspension or revocation of a license shall be issued by the Office as a result of an investigation carried out by the Office.

"(d) The Office, ABRA, or Metropolitan Police Department may request and check the identification of a person who has played, is playing, or is attempting to play a game of skill machine. The Office or Metropolitan Police Department may seize evidence that substantiates a violation under this title, which may include seizing the tickets, vouchers, or cash awards issued to a person under the age of 18 and fake identification documents used by a person under the age of 18.

"(e) The Office may seize a game of skill machine license from an establishment if:

"(1) The game of skill machine license has been suspended, revoked, or cancelled by the Office;

"(2) The business is no longer in existence; or

"(3) The business has been closed by another District government agency.

"Sec. 417. Investigations and inspections.

"(a) The Office may conduct investigations, searches, seizures, and perform other duties authorized by this title and rules issued pursuant to this title.

"(b) An applicant for a license and each licensee shall allow an authorized member of the Office, an ABRA investigator, or any member of the Metropolitan Police Department full opportunity to examine at any time during business hours:

"(1) The location on the premises where game of skill machines are available to play; and

"(2) The books and records of the licensee or applicant.

"Sec. 418. Unlawful acts; action by the Attorney General.

"(a)(1) No manufacturer, distributor, licensed establishment, or employee or agent of a manufacturer, distributor, or licensed establishment shall intentionally make a false or

misleading representation concerning an individual's chances, likelihood, or probability of winning at playing a game of skill machine.

"(2) An individual or entity claiming to be aggrieved by a fraudulent act or a false or misleading statement by a licensee shall have a cause of action in a court of competent jurisdiction for damages and any legal or equitable relief as may be appropriate.

"(b) The Attorney General for the District of Columbia, in the name of the District of Columbia, may bring an action in the Superior Court of the District of Columbia to enjoin an individual or entity or to seek a civil penalty of up to $50,000 for a violation of this title or rule issued pursuant to this title.

"Sec. 419. Taxation of game of skill machines.

"(a) A tax shall be imposed on all persons owning a game of skill machine located in the District for the privilege of operating a game of skill machine in the District.

"(b) The rate of tax shall be 10% of the game of skill machine gross revenue from each game of skill machine in the District.

"(c) On or before the 20th calendar day of each month, each owner of a game of skill machine located in the District shall file a return with the CFO, on forms and in the manner prescribed by the CFO, indicating the amount of game of skill machine gross revenue for the owner's game of skill machines for the preceding calendar month and the amount of tax for which the owner is liable.

"(d) All funds owed to the District under this section shall be held in trust for the District in federally insured depository institution that maintains an office in the District until the funds are paid to the District of Columbia Treasurer.

"(e) Each owner of a game of skill machine located in the District shall keep a record of the game of skill machine gross revenue, awards, and net income of each game of skill machine in such form as the CFO may require.

"(f) An owner of a game of skill who fails to pay the tax imposed by this section shall be subject to all collection, enforcement, and administrative provisions applicable to unpaid taxes or fees, as provided in Chapters 41, 42, 43, and 44 of Title 47 of the District of Columbia Official Code.

"(g) Notwithstanding D.C. Official Code § 47-4406, the CFO may disclose the total amount of game of skill machine gross revenue collected in the periodic estimates and reports of revenues.

"Sec. 420. Deposit of license fees.

"All fees collected under sections 406 through 408 shall be deposited in the Lottery, Gambling, and Gaming Fund, established by section 4 (D.C. Official Code § 36-601.12).

"Sec. 421. Rules and regulations governing game of skill machines.

"(a) The CFO, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 et seq.), shall by January 2021, issue rules to implement the provisions of this title.

"(b) The rules issued by the CFO pursuant to subsection (a) of this section shall include:

"(1) Minimum standards under section 409(b);

"(2) Standards for conducting inspections of game of skill machines for compliance with industry standards;

"(3) Standards for inspecting licensed establishments for compliance with this title;

"(4) Minimum and maximum payment amounts for playing game of skill machines;

"(5) The maximum amount of allowable winnings per game;

"(6) Requirements relating to how fees and taxes are to be remitted;

"(7) The method of accounting to be used by a licensed establishment where a game of skill machine is authorized;

"(8) Methods of age verification;

"(9) Types of records that shall be required to be maintained by a licensee;

"(10) Posting requirements;

"(11) Advertising guidelines, including specific language concerning individuals under the age of 18;

"(12) Penalties for a violation of this title or rule issued pursuant to this title; and

"(13) Internal control standards for game of skill machines.".

Sec. 3. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Chapter 1 is amended as follows:

(1) Section 25-101 is amended as follows:

(A) A new paragraph (22B) is added to read as follows:

"(22B) "Game of skill machine" has the meaning set forth in section 401(6) of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo and Raffles for Charitable Purposes in the District of Columbia, passed on 2nd reading on October 20, 2020 (Enrolled version of Bill 23-945).".

(B) A new paragraph (53A) is added to read as follows:

"(53A) "Voucher" means a ticket issued by a game of skill machine that is redeemable for cash winnings.".

(2) Section 25-113a is amended as follows:

(A) The section is redesignated as § 25-113.01.

(B) The section heading is amended to read as follows:

"§ 25-113.01. License endorsements.".

(C) A new subsection (e) is added to read as follows:

"(e)(1) A licensee under a manufacturer's license class A or B holding an on-site sales and consumption permit, or an on-premises retailer's license, class C/R, D/R, C/H, D/H, C/T,

D/T, C/N, D/N, C/X, or DX, shall obtain a game of skill machine endorsement from the Board in order to offer a game of skill machine on the licensed premises.

"(2)(A) A game of skill machine shall not be placed on outdoor public or private space; except, that the Board, in its discretion, may allow for the placement of a game of skill machine on outdoor public or private space if, in the Board's determination, activity associated with the game of skill machine is:

"(i) Not visible from a public street or sidewalk;

"(ii) Adequately secured against unauthorized entrance; and

"(iii) Accessible only by patrons from within the establishment.

"(B) Subparagraph (A) of this paragraph shall not apply to a licensee operating a passenger-carrying marine vessel in accordance with § 25-113(h).".

(b) Section 25-401 is amended by adding a new subsection (e) to read as follows:

"(e) An applicant for a game of skill machine endorsement shall submit to the Board with its application:

"(1) A diagram of where the game of skill machines will be placed on the licensed premises; and

"(2) The name of the manufacturer and distributor of the game of skill machines and documentation reflecting that the manufacturer and distributor are licensed to do business and pays taxes in the District of Columbia.".

(c) Section 25-508 is amended to read as follows:

"25-508. Minimum fee for permits, and manager's license, and endorsement.

"The minimum fees for permits, manager's license, and endorsement shall be as follows:

| | |
|---|---|
| "Tasting permit for class A licensees | $100/year |
| "Importation permit | $5 |
| "Manager's license | $100/year |
| "On-site sales and consumption permit | $1,000/year |
| "Game of skill machine endorsement | $200". |

(d) Chapter 7 is amended as follows:

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

"§ 25-786. Game of skill machine operating requirements.".

(2) Section 25-763 is amended by adding a new subsection (g) to read as follows:

"(g) Exterior signs advertising game of skill machines shall be prohibited on the licensed establishment.".

(3) Section 25-765 is amended by adding a new subsection (c) to read as follows:

"(c) Advertisements related to game of skill machines shall not be placed on the interior or exterior of a window or on the exterior of a door that is used to enter or exit the licensed establishment.".

(4) A new section 25-786 is added to read as follows:

"§ 25-786. Game of skill machine operating requirements.

"A licensee with a game of skill machine endorsement shall:

"(1) Not allow or permit a person under 18 years of age to play a game of skill machine and shall designate an employee to regularly monitor the designated area where game of skill machines are played to ensure that no person under 18 years of age is playing or attempting to play a game of skill machine;

"(2) Verify that each person playing a game of skill machine is lawfully permitted to do so by checking the person's government-issued identification document upon entry into either the licensed establishment or the designated area where the game of skill machines are located and where the person seeks to cash out his or her winnings, if any; except, that the failure of a licensee to verify a person's identification shall not be a violation of this paragraph if the person whose identification was not checked is 18 years of age or older;

"(3) Not allow or permit a person that appears intoxicated or under the influence of a narcotic or other substance to play a game of skill machine;

"(4) Not share revenue from the licensee's sale of alcohol with a manufacturer or distributor of a game of skill machine, unless approved by the Board as an owner of the license;

"(5) Not allow or permit the placement of a game of skill machine on an outdoor public or private space that has not been approved by the Board;

"(6) Not allow or permit the placement of a game of skill machine outside of the designated areas contained on the applicant's diagram provided as part of the license application or outside the areas approved by the Board;

"(7) Not have more than 5 game of skill machines on the licensed premises; and

"(8) Install security cameras that are operational and record for 30 days, in the areas designated for game of skill machines, near the cash register or terminal where cash winnings of game of skill machines are processed, and where the licensee's money is stored.".

(e) Section 25-801 is amended by adding a new subsection (h) to read as follows:

"(h) An ABRA investigator may request and check the identification of a person who has played, is playing, or is attempting to play a game of skill machine. An ABRA investigator may seize fake identification used by a person under 18 years of age and may seize such records related to a game of skill machine as the investigator considers appropriate to investigate the playing of a game of skill machine by a person under 18 years of age.".

Sec. 4. Section 865 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1331; D.C. Official Code § 22-1704), is amended as follows:

(a) The existing text is designated as subsection (a).

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

"(b) It shall be unlawful to install or operate a game of skill machine in the District except as permitted by Title IV of the Law to Legalize Lotteries, Daily Numbers Games, and Bingo Raffles for Charitable Purposes in the District of Columbia, passed on 2nd reading on October 20, 2020 (Enrolled version of Bill 23-945) ("Title IV"). Whoever shall install or operate a game of skill machine in the District in violation of Title IV shall be guilty of a misdemeanor and, upon conviction thereof, shall be imprisoned for not more than180 days or fined not more than the amount set forth in section 101 of the Criminal Fine Proportionality Amendment Act of 2012, effective June 11, 2013 (D.C. Law 19-317; D.C. Official Code-§ 22-3571.01), or both.".

Sec. 5. Repealers.

(a) The Games of Skill Machines Consumer Protection Emergency Amendment Act of 2020, enacted on August 28, 2020 (D.C. Act 23-404; 67 DCR 10098), is repealed.

(b) The Games of Skill Machines Consumer Protection Amendment Act of 2020, enacted on August 31, 2020 (D.C. Act 23-407; 67 DCR 10493), is repealed.

Sec. 6. Fiscal impact statement.

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

Sec. 7. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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

Chairman
Council of the District of Columbia

Mayor
District of Columbia

APPROVED
November 16, 2020

ENROLLED ORIGINAL

AN ACT

**D.C. ACT 23-497**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 10, 2020**

To amend, on an emergency basis, the Rental Housing Act of 1985 to require a housing provider to serve a written notice to vacate on a tenant before evicting the tenant for any reason, to require a housing provider to provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim, to require the Superior Court to dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider, in cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, to provide that no tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing, to require the Superior Court to seal certain eviction records, to authorize the Superior Court to seal certain evictions records upon motion by a tenant, to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action; to amend section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600; and to declare the sense of the Council that the Superior Court should raise filing fees for eviction cases to $100.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fairness in Renting Emergency Amendment Act of 2020".

Sec. 2. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "any reason other than the nonpayment of rent" and inserting the phrase "any reason" in its place.

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

"(a-1)(1) A housing provider shall provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim. Such notice may be served concurrently with notice provided under subsection (a) of this section.

"(2) The Superior Court shall dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider:

"(A) Did not provide the tenant with notice as required by this subsection;

"(B) Filed the claim to recover possession of the rental less than 30 days after providing the tenant with notice as required by this subsection; or

"(C) In cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, including evidence of the time and date of the service.".

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

"(q) No tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1); except, that a housing provider that obtains the required license shall not be precluded by this subsection from proceeding with an eviction.".

(c) New sections 509 and 510 are added to read as follows:

"Sec. 509. Sealing of eviction court records.

"(a) The Superior Court shall seal all court records relating to an eviction proceeding:

"(1) If the eviction proceeding does not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding; or

"(2) If the eviction proceeding results in a judgement for possession in favor of the housing provider, 3 years after the final resolution of the eviction proceeding; except, that, if the tenant was the defendant in any additional eviction proceedings that resulted in judgment for possession in favor of the housing provider during the 3-year period after the final resolution of the first eviction proceeding, the court shall seal the court records of all such proceedings at the completion of a 3-year period in which the tenant is not a defendant in another eviction proceeding that resulted in judgment for possession in favor of the housing provider.

"(b) For court records relating to an eviction proceeding filed before March 11, 2020, the requirements of subsection (a) of this section shall apply as of January 1, 2021.

"(c)(1) The Superior Court may seal court records relating to an eviction proceeding at any time, upon motion by a tenant, if:

"(A) The tenant demonstrates by a preponderance of the evidence that:

"(i) The housing provider brought the eviction proceeding because the tenant failed to pay an amount of $600 or less;

"(ii) The tenant was evicted from a unit under a federal or District site-based housing assistance program or a federal or District tenant-based housing assistance program;

"(iii) The housing provider's initiation of eviction proceedings against the tenant was in violation of:

"(I) Section 502; or

"(II) Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61);

"(iv) The housing provider failed to timely abate a violation of 14 DCMR § 100 *et seq.* or 12G DCMR 100 *et seq.* in relation to the defendant tenant's rental unit;

"(v) The housing provider initiated the eviction proceedings because of an incident that would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(vi) The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the rental unit; or

"(B) The Superior Court determines that there are other grounds justifying such relief.

"(2) An order dismissing, granting, or denying a motion filed under this subsection shall be a final order for purposes of appeal.

"(3)(A) A copy of an order issued under this subsection shall be provided to the tenant or his or her counsel.

"(B) A tenant may obtain a copy of an order issued under this subsection at any time from the Clerk of the Superior Court, upon proper identification, without a showing of need.

"(d) Records sealed under this section shall be opened only:

"(1) Upon written request of the tenant; or

"(2) On order of the Superior Court upon a showing of compelling need.

"(e) The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.

"Sec. 510. Tenant screening.

"(a) Before requesting any information from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"(1) The types of information that will be accessed to conduct a tenant screening;

"(2) The criteria that may result in denial of the application; and

"(3) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to obtain a free copy of the credit or consumer report in the event of a denial or other adverse action.

"(b) For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"(1) Whether a previous action to recover possession from the prospective tenant occurred if the action:

"(A) Did not result in a judgment for possession in favor of the housing provider; or

"(B) Was filed 3 or more years ago.

"(2) Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"(A) Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(B) Took place 3 or more years ago.

"(c) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"(d) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"(1) The specific grounds for the adverse action;

"(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"(e)(1) After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"(A) Inaccurate or incorrectly attributed to the prospective tenant; or

"(B) Based upon prohibited criteria under subsection (b) or subsection (c) of this section.

"(2) The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"(3) Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"(f) Any housing provider who knowingly violates any provision of this section, or any rule issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"(g) For the purposes of this section, the term:

"(1) "Adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"(2) "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant.

"(h) This section shall apply as of January 1, 2021.".

Sec. 3. Section 16-1501 of the District of Columbia Official Code is amended by adding a new subsection (c) to read as follows:

"(c) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600; except, that the person aggrieved may file a complaint to recover the amount owed.".

Sec. 4. Sense of the Council.

(a) In 2018, there were over 30,000 eviction filings in the Superior Court of the District of Columbia. These filings represent over 17,000 unique households in the District, most of which were concentrated in Wards 7 and 8.

(b) Just 10 housing providers were responsible for 40% of all eviction filings in the District, and around 50% of all filings in the District were for less than $1,000 in rent owed.

(c) A vast majority of these filings did not result in a judgement against the tenant. The Superior Court has reported 1,600 executed evictions annually from 2014 through 2018.

(d) Even when an eviction filing does not result in a judgment against the tenant, the tenant may experience adverse effects associated with the eviction proceeding itself, and the presence of an eviction filing on their record.

(e) Currently, the filing fee for an eviction action in the Landlord-Tenant Branch of the Superior Court is only $15. In most larger jurisdictions across the country, filing fees range from $50 to nearly $200. In Virginia, filing fees for eviction cases are anywhere from $120 to nearly $350.

(f) Emerging research is finding that filing fees can deter housing providers from filing frivolous cases in Superior Court. A recent study, published in Housing Studies, found that all else being equal, neighborhoods in states with higher eviction filings fees had fewer serial filings. (Housing Studies, Dan Immergluck, *et al.*, (Vol. 35, 2020)).

(g) It is the sense of the Council that the Superior Court should raise filing fees for eviction cases to $100 so that serial filers seeking small sums of money from their tenants are deterred from using eviction filings as a mechanism to collect rent from their tenants.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

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

**ENROLLED ORIGINAL**

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

Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
November 9, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-498**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2020**

To amend, on a temporary basis, the Homeless Services Reform Act of 2005 to reform the Emergency Rental Assistance Program to aid tenants in their recovery from the public health emergency, and to reduce administrative barriers to Emergency Rental Assistance Program payments for tenants in need.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Emergency Rental Assistance Reform Temporary Amendment Act of 2020".

Sec. 2. The Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-751.01 *et seq.*), is amended as follows:

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

"Sec. 8f. Emergency rental assistance.".

(b) A new section 8f is added to read as follows:

"Sec. 8f. Emergency rental assistance.

"(a)(1) To qualify for emergency rental assistance funds made available pursuant to this section ("Emergency Rental Assistance Funds"), an applicant unit shall be required to meet only the following eligibility criteria:

"(A) Be living in the District of Columbia at the time of application;

"(B) Be presented with an emergency situation that he or she has no other available resources to resolve, while still meeting other basic needs; and

"(C) Have a net income, combined with the net income of any individual with whom he or she lives, that in the 30 days immediately preceding the date of application does not exceed 40% of the Area Median Income for the District of Columbia for the specified household size.

"(2) To qualify for Emergency Rental Assistance Funds, an applicant unit may be required to document or otherwise establish the following, but no other documentation or proof shall be required:

"(A) That he or she is living in the District of Columbia at the time of application;

"(B) The applicant unit's household income and assets;

"(C) The number of bedrooms in the unit occupied by the applicant unit;

"(D) The number of people in the applicant unit's household; and

"(E) Facts and circumstances surrounding rental arrearages, security, or damage deposit, or first month's rent, including that the applicant unit is responsible for payment.

"(3) An unsworn declaration made under penalty of perjury shall be considered sufficient documentation or proof for the purposes of paragraph (2) of this subsection.

"(4) To qualify for Emergency Rental Assistance Funds, an applicant unit shall not be required to provide documentation or proof that the members of his or her household are related by blood, legal adoption, marriage or domestic partnership, or legal guardianship.

"(5) Case management or other services shall not be required as a condition to qualify for Emergency Rental Assistance Funds.

"(b)(1) Emergency Rental Assistance Funds shall not be paid to the applicant unit but instead directly to a vendor providing a service to the applicant unit.

"(2) Emergency Rental Assistance Funds may be utilized to pay rent arrearage, late fees, and associated court fees if eviction is imminent or the applicant unit has a current rent arrearage at least 30 days past due.

"(3)(A) The total payment of Emergency Rental Assistance Funds on behalf of an applicant unit for rent arrearages, late fees, and associated court fees shall not exceed an amount equal to the applicable fair market rent for the Washington-Arlington-Alexandria Metropolitan area based on unit size and zip code, as established by the U.S. Department of Housing and Urban Development, multiplied by 5. This cap may be waived if one or more of the following factors are determined to exist:

"(i) The applicant unit lives with 6 or more individuals and reasonable alternatives to the existing housing arrangement are not available;

"(ii) An individual living with the applicant unit has a physical or mental disability or an extended illness such that loss of existing housing would pose a serious threat to the health or safety of the family member; or

"(iii) The applicant unit is applying for Emergency Rental Assistance Funds during a public health emergency declared pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304.01) ("public health emergency"), or within 180 days after its conclusion.

"(B) During a public health emergency and for 180 days after its conclusion, an arrearage paid with Emergency Rental Assistance Funds may be for as many months of rent as the total number of months that the public health emergency has been in effect.

"(4) When a payment of Emergency Rental Assistance Funds up to the amount authorized by this section would not substantially alleviate an emergency situation during the 30-day period immediately following the authorization of payment, the payment shall not be made unless the applicant unit demonstrates that a landlord will:

"(A) Accept partial payment in full satisfaction of the outstanding rent due; or

"(B) Enter into a longer-term repayment plan for the payment of the remaining balance of unpaid rent.

"(5)(A) The use of Emergency Rental Assistance Funds to cover a security or damage deposit shall be authorized only if the landlord does not waive the deposit and one of the following criteria is met:

"(i) The applicant unit is or will become homeless if assistance is not provided; or

"(ii) The purpose of the assistance is to reunite a child less than 18 years of age with his or her family or to prevent separation of a child less than 18 years of age from his or her family.

"(B) The maximum payment for a security or damage deposit shall be the actual amount of the deposit, which may not exceed more than the cost of one month's unsubsidized rent, as specified by the landlord.

"(6)(A) Assistance may be authorized for first month's rent if:

"(i) The applicant unit is eligible for a security deposit payment as specified in paragraph (5)(A) of this subsection;

"(ii) The first month's rent must be paid in conjunction with the security deposit in order for the applicant unit to assume tenancy; and

"(iii) The applicant unit has no other means of paying for the first month's rent at the time it is required.

"(B) The maximum emergency assistance payment for first month's rent under this paragraph shall not exceed the actual amount of one month's unsubsidized rent, as specified by the landlord.

"(c) An applicant unit that has met the eligibility standards set forth in this section shall qualify for Emergency Rental Assistance Funds; except, that the agency may provide funding on a first come, first served basis and subject to availability of funds.

"(d) To the extent not explicitly superseded by the provisions of this act, the Emergency Rental Assistance Program rules (29 DCMR § 7500 *et seq.*) shall remain in effect until superseded by rules promulgated by the Mayor pursuant to the authority of this act. Upon the effective date of rules promulgated pursuant to this act, each superseded portion of the Emergency Rental Assistance Program rules shall be deemed repealed.

"(e) For purposes of this section, the term:

**ENROLLED ORIGINAL**

"(1) "Applicant unit" means an individual who is applying for Emergency Rental Assistance Funds pursuant to this section for his or her own needs or the needs of those with whom he or she lives.

"(2) "Basic needs" includes groceries, childcare, utilities, and car payments.

"(3) "Emergency situation" means a situation in which immediate action is necessary to avoid homelessness or eviction, to re-establish a home, or to otherwise prevent displacement from a home.

"(4) "Living in the District of Columbia" means that an individual is maintaining a home in the District as his or her principal residence or, if he or she is homeless, that he or she is physically present in the District and not a resident of another state.".

Sec. 3. Fiscal impact statement.

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

Sec. 4. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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

Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
November 16, 2020

**ENROLLED ORIGINAL**

AN ACT

**D.C. ACT 23-499**

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

**NOVEMBER 18, 2020**

To amend, on a temporary basis, the Rental Housing Act of 1985 to require a housing provider to serve a written notice to vacate on a tenant before evicting the tenant for any reason, to require a housing provider to provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim, to require the Superior Court to dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider, in cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, to provide that no tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing, to require the Superior Court to seal certain eviction records, to authorize the Superior Court to seal certain eviction records upon motion by a tenant, to provide that a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on certain criteria, to require a housing provider to provide written notice to a prospective tenant of the housing provider's basis for taking adverse action against the prospective tenant, to provide the tenant an opportunity to dispute the information forming the basis of the housing provider's adverse action; to amend section 16-1501 of the District of Columbia Official Code to provide that the person aggrieved shall not file a complaint seeking restitution of possession for nonpayment of rent in an amount less than $600; and to declare the Sense of the Council that the Superior Court should raise filing fees for eviction cases to $100.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fairness in Renting Temporary Amendment Act of 2020".

Sec. 2. Title V of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3505.01 *et seq.*), is amended as follows:

(a) Section 501 (D.C. Official Code § 42-3505.01) is amended as follows:

(1) Subsection (a) is amended by striking the phrase "any reason other than the nonpayment of rent" and inserting the phrase "any reason" in its place.

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

"(a-1)(1) A housing provider shall provide the tenant with notice of the housing provider's intent to file a claim against a tenant to recover possession of a rental unit at least 30 days before filing the claim. Such notice may be served concurrently with notice provided under subsection (a) of this section.

"(2) The Superior Court shall dismiss a claim brought by a housing provider to recover possession of a rental unit where the housing provider:

"(A) Did not provide the tenant with notice as required by this subsection;

"(B) Filed the claim to recover possession of the rental less than 30 days after providing the tenant with notice as required by this subsection; or

"(C) In cases where a notice to quit or a summons and complaint are served by posting on the leased premise, failed to provide the Superior Court with photographic evidence of the posted service, including evidence of the time and date of the service.".

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

"(r) No tenant shall be evicted from a rental unit for which the housing provider does not have a current business license for rental housing issued pursuant to D.C. Official Code § 47-2828(c)(1); except, that a housing provider that obtains the required license shall not be precluded by this subsection from proceeding with an eviction.".

(c) New sections 509 and 510 are added to read as follows:

"Sec. 509. Sealing of eviction court records.

"(a) The Superior Court shall seal all court records relating to an eviction proceeding if:

"(1) The eviction proceeding does not result in a judgment for possession in favor of the housing provider, 30 days after the final resolution of the eviction proceeding; or

"(2) The eviction proceeding results in a judgement for possession in favor of the housing provider, 3 years after the final resolution of the eviction proceeding; except, that, if the tenant was the defendant in any additional eviction proceedings that resulted in judgment for possession in favor of the housing provider during the 3-year period after the final resolution of the first eviction proceeding, the court shall seal the court records of all such proceedings at the completion of a 3-year period in which the tenant is not a defendant in another eviction proceeding that resulted in judgment for possession in favor of the housing provider.

"(b) For court records relating to an eviction proceeding filed before March 11, 2020, the requirement of subsection (a) of this section shall apply as of January 1, 2021.

"(c)(1) The Superior Court may seal court records relating to an eviction proceeding at any time, upon motion by a tenant, if:

"(A) The tenant demonstrates by a preponderance of the evidence that:

"(i) The housing provider brought the eviction proceeding because the tenant failed to pay an amount of $600 or less;

"(ii) The tenant was evicted from a unit under a federal or District site-based housing assistance program or a federal or District tenant-based housing assistance program;

"(iii) The housing provider's initiation of eviction proceedings against the tenant was in violation of:

"(I) Section 502; or

"(II) Section 261 of the Human Rights Act of 1977, effective December 13, 1977 (D.C. Law 2-38; D.C. Official Code § 2-1402.61);

"(iv) The housing provider failed to timely abate a violation of 14 DCMR § 100 *et seq.* or 12G DCMR § 100 *et seq.* in relation to the defendant tenant's rental unit;

"(v) The housing provider initiated the eviction proceedings because of an incident that would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(vi) The parties entered into a settlement agreement that did not result in the housing provider recovering possession of the rental unit; or

"(B) The Superior Court determines that there are other grounds justifying such relief.

"(2) An order dismissing, granting, or denying a motion filed under this subsection shall be a final order for purposes of appeal.

"(3)(A) A copy of an order issued under this subsection shall be provided to the tenant or his or her counsel.

"(B) A tenant may obtain a copy of an order issued under this subsection at any time from the Clerk of the Superior Court, upon proper identification, without a showing of need.

"(d) Records sealed under this section shall be opened only:

"(1) Upon written request of the tenant; or

"(2) On order of the Superior Court upon a showing of compelling need.

"(e) The Superior Court shall not order the redaction of the tenant's name from any published opinion of the trial or appellate courts that refer to a record sealed under this section.

"Sec. 510. Tenant screening.

"(a) Before requesting any information from a prospective tenant as a part of tenant screening, a housing provider shall first notify the prospective tenant in writing, or by posting in a manner accessible to prospective tenants:

"(1) The types of information that will be accessed to conduct a tenant screening;

"(2) The criteria that may result in denial of the application; and

"(3) If a credit or consumer report is used, the name and contact information of the credit or consumer reporting agency and a statement of the prospective tenant's rights to

obtain a free copy of the credit or consumer report in the event of a denial or other adverse action.

"(b) For the purposes of tenant screening, a housing provider shall not make an inquiry about, require the prospective tenant to disclose or reveal, or base an adverse action on:

"(1) Whether a previous action to recover possession from the prospective tenant occurred if the action:

"(A) Did not result in a judgment for possession in favor of the housing provider; or

"(B) Was filed 3 or more years ago.

"(2) Any allegation of a breach of lease by the prospective tenant if the alleged breach:

"(A) Stemmed from an incident that the prospective tenant demonstrates would constitute a defense to an action for possession under section 501(c-1) or federal law pertaining to domestic violence, dating violence, sexual assault, or stalking; or

"(B) Took place 3 or more years ago.

"(c) A housing provider shall not base an adverse action solely on a prospective tenant's credit score, although information within a credit or consumer report directly relevant to fitness as a tenant can be relied upon by a housing provider.

"(d) If a housing provider takes an adverse action, he or she shall provide a written notice of the adverse action to the prospective tenant that shall include:

"(1) The specific grounds for the adverse action;

"(2) A copy or summary of any information obtained from a third-party that formed a basis for the adverse action; and

"(3) A statement informing the prospective tenant of his or her right to dispute the accuracy of any information upon which the housing provider relied in making his or her determination.

"(e)(1) After receipt of a notice of an adverse action, a prospective tenant may provide to the housing provider any evidence that information relied upon by the housing provider is:

"(A) Inaccurate or incorrectly attributed to the prospective tenant; or

"(B) Based upon prohibited criteria under subsection (b) or subsection (c) of this section.

"(2) The housing provider shall provide a written response, which may be by mail, electronic mail, or in person, to the prospective tenant with respect to any information provided under this subsection within 30 business days after receipt of the information from the prospective tenant.

"(3) Nothing in this subsection shall be construed to prohibit the housing provider from leasing a housing rental unit to other prospective tenants.

"(f) Any housing provider who knowingly violates any provision of this section, or any rules issued to implement this section, shall be subject to a civil penalty for each violation not to exceed $1,000.

"(g) For the purposes of this section, the term:

"(1) "Adverse action" means:

"(A) Denial of a prospective tenant's rental application; or

"(B) Approval of a prospective tenant's rental application, subject to terms or conditions different and less-favorable to the prospective tenant than those included in any written notice, statement, or advertisement for the rental unit, including written communication sent directly from the housing provider to a prospective tenant.

"(2) "Tenant screening" means any process used by a housing provider to evaluate the fitness of a prospective tenant.

"(h) This section shall apply as of January 1, 2021.".

Sec. 3. Section 16-1501 of the District of Columbia Official Code is amended by adding a new subsection (c) to read as follows:

"(c) The person aggrieved shall not file a complaint seeking restitution of possession pursuant to this section for nonpayment of rent in an amount less than $600; except, that the person aggrieved may file a complaint to recover the amount owed.".

Sec. 4. Sense of the Council.

(a) In 2018, there were over 30,000 eviction filings in the Superior Court of the District of Columbia. These filings represent over 17,000 unique households in the District, most of which were concentrated in Wards 7 and 8.

(b) Just 10 housing providers were responsible for 40% of all eviction filings in the District, and around 50% of all filings in the District were for less than $1,000 in rent owed.

(c) A vast majority of these filings did not result in a judgment against the tenant. The Superior Court has reported 1,600 executed evictions annually from 2014 through 2018.

(d) Even when an eviction filing does not result in a judgment against the tenant, the tenant may experience adverse effects associated with the eviction proceeding itself, and the presence of an eviction filing on the tenant's record.

(e) Currently, the filing fee for an eviction action in the Landlord-Tenant Branch of the Superior Court is only $15. In most larger jurisdictions across the country, filing fees range from $50 to nearly $200. In Virginia, filing fees for eviction cases are anywhere from $120 to nearly $350.

(f) Emerging research is finding that filing fees can deter housing providers from filing frivolous cases in Superior Court. A recent study, published in Housing Studies, found that all else being equal, neighborhoods in states with higher eviction filing fees had fewer serial filings (Housing Studies, Dan Immergluck *et al.*, (Vol. 35, 2020)).

**ENROLLED ORIGINAL**

(g) It is the sense of the Council that the Superior Court should raise filing fees for eviction cases to $100 so that serial filers seeking small sums of money from their tenants are deterred from using eviction filings as a mechanism to collect rent from their tenants.

Sec. 5. Fiscal impact statement.

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

Sec. 6. Effective date.

(a) This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

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

Chairman
Council of the District of Columbia

UNSIGNED
Mayor
District of Columbia
November 17, 2020

**ENROLLED ORIGINAL**

A RESOLUTION

23-554

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2020

To confirm the reappointment of Christopher Bell to the Board of Trustees of the University of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Trustees of the University of the District of Columbia Christopher Bell Confirmation Resolution of 2020".

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

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Mr. Christopher Bell
Hawthorne Street, N.W.
Washington, D.C. 20008
(Ward 3)

as a member of the Board of Trustees of the University of the District of Columbia, established by section 201 of the District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1424; D.C. Official Code § 38-1202.01), for a term to end May 15, 2025.

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

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-555

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 20, 2020

To confirm the appointment of Ms. Mignon Clyburn to the Board of Trustees of the University of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Board of Trustees of the University of the District of Columbia Mignon Clyburn Confirmation Resolution of 2020".

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

Ms. Mignon Clyburn
G Street, S.W.
Washington, D.C. 20024
(Ward 6)

as a member of the Board of Trustees of the University of the District of Columbia, established by section 201 of the District of Columbia Public Postsecondary Education Reorganization Act, approved October 26, 1974 (88 Stat. 1424; D.C. Official Code § 38-1202.01), replacing Joshua Wyner, for a term to end May 15, 2024.

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

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-592

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 10, 2020

To declare the existence of an emergency with respect to the need to approve Contract No. SO-21-004-0002012 between the Washington Convention Center and Sports Authority and the Greater Washington Community Foundation to administer the DC CARES Program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Greater Washington Community Foundation Excluded Worker Relief Contract Emergency Declaration Resolution of 2020".

Sec. 2. (a) The Washington Convention Center and Sports Authority, t/a Events DC, proposes to enter into a memorandum of understanding ("MOU") with the Greater Washington Community Foundation to administer phase 2 of the DC CARES Program to provide critical, immediate financial relief to District of Columbia-based workers who do not have access to other COVID-19 related public relief funds.

(b) This MOU with the Greater Washington Community Foundation is for the not-to-exceed amount of $9 million, with a term commencing on the date of full execution of the MOU and continuing through September 30, 2021.

(c) These funds were authorized as part of the Fiscal Year 2021 budget and will provide critical funds as soon as possible to excluded workers in the District.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances, making it necessary that the Greater Washington Community Foundation Excluded Worker Relief Contract Emergency Approval Resolution of 2020 be adopted on an emergency basis.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-593

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 10, 2020

To approve, on an emergency basis, Contract No. SO-21-004-0002012 between the Washington Convention Center and Sports Authority and the Greater Washington Community Foundation to administer the DC CARES Program.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Greater Washington Community Foundation Excluded Worker Relief Contract Emergency Approval Resolution of 2020".

Sec. 2. Pursuant to section 451(b) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 1-204.51(b)), the Council approves Contract No. SO-21-004-0002012 between the Washington Convention Center and Sports Authority and the Greater Washington Community Foundation, for the period from the date of contract execution through September 30, 2021, in the amount of $9 million.

Sec. 3. Transmittal

The Council shall transmit a copy of this resolution, upon its adoption, to the Washington Convention Center and Sports Authority.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-596

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 17, 2020

To declare the existence of an emergency with respect to the need to require the Metropolitan Police Department to timely report overspending in overtime pay to the Council.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Metropolitan Police Department Overtime Spending Accountability Emergency Declaration Resolution of 2020".

Sec. 2. (a) On October 22, 2020, the Mayor transmitted Reprogramming Request 23-0141 requesting to reprogram $43,000,000 of Fiscal Year 2020 funds to the Emergency Planning and Security Fund.

(b) Most of the funds in the Mayor's reprogramming request would pay for the Metropolitan Police Department's ("MPD") overspending for overtime pay that it incurred in responding to the past several months of protests in the District.

(c) The funds were taken from the Department of Health Care Finance, the Child and Family Services Agency, and the Workforce Investment Fund that had been allocated for the modernization of the Alliance Healthcare Program, funding the Grandparent Caregiver Program, and funding many other critical District services that serve our most vulnerable populations and that have seen cuts during these trying times.

(d) In the midst of contentious negotiations about MPD's budget over the summer, the Mayor effectively wrote MPD a blank check and provided the Council with no prior notice, thereby denying the Council the opportunity to raise a timely objection.

(e) Emergency legislation is necessary to enable the Council to perform meaningful oversight over MPD's overspending.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances, making it necessary that the Metropolitan Police Department Overtime Spending Accountability Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-597

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 17, 2020

To declare the existence of an emergency with respect to the need to approve the exercise of option year one of Contract No. SO-15-030-0001049 with Aramark Sports and Entertainment Services, LLC to provide janitorial and related services at the Walter E. Washington Convention Center and Carnegie Library, and to authorize payment in the not-to-exceed amount of $4,415,654 for the goods and services received and to be received during option year one.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Modification to Contract No. SO-15-030-0001049 Approval and Payment Authorization Emergency Declaration Resolution of 2020".

Sec. 2. (a) There exists an immediate need to approve the exercise of option year one of Contract No. SO-15-030-0001049 between the Washington Convention Center and Sports Authority ("Authority") and Aramark Sports and Entertainment Services, LLC ("Aramark") to allow Aramark to continue to provide janitorial and related services at the Walter E. Washington Convention Center ("Convention Center") and Carnegie Library, including enhanced cleaning requirements to combat the spread of COVID-19, for the period from October 1, 2020, through September 30, 2021, in the not-to-exceed amount of $4,415,654.

(b) Prompt Council action is necessary to ensure there is no disruption in janitorial services at the Convention Center and Carnegie Library, particularly given the enhanced cleaning requirements that will be necessary to reduce the spread of COVID-19 and to maintain the Authority's Global Biorisk Advisory Council certification.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Modification to Contract No. SO-15-030-0001049 Approval and Payment Authorization Emergency Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

**ENROLLED ORIGINAL**

A RESOLUTION

23-598

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

November 17, 2020

To declare the existence of an emergency with respect to the need to amend the Fiscal Year 2021 Budget Support Act of 2020, the Fiscal Year 2021 Budget Support Congressional Review Emergency Amendment Act of 2020, the Fiscal Year 2021 Budget Support Clarification Emergency Amendment Act of 2020, and the Fiscal Year 2021 Budget Support Clarification Temporary Amendment Act of 2020 to clarify returning citizens' eligibility to apply for financial assistance for District residents impacted by the public health emergency.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Fiscal Year 2021 Budget Support Additional Clarification Emergency Declaration Resolution of 2020".

Sec. 2. (a) In the District's Fiscal Year 2021 budget, the Council identified $9 million that the Washington Convention and Sports Authority ("Events DC") was to use to provide financial assistance for District residents who are not eligible for traditional unemployment benefits or for other financial benefits that the District and federal government had identified during the COVID-19 public health emergency.

(b) Among the populations eligible for financial assistance from Events DC are District residents who have recently been released from incarceration; because the Council intended for the funds identified for financial assistance to provide relief for those who had been impacted by the COVID-19 pandemic, returning citizens were required to apply for benefits within 6 months of release from incarceration.

(c) On November 10, 2020, the Council approved the Greater Washington Community Foundation Excluded Worker Relief Emergency Approval Resolution of 2020, effective November 10, 2020 (Res. 23-593; 69 DCR __), which approved a contract between Events DC and the Greater Washington Community Foundation to disperse the $9 million that the Council identified for Events DC to provide financial assistance.

(d) Because the contract between Events DC and the Greater Washington Community Foundation was only recently approved, currently no applications have been made for assistance from Events DC, and it is possible that applications may not be available until December.

(e) District residents released from incarceration in the early stages of the pandemic were not able to apply for assistance within 6 months of release, because, through no fault of their own, the application was not available—clearly contrary to the Council's intent.

(f) Approving emergency and temporary legislation clarifying that any District resident who was released from incarceration on or after March 11, 2020, the date the Mayor Bowser declared a public health emergency, will ensure that when the Community Foundation of Greater Washington opens applications, all District residents who were released from incarceration during the current public health emergency will be eligible to apply for financial assistance.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Fiscal Year 2021 Budget Support Additional Clarification Emergency Amendment Act of 2020 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.

## COUNCIL OF THE DISTRICT OF COLUMBIA

## NOTICE OF INTENT TO ACT ON NEW LEGISLATION

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

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

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

PR23-1026 KIPP D.C. Public Charter Schools Revenue Bonds Project Approval Resolution of 2020

Intro. 11-16-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

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PR23-1027 Local Rent Supplement Program Contract No. 2019-LRSP-06A Approval Resolution of 2020

Intro. 11-16-2020 by Chairman Mendelson and referred to the Retained by the Council with comments from the Committee on Housing and Neighborhood Revitalization

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PR23-1032 Friendship Public Charter School, Inc. Revenue Bonds Project Approval Resolution of 2020

Intro. 11-17-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

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PR23-1033 Commission on Aging Councilmember Anita Bonds Reappointment Resolution of 2020

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Intro. 11-18-2020 by Chairman Mendelson and referred to the Retained by the Council

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PR23-1034 Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2020

Intro. 11-18-2020 by Chairman Mendelson and referred to the Committee of the Whole

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**Council of the District of Columbia**
**COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**
**NOTICE OF PUBLIC HEARING**
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON**
**COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

**ANNOUNCES A PUBLIC HEARING ON**

**B23-0708 - "D.C. CENTRAL KITCHEN, INC. TAX REBATE ACT OF 2020"**
**AND**
**B23-0977 - "CORPORATE GOVERNANCE ACCREDITATION ACT OF 2020"**

**Monday, December 14, 2020, 12:00 pm**
**Remote Hearing via Virtual Platform**
**Broadcast live on DC Council Channel 13**
**Streamed live at www.dccouncil.us and entertainment.dc.gov.**

On Monday, December 14, 2020, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public hearing to consider B23-0708, the "D.C. Central Kitchen, Inc. Tax Rebate Act of 2020" and B23-0977, the "Corporate Governance Accreditation Act of 2020".

**Bill 23-0708**, the "D.C. Central Kitchen, Inc. Tax Rebate Act of 2020", would provide a charitable rebate of the D.C. Central Kitchen, Inc.'s portion of real property taxes owed for real property that D.C. Center Kitchen, Inc. leases from a for-profit owner. The property is located at 2121 1st Street, S.W. in Ward 6. **Bill 23-0977**, the "Corporate Governance Accreditation Act of 2020", would establish a regulatory framework to require insurers to file an annual report, signed and attested to by a corporate officer, that describes the insurer's or insurer's group's corporate governance structure, policies, and practices. The Bill would also grant rulemaking authority to the Commissioner of the Department of Insurance, Securities and Banking to implement the legislation.

The Committee invites the public to testify remotely or to submit written testimony. Anyone wishing to testify must sign up in advance by contacting the Committee by e-mail, at BusinessEconomicDevelopment@dccouncil.us, or by phone, and providing their name, phone number or e-mail address, organizational affiliation, and title (if any), by **5:00 p.m. on Friday, December 11, 2020**. Witnesses are encouraged to electronically submit written testimony in advance of the hearing to BusinessEconomicDevelopment@dccouncil.us. Public witnesses will participate remotely and the Committee will follow-up with witnesses with additional instructions on how to provide testimony through a web conferencing platform.
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All public witnesses will have a maximum of three minutes to testify. The length of time provided for oral testimony may be reduced or extended at the discretion of the Committee Chair.

The Committee encourages the public to submit written testimony to be included for the public record. Copies of written testimony should be submitted by e-mail to BusinessEconomicDevelopment@dccouncil.us. To be included in the record, please indicate that you are submitting testimony for this hearing in the subject line of the e-mail. **The record for this hearing will close at 5:00 p.m. on Wednesday, December 23, 2020**.

For accommodation requests, including spoken language or sign language interpretation, please inform the Committee by email of the need as soon as possible, but no later than five (5) business days before the proceeding. The Council will make every effort to fulfill timely requests, however requests received less than five (5) business days prior to the hearing may not be fulfilled and alternatives may be offered.

Please contact Alicia DiFazio, Committee Director, at adifazio@dccouncil.us for additional information.

**COUNCIL OF THE DISTRICT OF COLUMBIA**
**COMMITTEE OF THE WHOLE**
**NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, NW, Washington, DC 20004

**CHAIRMAN PHIL MENDELSON**
**COMMITTEE OF THE WHOLE**
**ANNOUNCES A PUBLIC ROUNDTABLE**

on

**PR 23-1007, "Metropolitan Washington Airports Authority Board of Directors Thorn Pozen Confirmation Resolution of 2020"**

**PR 23-1034, "Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2020"**

on

**Monday, December 7, 2020 at 10:30 a.m.**

**Live via Zoom Video Conference Broadcast**
**Council Channel 13** (Cable Television Providers)
**DC Council Website** (www.dccouncil.us)

Council Chairman Phil Mendelson announces a public roundtable before the Committee of the Whole on PR 23-1007, the "Metropolitan Washington Airports Authority Board of Directors Thorn Pozen Confirmation Resolution of 2020" and PR 23-100X, the "Board of Zoning Adjustment Fred Hill Confirmation Resolution of 2020." The roundtable will be held **Monday, December 7, 2020, 10:30 a.m.** via Zoom video conference. The purpose of this roundtable is to receive testimony from the public as to the fitness of these nominees for the respective Boards.

The stated purpose of **PR 23-1007** is to confirm the reappointment of Mr. Thorn Pozen as a board member of the Metropolitan Washington Airports Authority Board of Directors for a term to end on January 5, 2027. Mr. Pozen's current term ends January 5, 2021. The Metropolitan Washington Airports Authority ("MWAA") is an independent body created through an interstate compact between the Commonwealth of Virginia, the State of Maryland, and the District of Columbia that promotes, develops, and operates Washington Dulles International Airport and Ronald Reagan Washington National Airport. The MWAA Board of Directors governs the activities of MWAA and is composed of members appointed by the Governors of Virginia and Maryland, the Mayor of Washington, D.C., and the President of the United States.

The stated purpose of **PR 23-1034** is to confirm the reappointment of Mr. Fred Hill to the Board of Zoning Adjustment for a term to end on September 30, 2023. Mr. Hill's term ended on September 30, 2020 and he is currently serving in a holdover capacity. The Board of Zoning Adjustment ("Board") is an independent, quasi-judicial body with the ability to grant relief from the strict application of the District's zoning regulations in the form of variances, to grant special exceptions where authorized under the Zoning Regulations, and to hear appeals from actions taken by the Zoning Administrator of the Department of Consumer and Regulatory Affairs.

Those who wish to testify must email the Committee of the Whole at cow@dccouncil.us, or call Evan Cash, Committee and Legislative Director, at (202) 724-7002, and to provide your name, address, telephone number, organizational affiliation and title (if any) by the close of business **Thursday, December 3, 2020.** Witnesses testimony is limited to three minutes. Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are

requested to inform the Committee office of the need as soon as possible but no later than five business days before the proceeding. We will make every effort to fulfill timely requests, although alternatives may be offered. Requests received in less than five business days may not be fulfilled.

Due to the COVID-19 public health emergency declaration, the roundtable will be conducted virtually on the Internet utilizing Zoom video conferencing technology. Because of this, written or transcribed testimony from the public is **highly encouraged** and will be taken by email or voice mail. Testimony may be submitted in writing to cow@dccouncil.us or may be left by voice mail (up to 3 minutes) – **which will be transcribed** – by calling (202) 430-6948. Testimony received by close of business on December 4, 2020 on will be posted publicly to http://www.chairmanmendelson.com/circulation prior to the roundtable. If you are unable to testify at the roundtable, written statements are encouraged and will be made a part of the official record. Written statements should be submitted to the Committee of the Whole, Council of the District of Columbia, Suite 410 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004. The record will close at 5:00 p.m. on December 14, 2020.

**Council of the District of Columbia**
**COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**
**NOTICE OF PUBLIC ROUNDTABLE**
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON**
**COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

**ANNOUNCES A**
**PUBLIC ROUNDTABLE ON**

**PR23-1018, THE "PUBLIC SERVICE COMMISSION LORNA JOHN CONFIRMATION RESOLUTION OF 2020"**

**Thursday, December 3, 2020, 9:00 a.m.**
**Remote Hearing via Virtual Platform**
**Broadcast live on DC Council Channel 13**
**Streamed live at www.dccouncil.us and entertainment.dc.gov**

On Thursday, December 3, 2020, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public roundtable – for public witnesses only – to consider the following measure:

1. Proposed Resolution PR23-1018, the "Public Service Commission Lorna John Confirmation Resolution of 2020"

Proposed Resolution 23-1018, the "Public Service Commission Lorna John Confirmation Resolution of 2020" would confirm the Mayor's nominee, Lorna John, as a member of the Public Service Commission. Ms. John, an attorney with decades of experience, currently serves as a member of the Board of Zoning Adjustment, an independent, quasi-judicial body. Prior to this role, Ms. John served as a Senior Attorney in the Federal Aviation Administration (FAA) where she led several complex, multi-million-dollar acquisition programs and successfully handled a wide range of acquisition matters. Ms. John also provided legal and policy advice on international and domestic regulatory issues including the regulatory harmonization to North American Free Trade Act (NAFTA) and Pilot Record Improvement Act (PRIA) matters. Ms. John is also a 1996 recipient of Vice President Al Gore's Hammer Award for superior accomplishment in acquisition reform, particularly for drafting the agency's innovative acquisition policies and procedures.

A Ward 6 resident, Ms. John received a Bachelor of Arts in English from the University of the West Indies, a Master of Education from Howard University, and a Juris Doctor from the Georgetown University Law Center.

The Committee invites the public to testify remotely or to submit written testimony. Anyone wishing to testify must sign up in advance by contacting the Committee by e-mail

at BusinessEconomicDevelopment@dccouncil.us or by phone and provide their name, phone number or e-mail, organizational affiliation, and title (if any) by **5:00 p.m. on December 2, 2020**.

Witnesses are encouraged to submit their testimony in writing electronically in advance to BusinessEconomicDevelopment@dccouncil.us. Public witnesses will participate remotely, and the Committee will follow-up with witnesses with additional instructions on how to provide testimony through a web conferencing platform.

All public witnesses will be allowed a maximum of three minutes to testify. At the discretion of the Chair, the length of time provided for oral testimony may be reduced or extended.

For accommodation requests, including spoken language or sign language interpretation, please inform the Committee by email of the need as soon as possible but no later than five (5) business days before the proceeding. The Council will make every effort to fulfill timely requests, however, requests received in less than five (5) business days may not be fulfilled and alternatives may be offered.

Please contact Alicia DiFazio, Committee Director for the Committee on Business and Economic Development, at adifazio@dccouncil.us for additional information.

**COUNCIL OF THE DISTRICT OF COLUMBIA**
**Notice of Grant Budget Modifications**

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

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

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

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**GBM 23-115** **FY 2020 Grant Budget Modifications as of November 10, 2020**

RECEIVED: 2-day review begins November 20, 2020

COUNCIL OF THE DISTRICT OF COLUMBIA
COMMITTEE OF THE WHOLE
1350 Pennsylvania Avenue, NW, Suite 410
Washington, DC 20004

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ABBREVIATED NOTICE OF INTENT TO CONSIDER LEGISLATION

The Council of the District of Columbia hereby gives notice of its intention to take action in less than fifteen days on PR 23-1033, the "Commission on Aging Councilmember Anita Bonds Reappointment Resolution of 2020," to ensure the resolution can be considered at the as soon as possible. The proposed resolution was introduced on November 18, 2020. The abbreviated notice is necessary to allow the Council to consider the proposed resolution in a timely manner.

## ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

## NOTICE OF PUBLIC HEARING

| | |
|---|---|
| Placard Posting Date: | November 27, 2020 |
| Protest Petition Deadline: | February 1, 2021 |
| Roll Call Hearing Date: | February 22, 2021 |
| Protest Hearing Date: | April 28, 2021 |

| | |
|---|---|
| License No.: | ABRA-117308 |
| Licensee: | Equity H, LLC |
| Trade Name: | Bulldog |
| License Class: | Retailer's Class "C" Nightclub |
| Address: | 713 H Street, N.W. |
| Contact: | Danielle Balmelle, Agent: (202) 714-2976 |

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 February 22, 2021 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 **April 28, 2021 at 4:30 p.m.**

**NATURE OF SUBSTANTIAL CHANGE**
New Retailer's Class "C" Nightclub offering a full restaurant menu with a Sidewalk Café Endorsement of 12 seats. Total Occupancy Load of 250 with seating for 100 patrons.

**HOURS OF OPERATION (INSIDE PREMISES)**
Sunday through Thursday 8am – 3am
Friday and Saturday 8am – 4am

**HOURS OF OPERATION (SIDEWALK CAFE)**
Sunday through Thursday 8am – 2am
Friday and Saturday 8am – 3am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION (INSIDE PREMISES AND SIDEWALK CAFÉ)**
Sunday through Thursday 8am – 2am
Friday and Saturday 8am – 3am

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

| | |
|---|---|
| Placard Posting Date: | November 27, 2020 |
| Protest Petition Deadline: | February 1, 2021 |
| Roll Call Hearing Date: | February 22, 2021 |
| Protest Hearing Date: | April 28, 2021 |

| | |
|---|---|
| License No.: | ABRA-117461 |
| Licensee: | Milpa 1 - Atlas, LLC |
| Trade Name: | Las Gemelas |
| License Class: | Retailer's Class "C" Tavern |
| Address: | 1280 4th Street, N.E., #2 |
| Contact: | Sidon Yohannes, Esq.: (202) 686-7600 |

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 22, 2021 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 **April 28, 2021 at 1:30 p.m.**

**NATURE OF OPERATION**

A new Retailer's Class "C" Tavern with a seating capacity of 43 and Total Occupancy Load of 45. Summer Garden with 40 seats.

**HOURS OF OPERATION FOR INSIDE PREMISES & OUTSIDE IN SUMMER GARDEN**

Sunday through Saturday 7am – 3am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN**

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

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**

**NOTICE OF PUBLIC HEARING**

| | |
|---|---|
| Placard Posting Date: | November 27, 2020 |
| Protest Petition Deadline: | February 1, 2021 |
| Roll Call Hearing Date: | February 22, 2021 |
| Protest Hearing Date: | April 28, 2021 |

| | |
|---|---|
| License No.: | ABRA-117462 |
| Licensee: | Milpa 1 - Atlas, LLC |
| Trade Name: | Taqueria Las Gemelas |
| License Class: | Retailer's Class "C" Tavern |
| Address: | 1280 4th Street, N.E., #10 |
| Contact: | Sidon Yohannes, Esq.: (202) 686-7600 |

WARD 5 ANC 5D SMD 5D01

Notice is hereby given that this licensee has applied for a new license under the D.C. Alcoholic Beverage Control Act and that the objectors are entitled to be heard before the granting of such on the **Roll Call Hearing date on February 22, 2021 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 **April 28, 2021 at 1:30 p.m.**

**NATURE OF OPERATION**

A new Retailer's Class "C" Tavern with a seating capacity of 31 and Total Occupancy Load of 91. Summer Garden with 50 seats.

**HOURS OF OPERATION FOR INSIDE PREMISES & OUTSIDE IN SUMMER GARDEN**

Sunday through Saturday 7am – 3am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR INSIDE PREMISES AND OUTSIDE IN SUMMER GARDEN**

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

**DEPARTMENT OF HEALTH**

**STATE HEALTH PLANNING AND DEVELOPMENT AGENCY**

**NOTICE OF INFORMATION HEARING**

Pursuant to D.C. Official Code § 44-406(b) (4), the District of Columbia State Health Planning and Development Agency ("SHPDA") will hold an information hearing on IRC Superman Midco, LLC (Certificate of Need Registration No. 20-0-6) for the Acquisition of American Renal Associates, Inc.

The hearing will be held on Friday, December 4, 2020, beginning at 10:00 a.m. using Webex Conferencing. **Please send an email to dana.mitchener@dc.gov to register for the information hearing**.

The hearing will include a presentation by the Applicant, describing its plans and addressing the certifications required pursuant to D.C. Official Code § 44-406(b) (1). The hearing also includes an opportunity for affected/interested persons to testify. Persons who wish to testify should contact the SHPDA at (202) 442-5875 before 4:45 p.m. on Thursday, December 3, 2020. Each member of the public who wishes to testify will be allowed a maximum of five (5) minutes. Written statements may be submitted to:

The State Health Planning and Development Agency
899 North Capitol Street, N.E.
Sixth Floor
Washington, D.C. 20002

Written statements must be received before the record closes at 4:45 p.m. on Friday, December 11, 2020. Persons who would like to review the Certificate of Need application or who have questions relative to the hearing may contact the SHPDA on (202) 442-5875.

**BOARD OF ZONING ADJUSTMENT**
**REVISED PUBLIC HEARING NOTICE**
**WEDNESDAY, DECEMBER 23, 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 SIX**

20340 ANC 6A — **Application of Arthur Melzer and Shikha Dalmia,** 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 under Subtitle E § 5007.1 from the accessory building rear yard setback requirements of Subtitle E § 5004.1, to construct a second-story addition to an existing accessory structure in the rear yard of an existing flat in the RF-1 Zone at premises 114 12th Street N.W. (Square 988, Lot 65).

**WARD FIVE**

20341 ANC 5B — **Application of 4527 Georgia Ave LLC,** pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the minimum parking requirements of Subtitle C § 701.5, to raze the existing building and to construct a new 49-unit residential apartment building in the MU-4 Zone at premises 1544 Rhode Island Avenue, N.E. (Square 4021, Lot 15).

**WARD FOUR**

20342 ANC 4C — **Application of Peggy C. Kennedy,** pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the new residential development provisions of Subtitle U § 421.1, to convert an existing, detached, principal dwelling unit into a 9-unit apartment house in the RA-1 Zone at premises 1212 Madison Street N.W. (Square 2934, Lot 34).

**WARD ONE**

20346 ANC 1B — **Application of John B. Gogos,** pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the alley lot use provisions of Subtitle U § 601.1(d), under Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1, and pursuant to Subtitle X, Chapter 10, for a variance from the alley lot height requirements of Subtitle E § 5102.1, to construct a new, detached principal dwelling unit in the RF-1 Zone at premises 782 Fairmont Street, NW (Square 2884, Lot 81).

**WARD ONE**

20347 ANC 1B — **Application of John B. Gogos,** pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the alley lot use provisions of Subtitle U § 601.1(d), under Subtitle C § 1504.1 from the penthouse setback requirements of Subtitle C § 1502.1, and pursuant to Subtitle X, Chapter 10, for a variance from the alley lot height requirements of Subtitle E § 5102.1, to construct a new, detached principal dwelling unit in the RF-1 Zone at premises 921 Euclid Street, NW (Square 2884, Lot 82).

**WARD ONE**

20352 ANC 1A — **Application of Charles Okunubi,** pursuant to 11 DCMR, Subtitle X, Chapter 9, for special exceptions under the residential conversion requirements of Subtitle U § 320.2, and under Subtitle C § 703.2, from the minimum parking requirements of Subtitle C § 701.5, to convert an existing principal dwelling unit to a three-unit apartment house at in the RF-1 Zone at premises 426 Manor Place, NW (Square 3036, Lot 67).

**WARD THREE**

20364 ANC 3D — **Application of Jonathan Fellows,** pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 1402.1, from the retaining wall height requirements of Subtitle C §§ 1401.3(b) and 1401.5, to replace an existing retaining wall in the R-15 Zone, at premises 3036 New Mexico Avenue, NW (Square 1622, Lot 819).

**WARD EIGHT**

20368 **Application of KD's Klubhouse,** pursuant to 11 DCMR Subtitle X,
ANC 8E Chapter 9, for a special exception under the R-use requirements of Subtitle U § 203.1(h) to permit the operation of a child development center for 160 children in the RF-1 Zone, at premises 4025 9th Street SE (Square 6159, Lot 124).

**WARD FOUR**

20370 **Application of 1337 Taylor Street LLC,** pursuant to 11 DCMR
ANC 4C Subtitle X, Chapter 9, for a special exception under the residential conversion requirements of Subtitle U § 320.2, to convert the existing principal dwelling unit into a three-unit apartment house in the RF-1 Zone, at premises 1337 Taylor Street NW (Square 2822, Lot 18).

**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.

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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.

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**Do you need assistance to participate?**

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**Do you need assistance to participate?**

*Amharic*
ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

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

*Chinese*
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*Vietnamese*
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**FREDERICK L. HILL, CHAIRPERSON**
**LORNA L. JOHN, VICE-CHAIRPERSON**
**VACANT, MEMBER**
**CHRISHAUN SMITH, MEMBER,**
**NATIONAL CAPITAL PLANNING COMMISSION**

**A PARTICIPATING MEMBER OF THE ZONING COMMISSION**
**CLIFFORD W. MOY, SECRETARY TO THE BZA**
**SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**BOARD OF ZONING ADJUSTMENT**
**REVISED PUBLIC HEARING NOTICE**
**WEDNESDAY, FEBRUARY 3, 2021**
**VIRTUAL HEARING via WEBEX**

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

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

**WARD ONE**

20356 ANC 1C — **Appeal of Advisory Neighborhood Commission 1C,** pursuant to 11 DCMR Y § 302, from the decision made on July 29, 2020, by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue Building Permit No. B20051559, to permit the construction of a rear addition and the conversion of an existing principal dwelling unit to a flat in the RF-1 Zone at premises 1808 Ontario Place NW (Square 2583, Lot 416).

**WARD TWO**

20367 ANC 2B — **Application of Lee A. Granados and Kevin R Klym,** pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201, from the lot occupancy requirements of Subtitle F § 604.1, to construct a new porch addition with entry stairs, to an existing attached principal dwelling unit in the RA-8 Zone at premises 1725 Church Street NW (Square 156, Lot 337).

**WARD SIX**

20369 ANC 6A — **Application of Emily and Wesley Raynor,** pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle C § 1500.4 from the penthouse requirements of Subtitle C § 1500, and under Subtitle E §§ 205.5 and 5201, from the rear addition requirements of Subtitle C § 205.4, to construct two new, attached, three-story flats with a penthouse, in the RF-1 Zone at premises 909-911 I Street, NE (Square 933, Lots 28 & 29).

**WARD SIX**

20371
ANC 6B

**Application of Charles and Coreil Dickinson,** pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle E §§ 205.5 and 5201, from the rear addition requirements of Subtitle E § 205.4, the lot occupancy requirements of Subtitle E § 304.1, and the rear yard requirements of Subtitle E § 306.1, to construct a three-story rear addition and a third floor addition to an existing principal dwelling unit in the RF-1 Zone at premises 1507 E Street SE (Square 1076, Lot 38).

**PLEASE NOTE:**
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*Chinese*

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**SARA A. BARDIN, DIRECTOR, OFFICE OF ZONING**

**BOARD OF ZONING ADJUSTMENT**
**PUBLIC HEARING NOTICE**
**WEDNESDAY, FEBRUARY 10, 2021**
**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 FIVE**

| | |
|---|---|
| **Application of:** | **Aulona Alia** |
| **Case No.:** | **20372** |
| **Address:** | 2017 Rear 2nd Street NE (Square 3564, Lot 810) |
| **ANC:** | **5E** |
| **Relief:** | Area variances from:<br>• the building height restrictions of Subtitle E § 5102 (pursuant to Subtitle X, Chapter 10)<br>• the retaining wall height restrictions of Subtitle C § 1401.3(c); (pursuant to Subtitle X, Chapter 10) |
| **Project:** | To construct a new, two-story, principal dwelling unit, with a cellar and retaining walls in the RF-1 Zone. |

**WARD EIGHT**

| | |
|---|---|
| **Application of:** | **3321 13th Street, LLC** |
| **Case No.:** | **20373** |
| **Address:** | 3321 13th Street, SE (Square 5937, Lot 59) |
| **ANC:** | **8E** |
| **Relief:** | Special Exception under:<br>• the residential conversion requirements of Subtitle U § 421(pursuant to Subtitle X § 901.2) |
| **Project:** | to convert an existing detached, community residence facility, to a 12- unit apartment building in the RA-1 Zone |

**WARD FIVE**

| | |
|---|---|
| **Application of:** | Quincy Street Condominium Association |
| **Case No.:** | **20375** |
| **Address:** | 908 Quincy Street, NE (Square 3818, Lot 3) |
| **ANC:** | **5B** |
| **Relief:** | Special Exception from:<br>• the surface parking screening requirements of Subtitle C § 714.2 (pursuant to Subtitle C § 714.3, and Subtitle X § 901.2) |
| **Project:** | To comply with three approved off-street parking spaces in the RA-1 Zone. |

**WARD FIVE**

| | |
|---|---|
| **Application of:** | 1419 Trinidad, LLC |
| **Case No.:** | **20378** |
| **Address:** | 1419 Trinidad Avenue, NE (Square 4061, Lot 123) |
| **ANC:** | **5D** |
| **Relief:** | Special Exception from:<br>• the rooftop architectural element requirements of Subtitle E § 206.1 (pursuant to Subtitle E §§ 206.2 and 5203 and a**;**<br>Waiver under**:**<br>• the provisions of Subtitle E § 5203.2 |
| **Project:** | To construct a porch with a roof addition, and to convert the existing attached principal dwelling unit to a three-story flat in the RF-1 Zone. |

## WARD SIX

| | |
|---|---|
| **Application of:** | Andrew Hanko and Carol Connelly |
| **Case No.:** | **20379** |
| **Address:** | 514 9th Street, SE (Square 949, Lot 36) |
| **ANC:** | **6B** |
| **Relief:** | Special Exception under:<br>• the rear addition requirements of Subtitle E § 205.4 (pursuant to Subtitles E §§ 205.5, 5201 and Subtitle X 901.2) |
| **Project:** | To construct a second story addition to an existing one-story principal dwelling unit in the RF-1 Zone. |

## WARD THREE

| | |
|---|---|
| **Application of:** | Polygon Holdings, LLC |
| **Case No.:** | **20380** |
| **Address:** | 4457 MacArthur Boulevard, NW (Square 1363, Lot 57) |
| **ANC:** | **3D** |
| **Relief:** | Special Exceptions under:<br>• the new residential development requirements of Subtitle U § 421.1 (pursuant to Subtitle X § 901.2), and from;<br>• the side yard requirements of Subtitle F § 306.2(a) (pursuant to Subtitle F § 5201 and Subtitle X § 901.2) |
| **Project:** | To construct a three-story addition, to a 9-unit residential apartment house in the RA-1 Zone. |

## WARD SIX

| | |
|---|---|
| **Application of:** | Thomas Sullivan and Heather Greenfield |
| **Case No.:** | **20381** |
| **Address:** | 314 10th Street, SE (Square 970, Lot 805) |
| **ANC:** | **6B** |
| **Relief:** | Special Exception from:<br>• the lot occupancy requirements of Subtitle E § 304.1 (pursuant to Subtitle E § 5201 and Subtitle X § 901.2) |
| **Project:** | To construct a two-story addition, with cellar, to an existing two-story principal dwelling unit in the RF-1 Zone. |

## WARD TWO

| | |
|---|---|
| **Application of:** | Matthew and Jacqueline Robertson, and Bernadette Eichelberger |
| **Case No.:** | **20385** |
| **Address:** | 1934 37th Street, NW (Square 1309, Lot 44) |
| **ANC:** | **2E** |
| **Relief:** | Special Exceptions under:<br>• the accessory apartment requirements of Subtitle U § 253.4 (pursuant to Subtitle X § 901.2), and from;<br>• the rear yard requirements of Subtitle D § 1206.2 (pursuant to Subtitle D § 5201 and Subtitle X § 901.2) |
| **Project:** | To construct a basement accessory apartment and a rear deck, to an existing attached, principal dwelling unit in the R-20 Zone. |

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*Chinese*
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**CHRISHAUN SMITH, MEMBER,**
**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**

## DEPARTMENT OF HEALTH

## NOTICE OF FINAL RULEMAKING

The Director of the Department of Health ("Director"), pursuant to the authority set forth in Section 1 of An Act To authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases, approved August 11, 1939 (53 Stat. 1408; D.C. Official Code § 7-131 (2018 Repl.)) and Mayor's Order 98-141, dated August 20, 1998, hereby gives notice of the adoption of final rules for the following amendments to Chapters 2 (Communicable and Reportable Diseases) of Title 22 (Health), Subtitle B (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

The rules add reporting requirements and procedures for reporting of Severe Maternal Morbidity (defined at 22-B DCMR § 299 as "unexpected outcomes of labor and delivery that result in significant short-term consequences or long-term consequences to a woman's health that include at least one (1) of the following twenty-one (21) specific morbidity indicators specified by the U.S. Centers for Disease Control and Prevention").

This rulemaking supports efforts to reduce Severe Maternal Morbidities by providing better and more-timely data to Department of Health officials responsible for reducing all maternal morbidities.

A Notice of Proposed Rulemaking adopted on May 22, 2020 was published in the *D.C. Register* at 67 DCR 9525 on August 7, 2020.

Planned Parenthood of Metropolitan DC (PP) submitted the only set of comments making three specific comments: (1) "While it may be beyond the scope of this rulemaking to require additional information to be reported by health care facilities, we recommend that DC Health collect data on important individual characteristics that relate directly to the systemic quality of care received. When reporting severe maternal morbidity, healthcare facilities should also report demographic data including age, race, DC residency, ward, and insurance status and type. Collection of this information will make analysis of severe maternal morbidity data more useful going forward and will better inform efforts to improve maternal health outcomes, particularly for those experiencing the greatest health inequities." (2) "In addition, we recommend that data analysis and reporting be coordinated with the District's MMRC [Maternal Mortality Review Committee] so that legislators and policy makers have greater ability to institute evidence-informed law and policy change." (3) "Importantly, the findings and trends from the collected severe maternal morbidity data must be publicly reported on a regular basis to support accountability of those involved in the process. In line with other communicable disease reporting, confidentiality of any individual-level data should be protected."

After considering PP's comments, the Department of Health determined that there is no need to modify the regulations because: (1) This rulemaking imposes a duty to report each severe maternal morbidity. Existing 22-B DCMR § 202.9 requires the report be on a form approved by the Director of the Department of Health that includes individual characteristics as suggested by the comment. (2) This rulemaking implements efforts to reduce maternal morbidities by providing better and

more timely data to the Maternal Mortality Review Committee established by Section 3 of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.02), and to Department of Health officials responsible for reducing all maternal mortalities (including pregnancy-associated deaths, pregnancy-related deaths, and deaths from severe maternal morbidity) and all maternal morbidities. (3) The Maternal Mortality Review Committee and to Department of Health will determine what public reporting can be made in light of confidentiality laws.

No changes were made to these rules as published in Notice of Proposed Rulemaking. The Director took final action to adopt these rules on October 5, 2020 and the rules will become effective upon publication of this notice in the *D.C. Register.*

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

**Chapter 2, COMMUNICABLE AND REPORTABLE DISEASES, is amended by adding a new Section 220 to read as follows:**

**220 SEVERE MATERNAL MORBIDITY**

220.1 Each health care facility shall report to the Department each severe maternal morbidity, as defined in § 299.

220.2 Each health care facility shall report each severe maternal morbidity in writing within five (5) days of the end of each event causing that maternal morbidity.

**ZONING COMMISSION OF THE DISTRICT OF COLUMBIA**

**NOTICE OF PROPOSED RULEMAKING**

**Z.C. CASE NO. 20-02**
**(Office of Planning - Text Amendment to Subtitles B, C, F, G, I, K, U, X, and Z for Inclusionary Zoning Plus)**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Rep1.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following provisions of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the proposed text at the end of this notice:

- Subtitle B, Definitions, Rules of Measurement, and Use Categories – § 100.2
- Subtitle C, General Rules – §§ 1001, 1002, 1003, 1006, & 1505
- Subtitle F, Residential Apartment (RA) Zones – §§ 105, 302, 602
- Subtitle G, Mixed-Use (MU) Zones – §§ 104, 504, & 804
- Subtitle I, Downtown (D) Zones – §§ 502, 516, 531, 539, 547, 555, 562, & 569
- Subtitle K, Special Purpose Zones – § 500
- Subtitle U, Use Permissions – § 320
- Subtitle X, General Procedures – §§ 500, 501, & 502
- Subtitle Z, Zoning Commission Rules of Practice and Procedure – §§ 400 & 500

**Setdown**

On September 4, 2020, the Office of Planning (OP filed a petition (Petition) to the Commission proposing these revisions to expand the Inclusionary Zoning (IZ) program to include map amendments that increase the permitted gross floor area (GFA) and floor area ratio (FAR).

At its September 14, 2020, public meeting, the Commission voted to grant OP's request to set down the Petition for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

OP filed a November 6, 2020, public hearing report that addressed public comments raised in OP's public outreach and that proposed revising the proposed text to:

- Exempt the NHR and BF zones from the Expanded IZ/IZ Plus Inclusionary Zoning requirements as these zones have their own affordable housing/IZ requirements that exceed the IZ requirements of Subtitle C, Chapter 10; and
- Require the Zoning Administrator, based on OP's recommendations, determine that an IZ Plus Inclusionary Development qualifies for the twenty percent (20%) reduction for IZ Plus Inclusionary Developments that provide at least fifty percent (50%) of units with three or more bedrooms based on specific criteria.

OP filed a November 13, 2020,[1] supplemental report that addressed the economic modeling based on its proposed required set-aside for IZ Plus Inclusionary Developments, and proposed revising the proposed text to:

- Change the set-aside in Subtitle C §§ 1300.3 and 1300.4 from increments of FAR increase due to the map amendment to a sliding scale based on the percent FAR increase, except for the following map amendments that shall remain subject to a flat 20% set-aside requirement:
  - A PDR zone or unzoned land to a R, RF, RA, MU, D, CG, or ARTS zone; or
  - Any zone with a residential FAR limit to a D zone without a residential FAR limit.

**Public Hearing**

At the November 16, 2020, public hearing, the Commission heard testimony from OP, which testified in support of the Petition and responded to the Commission's questions. In addition to multiple written comments filed prior to the public hearing, the Commission heard testimony in support of the case from multiple witnesses, all but one of which supported the Petition citing the critical need for affordable housing cross the District of Columbia. Several of these comments raised the following concerns:

- That the Petition should not apply to map amendment applications
  - For which the Commission had approved final action prior to the public hearing but the order had yet to issue; and
  - Filed prior to the effective date of the Commission's approval of the Petition, provided that the map amendment's proposed new zone is not inconsistent with the current Comprehensive Plan;
- That the Petition should not apply to existing unzoned land; and
- That the Petition should be revised to calculate the percent FAR increase that determines the IZ set-aside requirements by:
  - Including the current IZ bonus density for both the current and new zones; and
  - Limiting it to the "achievable" IZ Plus density actually realized in a project in the new zone, not on the potential increase in density between the current and new zones.

One group, the DC Building Industry Association (DCBIA), expressed qualified support but requested additional time to consider OP's proposed revisions. One party opposed the Petition as ignoring the need to fundamentally reevaluate the entire IZ program before expanding it as proposed by the Petition.

OP testified that any vesting provision should be limited to map amendment applications filed before the November 16, 2020, hearing and that it opposed the proposed revisions to the calculation of percent FAR increase.

**Proposed Action**

The Commission agrees that map amendment applications filed before the public hearing should not be subject to the Petition. However, the Commission does not find persuasive the proposed exclusion of map amendments of unzoned land or the proposed changes to the calculation of the percent FAR increase for determining the IZ set-aside requirement, both of which OP opposed.

[1] The OP Supplemental Report was mistakenly dated November 6, 2020, when it was actually filed on November 13, 2020.

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

The Commission finds OP's recommendation that the Commission take proposed action to adopt the Petition with the exemption of map amendment applications limited to those filed before the November 16, 2020, public hearing and without the proposed changes to the calculation of percent FAR increase, 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 concern expressed in ANC 3E's written report, as supplemented by testimony, of the need to provide additional IZ units based on the need for affordable housing, particularly in Ward 3, persuasive and concurs in the ANC's support of the Petition as an additional tool to address this concern.

At the close of the public hearing, the Commission voted to take **PROPOSED ACTION** to adopt the Petition as advertised in the public hearing notice and as modified by the revisions proposed by the OP Hearing and Supplemental Reports and including an exemption for map amendment applications filed prior to the public hearing:

**VOTE (November 16, 2020): 5-0-0** (Robert E. Miller, Michael G. Turnbull, Anthony J. Hood, Peter A. Shapiro, and Peter G. May to **APPROVE**)

The complete record in the case can be viewed online at the Office of Zoning's Interactive Zoning Information System (IZIS) website at: https://app.dcoz.dc.gov/Content/Search/Search.aspx.

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at https://app.dcoz.dc.gov/Login.aspx; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by

e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register.*

**PROPOSED TEXT AMENDMENT**

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in ~~**bold and strikethrough**~~ text; new text is shown in **bold and underline** text).

**I. Proposed Amendment to Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES**

**The definition of "Inclusionary Development" in § 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is proposed to be amended by revising the to read as follows:**

> Inclusionary Development: A residential development that is subject to the provisions of Subtitle C, Chapter 10, Inclusionary Zoning, as a Mandatory **Inclusionary Development (including an IZ Plus Inclusionary Development)** or Voluntary Inclusionary Development, or that is required to comply with the provisions therein by an order of the Zoning Commission or of the Board of Zoning Adjustment, as established by Subtitle C § 1001.2.

**II. Proposed Amendment to Subtitle C, GENERAL RULES**

**Subsections 1001.2 and 1001.4 of § 1001, APPLICABILITY, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1001.2 Except as provided in Subtitle C § 1001.5, the requirements of this chapter shall apply to, and the modifications to certain development standards and bonus density of this chapter shall be available to, developments in zones in which this chapter is identified as applicable as specified in the individual subtitles of this title; provided the development falls into one of the following categories:

(a) A "Mandatory Inclusionary Development" – a development that meets one or more of the following …[2]

(1) Is proposing new gross floor area …

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

(2) Will have ten (10) or more new dwelling units constructed concurrently … for the first building permit; ~~or~~

(3) Consists of a residential building that has penthouse habitable space pursuant to Subtitle C § 1500.11; or

**(4) An "IZ Plus Inclusionary Development" – a development located on property that was the subject of a map amendment that increased the allowable FAR pursuant to Subtitle X § 502 and as indicated with an "IZ+" on the Zoning Map and that meets one of the categories of Subtitle C § 1001.2(a)(1) through (3); or**

(b) A "Voluntary Inclusionary Development" – any single household …

(1) The square footage …

…

(3) Any use of the modifications of development standards … and to Subtitle D § 5206, Subtitle E § 5206, or Subtitle F § 5206, as applicable.

…

1001.4 For existing buildings that become subject to the requirements of this chapter pursuant to Subtitle C § 1001.2, the requirements of Subtitle C §§ 1003.1 ~~and 1003.2~~ **through 1003.4** and the available modifications to applicable development standards shall apply:

(a) To both the existing …

…

**Subsection 1002.3 of § 1002, MODIFICATIONS OF DEVELOPMENT STANDARDS AND BONUSES TO INCENTIVIZE INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1002.3 Inclusionary Developments, except those located in the R, RF, SEFC, HE, **NHR,** StE, and WR zones, may construct up to twenty percent (20%) more gross floor area than permitted as a matter of right ("bonus density") as reflect in the zone-specific development standards and subject to all other zoning requirements (as may be modified by the zone) and the limitations established by the Height Act.

**Section 1003, SET-ASIDE REQUIREMENTS, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1003.1 An Inclusionary Development ~~which~~ **other than an IZ Plus Inclusionary Development that** does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units and which is located in a zone with a by-right height limit, exclusive of any bonus height, of fifty feet (50 ft.) or less, shall set aside for Inclusionary Units the sum of the following:

(a) The greater of ten percent (10%) of the **residential** gross floor area ~~dedicated to residential use~~ **as described in Subtitle C § 1003.5**, excluding penthouse habitable space**,** or seventy-five percent (75%) of the bonus density utilized; and

(b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11.[3]

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § ~~1003.4~~ **1003.6**.

1003.2 An Inclusionary Development ~~which~~ **other than an IZ Plus Inclusionary Development that** employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than fifty feet (50 ft.), shall set aside for Inclusionary Units the sum of the following:

(a) The greater of eight percent (8%) of the **residential** gross floor area ~~dedicated to residential use~~ **as described in Subtitle C § 1003.5**, excluding penthouse habitable space**,** or fifty percent (50%) of the bonus density utilized; and

(b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11.[4]

This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § ~~1003.4~~ **1003.6**.

**1003.3 An IZ Plus Inclusionary Development that does not employ Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, and which is located in a zone with a by-right height limit, exclusive of any bonus height,**

[3] Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[4] Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

**of eighty-five feet (85 ft.) or less, shall set aside for Inclusionary Units the sum of (a) and (b):**

**(a) The percent of the residential gross floor area as described in Subtitle C § 1003.5, excluding penthouse habitable space, set forth in the following table, based on the percent increase in FAR established in the Zoning Commission order approving the map amendment pursuant to Subtitle X §§ 502.3 and 502.4:**

**TABLE C § 1003.3 SET-ASIDE FOR INCLUSIONARY UNITS**

| | | | | |
|---|---|---|---|---|
| Map Amendment from a PDR zone or unzoned land to a R, RF, RA, MU, D, CG, or ARTS zone | | | | 20% |
| Map Amendment from a zone with a prescribed residential FAR to a D zone without a prescribed residential FAR | | | | |
| All Other Map Amendments | | | | |
| Percent Increase in FAR | 20% to 40% | 40%+ to 60% | 60%+ to 80% | Over 80% |
| Set-Aside Requirement | 14% | 16% | 18% | 20% |

**(b) An area equal to ten percent (10%) of the penthouse habitable space as described in Subtitle C § 1500.11.**[5]

**This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6.**

**1003.4 An IZ Plus Inclusionary Development that employs Type I construction as classified in Chapter 6 of the District of Columbia Building Code (Title 12-A DCMR) to construct a majority of dwelling units, or which is located in a zone with a by-right height limit, exclusive of any bonus height, that is greater than eighty-five feet (85 ft.), shall set aside for Inclusionary Units the sum of (a) and (b):**

**(a) The percent of the residential gross floor area as described in Subtitle C § 1003.5, excluding penthouse habitable space, set forth in the following table, based on the percent increase in FAR established in the Zoning Commission order approving the map amendment pursuant to Subtitle X §§ 502.3 and 502.4:**

**TABLE C § 1003.4 SET-ASIDE FOR INCLUSIONARY UNITS**

| | |
|---|---|
| Map Amendment from a PDR zone or unzoned land to a R, RF, RA, MU, D, CG, or ARTS zone | 20% |
| Map Amendment from a zone with a prescribed residential FAR to a D zone without a prescribed residential FAR | |

[5] Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

| All Other Map Amendments | | | | | |
|---|---|---|---|---|---|
| Percent Increase in FAR | 20% to 50% | 50%+ to 75% | 75%+ to 100% | 100%+ to 125% | Over 125% |
| Set-Aside Requirement | 10% | 12% | 14% | 16% | 18% |

**(b) An area equal to eight percent (8%) of the penthouse habitable space as described in Subtitle C § 1500.11.**[6]

**This set-aside requirement shall be converted to net square footage pursuant to Subtitle C § 1003.6**.

~~1003.8~~ **1003.5** ~~**An Inclusionary Development's**~~ **For the purposes of this section, "residential gross floor area" shall be the** entire residential floor area including**, but not limited to:**

**(a) Dwelling** ~~**dwelling**~~ units located in cellar space**;** ~~**or**~~

**(b) Enclosed** ~~**enclosed**~~ building projections that extend into public space~~**, shall be included for purposes of calculating the minimum set-aside requirements of Subtitle C §§ 1003.1 and 1003.2.**~~**; and**

~~1003.10~~ **(c)** Increases in FAR ~~**as a result of**~~ **authorized by** variances granted by the Board of Zoning Adjustment ~~**shall be included within gross floor area for the purposes of calculating the maximum IZ requirement**~~.

~~1003.4~~ **1003.6** The square footage required to be set-aside for Inclusionary Units pursuant to Subtitle C §§ 1003.1 ~~**and 1003.2**~~ **through 1003.4** shall be converted to net square footage based on the ratio of net residential floor area …

~~1003.3~~ **1003.7** Except as provided in Subtitle C §§ ~~**1003.5 and 1003.6**~~ **1003.8 through 1003.10**, Inclusionary Zoning resulting from the set-asides required by Subtitle C §§ 1003.1 ~~**and 1003.2**~~ **through 1003.4** shall be reserved for households earning equal to or less than:

(a) Sixty percent (60%) of the MFI for rental units; and

(b) Eighty percent (80%) of the MFI for ownership units.

~~1003.7~~ **1003.8** ~~**Notwithstanding Subtitle C § 1003.3, one**~~ **One** hundred percent (100%) of inclusionary units resulting from the set-aside required for penthouse habitable space shall be set aside for eligible households earning equal to or less than fifty percent (50%) of the MFI.

[6] Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

1003.9 ~~The~~ **Except for Inclusionary Units resulting from the set-aside for penthouse habitable space, the** square footage set aside **established by Subtitle C §§ 1003.1 through 1003.4** applicable to an ~~inclusionary development that is exclusively comprised of ownership units~~ **Inclusionary Development** may be reduced by twenty percent (20%) ~~provided~~ **if it complies with one or more of the following:**

**(a)** ~~all the units~~ **All Inclusionary Units** are **ownership units and are** set aside to households earning equal to or less than sixty percent (60%) of the MFI**;**

**(b) One hundred percent (100%) of Inclusionary Units in an IZ Plus Inclusionary Development are reserved for households earning equal to or less than fifty percent (50%) of the MFI; or**

**(c) At least fifty percent (50%) of Inclusionary Units in an IZ Plus Inclusionary Development are three (3) bedroom or larger units; provided that the Zoning Administrator determines that the request for this reduction demonstrates that the Inclusionary Development satisfies the following criteria, based on the written recommendations of the Office of Planning that shall include consultation with the Department of Housing and Community Development and shall be submitted to the Zoning Administrator within forty-five (45) days of the filing of the request with the Zoning Administrator and Office of Planning:**

**(1) A market study demonstrates that demand exists for Inclusionary Units with three (3) or more bedrooms in the neighborhood within a half-mile radius of the IZ Plus Inclusionary Development;**

**(2) A floor plan demonstrates that three (3) bedroom or larger units represent a minimum of twenty percent (20%) of all units in the IZ Plus Inclusionary Development; and**

**(3) Access to active outdoor space suitable for children is located in the IZ Plus Inclusionary Development or in a park or publicly accessible area located within one thousand feet (1,000 feet ft.).**

~~1003.5~~ **1003.10** An Inclusionary Development that results from a conversion of a single dwelling unit or flat to a multiple dwelling unit development in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside every even numbered dwelling unit beginning at the fourth ($4^{th}$) unit as an inclusionary unit~~. 1003.6 An Inclusionary Development that results from a conversion of single dwelling unit or flat to a multiple dwelling unit in an RF zone for four (4) or more dwelling units approved by the Board of Zoning Adjustment shall set aside one hundred percent (100%) of inclusionary units~~

**reserved** for eligible households earning equal to or less than eighty percent (80%) of the MFI.

**Paragraph (c) of § 1006.2 of § 1006, OFF-SITE COMPLIANCE WITH INCLUSIONARY ZONING, of Chapter 10, INCLUSIONARY ZONING, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1006.2 Among the factors that may be considered by the Board of Zoning Adjustment in determining the existence of economic hardship are:

(a) Exceptionally high fees …

(b) The inclusion of expensive and specialized social or health services …

(c) Proof that continuation of the existing rental inclusionary development is no longer economically feasible, when the owner wishes to change the property's use to a non-residential use or to one (1) meeting the exemption requirements of Subtitle C §**§** 1001.5 **and 1001.6(b)-(c)**.

**Subsection 1505.1 of § 1505[7], AFFORDABLE HOUSING PRODUCTION REQUIREMENT GENERATED BY CONSTRUCTION ON A NON-RESIDENTIAL BUILDING OF PENTHOUSE HABITABLE SPACE, of Chapter 15, PENTHOUSES, of Subtitle C, GENERAL RULES, is proposed to be amended to read as follows:**

1505.1 The owner of a non-residential building proposing to construct penthouse habitable space shall produce or financially assist in the production of residential uses that are affordable to households earning equal to or less than the income limits established by Subtitle C § ~~**1003.7**~~ **1003.8**, in accordance with this section.

## III. Proposed Amendment to Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES

**Subsection 105.1[8] of § 105, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO RESIDENTIAL APARTMENT (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:**

105.1 The Inclusionary Zoning (IZ) requirements, and the available IZ modifications to certain development standards and bonus density, shall apply to all RA zones as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and the zone-specific development standards of this subtitle~~**, except for**~~**; provided that in** the RA-5 and RA-10 zones~~**, in which**~~ the IZ requirements, modifications, and bonus density shall not apply **except that IZ Plus Inclusionary Developments** ~~**that are located in the**~~

[7] Subtitle C § 1505 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[8] Subtitle F § 105.1 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27. Upon final action in that case, this proposed revision will be updated to reflect the new text.

~~RA-5 and RA-10 zones~~ **shall be subject to the IZ requirements of Subtitle C, Chapter 10**.

**Subsection 302.2[9] of § 302, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 3, RESIDENTIAL APARTMENT ZONES – RA-1, RA-2, RA-3, RA-4, AND RA-5, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:**

302.2 ~~The~~ **Except for IZ Plus Inclusionary Developments, the** Inclusionary Zoning **(IZ)** requirements, modifications, and bonus density of Subtitle C, Chapter 10**,** shall not apply to the RA-5 zone.

**Subsection 602.2[10] of § 602, DENSITY – FLOOR AREA RATIO (FAR), of Chapter 6, DUPONT CIRCLE RESIDENTIAL APARTMENT ZONES – RA-8, RA-9, AND RA-10, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be amended to read as follows:**

602.2 ~~The~~ **Except for IZ Plus Inclusionary Developments, the** Inclusionary Zoning **(IZ)** requirements, modifications, and bonus density of Subtitle C, Chapter 10**,** shall not apply to the RA-10 zone.

## IV. Proposed Amendment to Subtitle G, MIXED-USE (MU) ZONES

**Subsection 104.1[11] of § 104, INCLUSIONARY ZONING, of Chapter 1, INTRODUCTION TO MIXED-USE (MU) ZONES, of Subtitle G, MIXED-USE (MU) ZONES, is proposed to be amended to read as follows:**

104.1 The Inclusionary Zoning (IZ) requirements, and the available IZ modifications and bonus density, shall apply to all MU zones, except for the portion of the MU-13 zone in the Georgetown Historic District and the MU-27 zone, as specified in Subtitle C, Chapter 10, Inclusionary Zoning, and in the zone-specific development standards of this subtitle; provided that new penthouse habitable space, as described in Subtitle C § 1500.11,[12] **and IZ Plus Inclusionary Developments,** that ~~is~~ **are** located in the portion of the MU-13 zone in the Georgetown Historic District or in the MU-27 zone shall be subject to the IZ requirements **of Subtitle C, Chapter 10**.

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[9] Subtitle F § 302.2 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[10] Subtitle F § 602.2 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[11] Subtitle G § 104.1 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[12] Subtitle C § 1500.11 is proposed to be amended by the proposed text amendment in Z.C. Case No. 14-13E. Upon final action in that case, this proposed revision will be updated to reflect the new text.

**Subsection 504.3[13] of § 504, LOT OCCUPANCY, of Chapter 5, MIXED-USE ZONES – MU-11, MU-12, MU-13, AND MU-14, of Subtitle G, MIXED-USE (MU) ZONES, is proposed to be amended to read as follows:**

504.3 Except for new penthouse habitable space**,** as described in Subtitle C § 1500.11, **and IZ Plus Inclusionary Developments,** the Inclusionary Zoning **(IZ)** requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the portion of the MU-13 zone in the Georgetown Historic District.

**Subsection 804.3[14] of § 804, LOT OCCUPANCY, of Chapter 8, NAVAL OBSERVATORY MIXED-USE ZONE – MU-27, of Subtitle G, MIXED-USE (MU) ZONES, is proposed to be amended to read as follows:**

804.3 Except for new penthouse habitable space**,** as described in Subtitle C § 1500.11, **and IZ Plus Inclusionary Developments,** the Inclusionary Zoning **(IZ)** requirements, and modifications of Subtitle C, Chapter 10, shall not apply to the MU-27 zone.

## V. Proposed Amendment to Subtitle I, DOWNTOWN (D) ZONES

**Subsection 502.3 of § 502, DENSITY – FLOOR AREA RATIO (FAR) (D-1-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

502.3 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-1-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter ~~**9**~~ **10**.

**Subsection 516.2 of § 516, DENSITY – FLOOR AREA RATIO (FAR) (D-3), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTON (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

516.2 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density **in the D-3 zone** is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 531.4 of § 531, DENSITY – FLOOR ARE RATIO (FAR) (D-4-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

[13] Subtitle G § 504.3.1 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

[14] Subtitle G § 804.3.1 is proposed to be amended by the proposed text amendment in Z.C. Case No. 19-27A. Upon final action in that case, this proposed revision will be updated to reflect the new text.

531.4 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-4-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 539.2 of § 539, DENSITY – FLOOR AREA RATIO (FAR) (D-5), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

539.2 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-5 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 547.3 of § 547, DENSITY – FLOOR AREA RATIO (FAR) (D-5-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

547.3 Except for Square 487 **and IZ Plus Inclusionary Developments**, residential density in the D-5-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 555.2 of § 555, DENSITY – FLOOR AREA RATIO (FAR) (D-6), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

555.2 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-6 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 562.3 of § 562, DENSITY – FLOOR AREA RATIO (FAR) (D-6-R), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

562.3 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-6-R zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

**Subsection 569.2 of § 569, DENSITY – FLOOR AREA RATIO (FAR) (D-7), of Chapter 5, REGULATIONS SPECIFIC TO PARTICULAR DOWNTOWN (D) ZONES, of Subtitle I, DOWNTOWN ZONES, is proposed to be amended to read as follows:**

569.2 ~~**Residential**~~ **Except for IZ Plus Inclusionary Developments, residential** density in the D-5 zone is not subject to the Inclusionary Zoning requirements or bonuses of Subtitle C, Chapter 10.

## VI. Proposed Amendment to Subtitle K, SPECIAL PURPOSE ZONES

**Subsections 500.4 and 500.6 of § 500, GENERAL PROVISIONS (CG), of Chapter 5, CAPITOL GATEWAY ZONES – CG-1 THROUGH CG-7, of Subtitle K, SPECIAL PURPOSE ZONES, are proposed to be amended to read as follows:**

500.4 **The** Inclusionary Zoning **(IZ)** development standards for the CG zones are as established in this chapter and indicated by the abbreviation IZ, and all other Inclusionary Zoning requirements for the CG zones are as specified in Subtitle C, Chapter 10**, including IZ Plus Inclusionary Developments**.

…

500.6 ~~The~~ **Except for IZ Plus Inclusionary Developments, the** Inclusionary Zoning requirements, modifications, and bonus density of Subtitle C, Chapter 10, shall not apply to the CG-1 zone, provided that the IZ bonus density of Subtitle C § 1002.3 is available for Voluntary Inclusionary Developments in the CG-1 zone.

## VII. Proposed Amendment to Subtitle U, USE PERMISSIONS

**Paragraph (b) of § 320.2[15] of § 320, SPECIAL EXCEPTION USES (RF), of Chapter 3, USE PERMISSIONS RESIDENTIAL FLATS (RF) ZONES, of Subtitle U, USE PERMISSIONS, is amended to read as follows:**

320.2 The conversion of an existing residential building … and subject to the following conditions:

(a) The building to be converted or expanded …

(b) The fourth (4th) dwelling unit and every additional even number dwelling unit thereafter shall be subject to the requirements of Subtitle C, Chapter 10, Inclusionary Zoning, including the set aside requirement set forth at Subtitle C § ~~1003.6~~ **1003.10**; and

(c) There shall be a minimum …

## VIII. Proposed Amendment to Subtitle X, GENERAL PROCEDURES

**The title of § 500, MAP AMENDMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

**500 MAP ~~AMENDMENTS~~ AMENDMENT REVIEW STANDARDS**

[15] The text of Subtitle U § 320.2 shown here reflects the final text approved by the Commission in Z.C. Case No. 19-21, published in the Notice of Final Rulemaking in the November 13, 2020, *D.C. Register*.

**Subsection 500.1 of §500, MAP AMENDMENT REVIEW STANDARDS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

500.1 The Zoning Commission will evaluate and approve, disapprove, or modify a map amendment application or petition according to the standards of this ~~**section**~~ **chapter**.

**Section 501, APPLICATION OR PETITION REQUIREMENTS, of Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, is proposed to be amended to read as follows:**

501.1 An application~~/~~ **or** petition for a map amendment shall meet the requirements of Subtitle Z § 304.

**A new § 502, is proposed to be added to Chapter 5, MAP AMENDMENTS, of Subtitle X, GENERAL PROCEDURES, to read as follows:**

**502 APPLICABILITY OF INCLUSIONARY ZONING PLUS**

**502.1 Except as provided in Subtitle X § 502.2, the requirements of this section shall apply to:**

**(a) A map amendment that rezones a property:**

**(1) From a PDR zone to a R, RF, RA, MU, D, CG, NHR, or ARTS zone;**

**(2) From any zone with a prescribed residential FAR to a D zone without a prescribed residential FAR; or**

**(3) From unzoned to a R, RF, RA, MU, D, CG, or ARTS zone; or**

**(b) A map amendment not described in Subtitle X § 502.1(a), which rezones a property from any zone to a zone that allows a higher maximum residential FAR, both inclusive of the twenty percent (20%) IZ bonus density, if applicable.**

**502.2 The requirements of this section shall not apply to a map amendment that:**

**(a) Is related to a PUD application;**

**(b) Is to a HE, NHR, SEFC, StE, USN, or WR zone;**

**(c) The Zoning Commission determines is not appropriate for IZ Plus due to the mitigating circumstances identified by the Office of Planning in**

**its report recommending that the map amendment not be subject to IZ Plus; or**

**(d) Was filed as an application that was accepted by the Office of Zoning prior to November 16, 2020.**

**502.3 The Zoning Commission shall establish the percent FAR increase applicable to the set-aside categories of Subtitle and Table C §§ 1003.3 or 1003.4 in the order approving a map amendment subject to Subtitle § 502.1(a),**

**502.4 In its order approving a map amendment subject to Subtitle § 502.1(b), the Zoning Commission shall establish the increase in permitted residential FAR as follows:**

**(a) The percent change from the maximum permitted residential FAR of the existing zone (exclusive of the twenty percent (20%) IZ bonus density, if applicable) to the maximum permitted residential FAR of the new zone (inclusive of the twenty percent (20%) IZ bonus density, if applicable); and**

**(b) For computation purposes of this subsection, the R-1 and R-2 zones shall have a FAR equivalent to 0.4, the R-3 zones shall have a FAR equivalent to 0.6, and the RF-1 zones shall have a FAR equivalent to 0.9.**

**502.5 Property subject to a map amendment subject to the requirements of this section shall be indicated with a "IZ+" symbol on the Zoning Map.**

## IX. Proposed Amendment to Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE

**Subsection 400.5 of § 400, SETDOWN PROCEDURES: SCHEDULING CONTESTED CASE APPLICATIONS FOR HEARING, of Chapter 4, PRE-HEARING AND HEARING PROCEDURES: CONTESTED CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is proposed to be amended to read as follows:**

400.5 For all other types of applications, the Commission, at a public meeting, shall determine if the application should be scheduled (setdown) for a hearing. The Office of Planning shall review each such application and submit a report ~~**and recommend**~~ **that recommends** whether the application should be set down for a hearing**, with the report on a map amendment application to include whether the application is:**

**(a) Not inconsistent with the Comprehensive Plan;**

**(b) Consistent with the purpose of the map amendment process;**

**(c) Appropriate for IZ Plus per Subtitle X § 502 including mitigating circumstances, if any; and**

**(d) Generally ready for a public hearing to be scheduled.**

**Subsection 500.5 of § 500, SETDOWN PROCEDURES: SCHEDULING RULEMAKING CASE PETITIONS FOR HEARING, of Chapter 5, PRE-HEARING AND HEARING PROCEDURES: RULEMAKING CASES, of Subtitle Z, ZONING COMMISSION RULES OF PRACTICE AND PROCEDURE, is proposed to be amended to read as follows:**

500.5 For all petitions, the Commission, at a public meeting, shall determine if the petition should be scheduled (setdown) for a hearing. The Office of Planning shall review ~~**and recommend**~~ **the petition and submit a report that recommends** whether the petition should be set down for a hearing**, with the report on a map amendment petition to include whether the petition is:**

**(a) Not inconsistent with the Comprehensive Plan;**

**(b) Consistent with the purpose of the map amendment process;**

**(c) Appropriate for IZ Plus per Subtitle X § 502 including mitigating circumstances, if any; and**

**(d) Generally ready for a public hearing to be scheduled.**

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

**NOTICE OF SECOND EMERGENCY AND FIRST PROPOSED RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211 (2012 Repl. & 2019 Supp.)), and D.C. Official Code §§ 25-351, *et seq.* (2012 Repl.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of the following emergency and proposed rulemaking which would amend Section 311 (Langdon Park Moratorium Zone) of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). Specifically, the rulemaking:

1. Renews the moratorium for an additional three (3) years; and
2. Amends the moratorium to prohibit ABC-licensed establishments located within the moratorium zone from expanding their licensed premises onto adjoining properties or lots, except for purposes of increasing onsite parking.

**BACKGROUND**

On May 24, 2017, the Board adopted the Langdon Park Moratorium Zone by a vote of six (6) to zero (0), and it took effect on August 2, 2017. The moratorium (1) established a cap of three (3) on-premises retailer licenses, class CN and CX licenses; and (2) prohibited the issuance of any new entertainment endorsements for on-premises retailer licenses, class CR or CT in the Langdon Park Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from the intersection of Bladensburg Road, N.E. and 24th Place, N.E. The duration of the moratorium was three (3) years, and is scheduled to expire on July 27, 2020, unless it is renewed by the Board.

On May 28, 2020, Advisory Neighborhood Commission (ANC) 5C convened a meeting with a quorum present, and voted five (5) to zero (0) to renew the moratorium. The ANC informed the Board that the moratorium has served the community well and its continuation is necessary to address the adverse effects that ABC-licensed establishments are having on the community's residential parking needs. ANC 5C also expressed the need for the moratorium as a means of addressing ongoing public safety concerns such as vehicular and pedestrian safety. Lastly, they assert that the moratorium is necessary for maintaining the peace, order, and quiet of the community.

On June 17, 2020, ANC 5C submitted a resolution to the Board requesting that it not only renew the Langdon Park Moratorium Zone, but that the Board consider additional conditions to include the following:

1. Increase the duration of the moratorium from three (3) years to five (5) years;
2. Prohibit ABC licensees from expanding their premises into adjoining properties or lots except for purposes of increasing their onsite parking; and

3. Change the name of the moratorium zone from "Langdon Park Moratorium Zone" to "ANC 5C Moratorium".

In order to afford the Board time to fully consider ANC 5C's request, as well as to hear from other interested persons, the Board adopted the Langdon Park Moratorium Notice of Emergency Rulemaking (emergency rulemaking) on July 15, 2020, by a vote of seven (7) to zero (0). *See* 67 DCR 10402 (August 28, 2020). The Board adopted the emergency rulemaking for purposes of preventing the moratorium from expiring on July 27, 2020, as originally scheduled.

On September 30, 2020, the Board held a hearing concerning the Langdon Park Moratorium Zone. Notice of the hearing was published in the D.C. Register and the Board sent notice to those required to receive notice in accordance with Title 25 of the D.C. Official Code. Commissioner Jeremiah Montague, Jr., Vice-chairman of ANC 5C, testified on behalf of the ANC. Commissioner Montague reiterated the ANC's request that the Board (a) renew the moratorium for five (5) years; (b) prohibit licensees from expanding their premises to adjoining premises or lots except for purposes of increasing onsite parking; and (c) renaming the moratorium zone "ANC 5C Moratorium" because the Langdon Park Neighborhood Association is now defunct.

**BOARD'S DECISION**

The Board appreciates the time that ANC 5C has given to the renewal of the Langdon Park Moratorium Zone and for its testimony and appearance before the Board at the public hearing. The Board takes the decision to impose or renew a moratorium very seriously and makes every effort to strike a balance to ensure the peace, order, and quiet of the neighborhood, while not inadvertently impeding economic growth and commercial development in the area.

The Board recognizes that residents in the Langdon Park neighborhood have been frustrated by certain ABC licensees who contribute to the litter, loud noise, and loss of parking availability on residential streets. In order to address the community's concerns, the Board adopted the Langdon Park Moratorium Zone in 2017.

Since the adoption of the moratorium there have been some improvements but to some degree the lack of peace, order, and quiet are still a concern for the community. For instance, patrons parking in the residential neighborhood prevent residents and their guests from parking in front of or near their homes. Additionally, when these individuals leave the ABC-licensed establishments to return to their vehicles, oftentimes late at night, they cause disruption to the residents in their homes. For these reasons, the Board finds it necessary to continue the moratorium because doing so will immediately preserve and continue to aid in addressing the adverse impact on peace, order, and quiet the ABC-licensed establishments in the area are continuing to have on the community.

Although the Board agrees with the ANC's recommendation to renew the moratorium it does not support renewing the moratorium for an additional five (5) years. The Board believes continuing the moratorium for an additional three (3) years is sufficient to meet the community's needs. The community will have the protection of the moratorium for an extended period of time and

the Board will be afforded an opportunity to review the value of the moratorium in another three (3) years. Because the city and its neighborhoods are not stagnant, but rather growing and changing at a rapid pace, the Board believes that it is in the best interest to review the merits of the moratorium every three years. This will also allow the Board to act sooner if further modifications to the moratorium are warranted.

The Board agrees with the ANC's recommendation to amend the moratorium to specifically prohibit ABC-licensed establishments from expanding its licensed premises to adjacent properties and lots, except for purposes of increasing onsite parking. As previously mentioned, the Board is concerned about the ongoing noise and parking difficulties for the neighborhood due to the presence of ABC licensed establishments. Area homeowners deserve peace and quiet free from the late night activities brought about by the nearby commercial businesses. Thus, the Board finds adding this prohibition to the moratorium to be necessary to immediately preserve the peace, order, and quiet of the community.

Finally, the Board does not agree with renaming the moratorium. The Board acknowledges that the Langdon Park Neighborhood Association, the entity that initiated the creation of the moratorium, no longer exists. This, however, is not sufficient rationale to rename the moratorium, especially to rename it after the ANC commission district. Additionally, renaming the moratorium may cause one to erroneously believe that the moratorium covers the entire boundary of ANC 5C. The Board believes that the name "the Langdon Park Moratorium Zone" is appropriate and easily understood and therefore rejects the request to have the moratorium renamed.

Thus, for the reasons discussed above, the Board gives notice, that on October 21, 2020, it has approved the Langdon Park Moratorium Zone Notice of Emergency and Proposed Rulemaking, by a vote of seven (7) to zero (0). The emergency rulemaking (a) became effective on October 21, 2020; (b) supersedes the emergency rulemaking that the Board adopted on July 15, 2020; (c) renews the Langdon Park Moratorium for three (3) years; and (d) prohibits ABC-licensed establishments from expanding onto adjacent properties and lots, unless for purposes of increasing onsite parking. The emergency rules shall remain in effect for one hundred twenty (120) days, expiring on February 18, 2021, unless superseded by an emergency or final rulemaking.

Further, the Board gives notice of its intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*. In accordance with D.C. Official Code § 25-211(b), these proposed rules will be transmitted to the Council for the District of Columbia (Council) for a ninety (90)-day period of review. The Board will not adopt the rules as final prior to the expiration of the ninety (90)-day review period, unless approved by Council resolution, and the rules will not take effect until five (5) days after publication in the *D.C. Register.*

**Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:**

**311 LANGDON PARK MORATORIUM ZONE**

311.1 The number of retailer's licenses class CN and CX permitted in the Langdon Park Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from the intersection of Bladensburg Road, N.E. and 24th Place, N.E., Washington, D.C., shall not exceed three (3). No new entertainment endorsements for class CR and CT retailer's licenses shall be issued in the moratorium zone.

311.2 On-premises retailer's licenses, class CR, DR, CT, DT, CN, DN, CX, and DX, shall be prohibited from expanding their licensed premises to adjacent properties or lots, except for purposes of increasing onsite parking.

311.3 The Langdon Park Moratorium Zone is more specifically described as the area bounded by a line beginning at the 2200 block of 24th Place, N.E.; continuing in a northeast direction to the 2200 block of 25th Place, N.E.; continuing east to the 2400 block of Bladensburg Road N.E.; continuing in a southeast direction to the 2800 block of V Street N.E.; continuing southwest along the north side of the 2700 block of New York Avenue, N.E. to the 2000 block of Bladensburg Road, N.E.; continuing in a northwesterly direction to the 2200 block of Adams Place, N.E.; continuing north to the 2100 block of Queens Chapel Road, N.E.

311.4 All hotels, whether present or future, shall be exempt from the Langdon Park Moratorium Zone.

311.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CN or CX within the Langdon Park Moratorium Zone that was in effect or for which an application was pending prior to August 2, 2017, the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

311.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Langdon Park Moratorium Zone to a new location within the Langdon Park Moratorium Zone.

311.7 A license holder outside the Langdon Park Moratorium Zone shall not be permitted to transfer its license to a location within the Langdon Park Moratorium Zone.

311.8 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.

311.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to August 2, 2017, the effective date of this section, or to any application for licensure pending on the effective date of this section.

311.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in the *D.C. Register*.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2020-119
November 23, 2020

**SUBJECT:** Modified Requirements to Combat Escalation of COVID-19 Pandemic During Phase Two

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); in accordance with the Coronavirus Support Congressional Review Emergency Amendment Act of 2020, effective June 8, 2020, D.C. Act 23-328, the Public Health Emergency Authority Additional Extension Emergency Amendment Act of 2020, effective October 5, 2020, D.C. Act 23-411, and any substantially similar subsequent emergency or temporary legislation; section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002, D.C. Law 14-194, D.C. Official Code § 7-2304.01 (2018 Repl.); section 1 of An Act To Authorize the Commissioners of the District of Columbia to make regulations to prevent and control the spread of communicable and preventable diseases ("Communicable and Preventable Diseases Act"), approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.* (2012 Repl.); and in accordance with Mayor's Order 2020-045, dated March 11, 2020; Mayor's Order 2020-046, dated March 11, 2020; Mayor's Order 2020-050, dated March 20, 2020; Mayor's Order 2020-063, dated April 15, 2020; Mayor's Order 2020-066, May 13, 2020; Mayor's Order 2020-067, dated May 27, 2020; Mayor's Order 2020-079, dated July 22, 2020, and Mayor's Order 2020-103, dated October 7, 2020, it is hereby **ORDERED** that:

## I. BACKGROUND

1. This Order incorporates the findings of prior Mayor's Orders relating to COVID-19.

2. Community transmission of COVID-19 is escalating throughout the District and is exploding in many parts of the country. Reinforcement to encourage community responsibility and compliance with health and safety rules is necessary. Flu season, holiday gatherings, and greater indoor activity during winter are anticipated to cause even more cases of COVID-19 and increased stress on our hospital system's capacity. Immediate further action on the part of our residents, employers, and visitors, and further restrictions on activities that are conducive to the rapid spread of the disease are warranted.

3. The District's cumulative positive COVID-19 cases now total 20,290, and 672 District residents have lost their lives to COVID-19 to date.

4. Our daily case rate (a running seven-day average of new cases) is 23.9 cases per 100,000 residents and the rate of transmission stands at 1.12. Our hospital utilization stands at 82.9% of available beds. These indicators warrant decisive action to slow the spread of the virus that causes COVID-19.

5. Current epidemiological data shows that private gatherings are a strong contributor to transmission of the COVID-19 virus.

6. In addition, inspections have revealed that later at night, particularly when alcohol is served, persons are less compliant with rules regarding social distancing and staying seated at restaurants, contributing to a high rate of spread of the COVID-19 virus.

7. This Order modifies requirements regarding capacity restrictions for restaurants and houses of worship; various fitness activities; mass gatherings rules outdoors; and establishes rules for the size of private social gatherings during the COVID-19 public health emergency and in response to it.

## II. NON-ESSENTIAL, NON-RETAIL BUSINESSES

Section IV.1. of Mayor's Order 2020-103 is modified to strongly encourage continued telework.

## III. REQUIREMENTS FOR RESTAURANTS

1. Restaurants and other licensed food establishments may continue to operate for patrons until midnight, but alcohol sales, service and consumption (excluding carry-out and delivery) must end at 10:00 p.m.

2. The indoor occupancy of restaurants is hereby reduced from fifty percent (50%) to twenty-five percent (25%) as of 12:01 a.m. on Monday, December 14, 2020, so as to reduce the frequency of high-risk exposure.

## IV. LIVE ENTERTAINMENT PILOT

The live entertainment pilot is hereby paused. Some previously-approved performances will be grandfathered.

## V. MASS GATHERINGS

As further described in Mayor's Orders 2020-048 and 2020-075, a mass gathering is a planned event or gathering within a confined space.

1. Outdoors. The number of persons allowed to be together at an outdoor mass gathering, excepting worship services, is reduced from fifty (50) to twenty-five (25) persons, with

the exceptions listed in Mayor's Order 2020-075, and houses of worship are not subject to numeric caps on the numbers of persons at an outdoor service.

2. Indoors. If a gathering is conducted in a structure with more than two walls, and is not subject to other more specific rules, such as for restaurants and houses of worship, it is an indoor gathering and cannot exceed ten (10) persons.

3. Indoor services in Houses of Worship. Services inside houses of worship are excepted to the following extent: The maximum number of persons attending an indoor service at a house of worship at any one time is hereby reduced from one hundred (100) to fifty (50) persons, with the maximum fifty percent (50%) occupancy limit remaining in place. The lesser number of fifty (50) persons or fifty percent (50%) occupancy is allowable. Virtual services, rather than in-person services, continue to be encouraged.

## VI. SOCIAL GATHERINGS

Unless the number of persons in a household exceeds ten persons, indoor social gatherings shall not exceed ten (10) persons. This limitation applies to private homes, dormitories, hotels, apartments, condominiums and cooperatives, and party or common rooms of such permanent or temporary residences.

## VII. GYMS

1. Gyms, private trainers, and other businesses and recreation centers must suspend all indoor group exercise classes.

2. Gyms, private trainers, and other businesses and recreation centers must suspend all outdoor group exercise classes of twenty-five (25) or more persons.

## VIII. ENFORCEMENT

1. Any individual or entity that knowingly violates this Order may be subject to civil and administrative penalties authorized by law, including sanctions or penalties for violating D.C. Official Code § 7-2307, including civil fines or summary suspension or revocation of licenses.

2. The District of Columbia reserves the right to exercise provisions of the Communicable and Preventable Diseases Act, approved August 11, 1939, 53 Stat. 1408, D.C. Official Code §§ 7-131 *et seq.*, if warranted; and to issue regulations providing for civil and criminal penalties and injunctive relief for violations of this Order.

## IX. SUPERSESSION

This Order supersedes any Mayor's Order or guidance issued by a District agency issued during the COVID-19 public health emergency to the extent of any inconsistency.

## X. EFFECTIVE DATE AND DURATION

This Order shall be effective at 12:01 a.m. on Wednesday, November 25, 2020, and shall continue to be in effect through December 31, 2020, or until the date to which the COVID-19 public health emergency is extended, whichever is later.

**MURIEL BOWSER**
**MAYOR**

**ATTEST:** _____
**KIMBERLY A. BASSETT**
**SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA**

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

**NOTICE OF MEETING**
**CANCELLATION AGENDA**

**WEDNESDAY, DECEMBER 2, 2020 AT 10:30 AM**
**2000 14TH STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009**

The ABC Board will be cancelling the following licenses for the reasons outlined below:

ABRA-079241 – **Super Liquors** – Retail – A – Liquor Store – No Location
[Safekeeping][Licensee did not extend Safekeeping.]

---

ABRA-092168 – **RiRa Irish Pub** – Retail – C – Restaurant – 3123M Street NW
[Safekeeping][ Licensee did not extend Safekeeping.]

---

ABRA-106088 – **Seasons & Sessions** – Retail – C – Restaurant – 2427 18th Street NW
[Safekeeping][ Licensee did not extend Safekeeping.]

---

ABRA-108135 – **SLK 6, LLC** – Retail – A – Liquor Store – No Location
[Safekeeping][ Licensee did not pay Safekeeping fee within 30 days.]

---

ABRA-088441 – **St. Arnold's Mussel Bar** – Retail – C – Restaurant – 3433 Connecticut Avenue NW
[Safekeeping][ Licensee did not pay Safekeeping fee within 30 days.]

---

ABRA-117256 – **Formerly B Too** – Retail – C – Restaurant – 1324 14th Street NW
[Safekeeping][ Licensee did not pay Safekeeping fee within 30 days.]

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## OFFICE OF THE DISTRICT OF COLUMBIA CLEMENCY BOARD

## NOTICE OF PUBLIC MEETING

The Clemency Board will be holding its meeting on Friday, December 4, 2020 at 10:30 a.m. The meeting will be held via WebEx at the link (and numbers) below. Below is the agenda for this meeting.

### AGENDA

1. Welcome and Call to Order

2. Old Business

    a. None

3. New Business
    a. Update on progress of rulemaking

4. Public Comment

5. Adjournment

**Meeting Link:**

https://dcnet.webex.com/dcnet/onstage/g.php?MTID=e680ac25f1409e2bca46e397856a22d92

**Registration**: Please click the link above to pre-register for the meeting.

**Registration password:** This meeting does not require a password for registration.

For additional information, please contact **Lisa M. Wray, Executive Assistant** at (202) 724-7681 or lisa.wray@dc.gov.

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**CITYWIDE REGISTRATION SUMMARY**

**As Of October 31, 2020**

| WARD | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **1** | 49,487 | 2,860 | 601 | 282 | 182 | 11,558 | **64,970** |
| **2** | 33,453 | 5,117 | 229 | 268 | 122 | 10,940 | **50,129** |
| **3** | 40,888 | 5,568 | 335 | 277 | 123 | 11,297 | **58,488** |
| **4** | 51,192 | 2,187 | 522 | 193 | 150 | 9.084 | **63,328** |
| **5** | 55,878 | 2,591 | 624 | 279 | 250 | 10,176 | **69,798** |
| **6** | 61,642 | 8,017 | 531 | 433 | 236 | 15,465 | **86,324** |
| **7** | 50,164 | 1,564 | 558 | 167 | 194 | 7,656 | **60,303** |
| **8** | 48,677 | 1,696 | 546 | 180 | 182 | 8,311 | **59,592** |
| **Totals** | 391,381 | 29,600 | 3,946 | 2,079 | 1,439 | 84,487 | **512,932** |
| **Percentage By Party** | **76.30%** | **5.77%** | **.77%** | **.41%** | **.28%** | **16.47%** | **100.00%** |

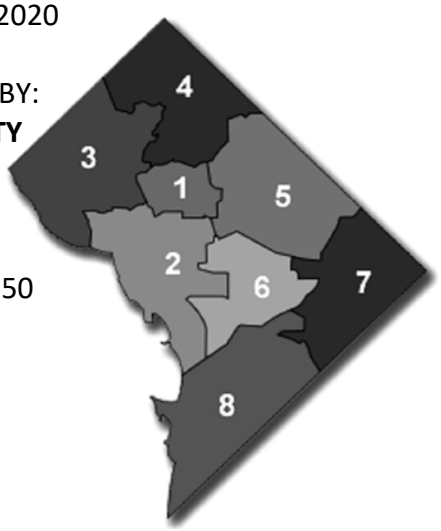
DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF

**VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS**

AS OF THE END OF October 31, 2020

COVERING CITY WIDE TOTALS BY:

**WARD, PRECINCT AND PARTY**




ONE JUDICIARY SQUARE
1015 HALF STREET, SE SUITE 750
WASHINGTON, DC 20003
(202) 727-2525
http://www.dcboe.org

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**WARD 1 REGISTRATION SUMMARY**

**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **20** | 1,730 | 42 | 14 | 10 | 9 | 299 | **2,104** |
| **22** | 4,239 | 416 | 22 | 24 | 12 | 1,059 | **5,772** |
| **23** | 3,194 | 198 | 45 | 25 | 10 | 787 | **4,259** |
| **24** | 2,935 | 242 | 28 | 37 | 5 | 793 | **4,040** |
| **25** | 4,293 | 395 | 41 | 16 | 11 | 1,078 | **5,834** |
| **35** | 3,984 | 180 | 56 | 21 | 18 | 849 | **5,108** |
| **36** | 4,716 | 256 | 58 | 25 | 17 | 1,001 | **6,073** |
| **37** | 3,996 | 183 | 35 | 21 | 25 | 868 | **5,128** |
| **38** | 3,199 | 142 | 47 | 15 | 12 | 797 | **4,212** |
| **39** | 4,230 | 178 | 55 | 23 | 14 | 983 | **5,483** |
| **40** | 3,908 | 184 | 67 | 13 | 8 | 912 | **5,092** |
| **41** | 3,955 | 191 | 75 | 24 | 22 | 1,064 | **5,331** |
| **42** | 1,980 | 91 | 28 | 11 | 5 | 473 | **2,588** |
| **43** | 1,936 | 72 | 22 | 6 | 7 | 362 | **2,405** |
| **137** | 1,192 | 90 | 8 | 11 | 7 | 233 | **1,541** |
| **TOTALS** | **49,487** | **2,860** | **601** | **282** | **182** | **11,558** | **64,970** |

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**WARD 2 REGISTRATION SUMMARY**

**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **2** | 975 | 166 | 6 | 8 | 7 | 509 | **1,671** |
| **3** | 1,891 | 347 | 13 | 17 | 9 | 724 | **3,001** |
| **4** | 2,296 | 469 | 11 | 26 | 6 | 844 | **3,652** |
| **5** | 2,231 | 541 | 19 | 28 | 12 | 828 | **3,659** |
| **6** | 2,650 | 706 | 22 | 23 | 18 | 1,247 | **4,666** |
| **13** | 1,358 | 202 | 8 | 5 | 4 | 445 | **2,022** |
| **14** | 3,046 | 376 | 17 | 29 | 6 | 833 | **4,307** |
| **15** | 3,290 | 322 | 25 | 20 | 9 | 864 | **4,530** |
| **16** | 3,596 | 414 | 27 | 20 | 8 | 929 | **4,994** |
| **17** | 4,973 | 537 | 35 | 45 | 18 | 1,453 | **7,061** |
| **129** | 2,717 | 402 | 13 | 16 | 14 | 997 | **4,159** |
| **141** | 2,647 | 284 | 19 | 13 | 5 | 642 | **3,610** |
| **143** | 1,783 | 351 | 14 | 18 | 6 | 625 | **2,797** |
| **TOTALS** | **33,453** | **5,117** | **229** | **268** | **122** | **10,940** | **50,129** |

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**WARD 3 REGISTRATION SUMMARY**

**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **7** | 1,411 | 369 | 10 | 18 | 3 | 562 | **2,373** |
| **8** | 2,583 | 568 | 18 | 12 | 10 | 827 | **4.018** |
| **9** | 1,330 | 457 | 9 | 10 | 6 | 489 | **2,301** |
| **10** | 1,994 | 360 | 21 | 12 | 7 | 700 | **3,094** |
| **11** | 3,713 | 656 | 48 | 46 | 14 | 1,245 | **5,722** |
| **12** | 582 | 166 | 0 | 4 | 3 | 226 | **981** |
| **26** | 3,222 | 325 | 20 | 22 | 9 | 885 | **4,483** |
| **27** | 2,514 | 223 | 23 | 10 | 3 | 555 | **3,328** |
| **28** | 2,614 | 390 | 29 | 20 | 8 | 793 | **3,854** |
| **29** | 1,447 | 154 | 18 | 8 | 4 | 403 | **2,034** |
| **30** | 1,324 | 180 | 14 | 7 | 2 | 310 | **1,837** |
| **31** | 2,504 | 293 | 14 | 11 | 11 | 563 | **3,396** |
| **32** | 2,882 | 273 | 28 | 12 | 12 | 629 | **3,836** |
| **33** | 3,028 | 244 | 25 | 12 | 6 | 702 | **4,017** |
| **34** | 4,232 | 344 | 24 | 25 | 9 | 1,102 | **5,736** |
| **50** | 2,318 | 285 | 12 | 20 | 7 | 554 | **3,196** |
| **136** | 909 | 63 | 10 | 7 | 1 | 259 | **1,249** |
| **138** | 2,281 | 218 | 12 | 21 | 8 | 493 | **3,033** |
| **TOTALS** | **40,888** | **5,568** | **335** | **277** | **123** | **11,297** | **58,488** |

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**WARD 4 REGISTRATION SUMMARY**

**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **45** | 2,410 | 65 | 28 | 15 | 7 | 380 | **2,905** |
| **46** | 3,221 | 98 | 36 | 14 | 11 | 554 | **3,934** |
| **47** | 3,610 | 145 | 35 | 13 | 13 | 707 | **4,523** |
| **48** | 2,909 | 125 | 29 | 9 | 3 | 543 | **3,618** |
| **49** | 1,002 | 45 | 9 | 2 | 8 | 206 | **1,272** |
| **51** | 3,441 | 477 | 20 | 15 | 10 | 655 | **4,618** |
| **52** | 1,378 | 133 | 9 | 5 | 2 | 248 | **1,775** |
| **53** | 1,298 | 66 | 25 | 5 | 4 | 248 | **1,646** |
| **54** | 2,325 | 77 | 29 | 5 | 5 | 418 | **2,859** |
| **55** | 2,528 | 89 | 20 | 8 | 12 | 418 | **3,075** |
| **56** | 3,418 | 104 | 36 | 19 | 12 | 649 | **4,238** |
| **57** | 2,367 | 68 | 27 | 14 | 10 | 484 | **2,970** |
| **58** | 2,294 | 68 | 20 | 7 | 6 | 364 | **2,759** |
| **59** | 2,637 | 75 | 25 | 10 | 5 | 403 | **3,155** |
| **60** | 2,331 | 73 | 29 | 10 | 9 | 609 | **3,061** |
| **61** | 1,635 | 62 | 14 | 8 | 5 | 297 | **2,021** |
| **62** | 3,226 | 121 | 22 | 8 | 1 | 425 | **3,803** |
| **63** | 3,928 | 140 | 57 | 9 | 15 | 696 | **4,845** |
| **64** | 2,400 | 72 | 20 | 9 | 10 | 382 | **2,893** |
| **65** | 2,834 | 84 | 32 | 8 | 2 | 398 | **3,358** |
| **Totals** | **51,192** | **2,187** | **522** | **193** | **150** | **9,084** | **63,328** |

**D.C. BOARD OF ELECTIONS**
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**
**WARD 5 REGISTRATION SUMMARY**
**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **19** | 4,881 | 226 | 70 | 35 | 22 | 1,031 | **6,265** |
| **44** | 2,927 | 206 | 36 | 20 | 14 | 659 | **3,862** |
| **66** | 4,812 | 127 | 36 | 20 | 18 | 717 | **5,730** |
| **67** | 2,860 | 109 | 22 | 9 | 10 | 420 | **3,430** |
| **68** | 2,018 | 169 | 22 | 11 | 13 | 397 | **2,630** |
| **69** | 2,163 | 82 | 17 | 9 | 7 | 293 | **2,571** |
| **70** | 1,512 | 62 | 27 | 4 | 7 | 259 | **1,871** |
| **71** | 2,524 | 78 | 31 | 13 | 12 | 397 | **3,055** |
| **72** | 4,503 | 170 | 40 | 18 | 23 | 756 | **5,510** |
| **73** | 1,960 | 104 | 19 | 10 | 7 | 368 | **2,468** |
| **74** | 5,150 | 287 | 68 | 25 | 25 | 1,060 | **6,615** |
| **75** | 4,270 | 234 | 43 | 29 | 17 | 852 | **5,445** |
| **76** | 1,954 | 145 | 19 | 18 | 17 | 437 | **2,590** |
| **77** | 3,078 | 128 | 34 | 14 | 12 | 553 | **3,819** |
| **78** | 3,120 | 109 | 45 | 12 | 11 | 544 | **3,841** |
| **79** | 2,185 | 96 | 26 | 9 | 13 | 452 | **2,781** |
| **135** | 3,139 | 169 | 38 | 17 | 13 | 612 | **3,988** |
| **139** | 2,822 | 90 | 31 | 6 | 9 | 369 | **3,327** |
| **TOTALS** | **55,878** | **2,591** | **624** | **279** | **250** | **10,176** | **69,798** |

**D.C. BOARD OF ELECTIONS**
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**
**WARD 6 REGISTRATION SUMMARY**
**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **1** | 5,065 | 579 | 39 | 32 | 23 | 1,488 | **7,226** |
| **18** | 5,094 | 376 | 48 | 24 | 14 | 1,129 | **6,685** |
| **21** | 1,174 | 62 | 12 | 9 | 3 | 252 | **1,512** |
| **81** | 4,742 | 359 | 54 | 23 | 20 | 980 | **6,178** |
| **82** | 2,721 | 261 | 23 | 16 | 4 | 623 | **3,648** |
| **83** | 3,733 | 411 | 29 | 30 | 19 | 900 | **5,122** |
| **84** | 2,037 | 375 | 18 | 13 | 9 | 544 | **2,996** |
| **85** | 2,808 | 520 | 18 | 16 | 8 | 722 | **4,092** |
| **86** | 2,273 | 242 | 17 | 13 | 9 | 429 | **2,983** |
| **87** | 2,677 | 281 | 16 | 17 | 10 | 621 | **3,622** |
| **88** | 2,138 | 285 | 21 | 10 | 8 | 472 | **2,934** |
| **89** | 2,816 | 593 | 21 | 21 | 9 | 786 | **4,246** |
| **90** | 1,628 | 242 | 18 | 12 | 13 | 510 | **2,423** |
| **91** | 4,461 | 435 | 35 | 22 | 18 | 971 | **5,942** |
| **127** | 4,296 | 334 | 52 | 27 | 21 | 939 | **5,669** |
| **128** | 2,624 | 227 | 25 | 18 | 6 | 646 | **3,546** |
| **130** | 770 | 292 | 7 | 5 | 3 | 276 | **1,353** |
| **131** | 4,706 | 1,364 | 38 | 55 | 19 | 1,554 | **7,736** |
| **142** | 2,406 | 329 | 21 | 27 | 6 | 689 | **3,478** |
| **144** | 3,473 | 450 | 19 | 43 | 14 | 934 | **4,933** |
| **TOTALS** | **61,642** | **8,017** | **531** | **433** | **236** | **15,465** | **86,324** |

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**WARD 7 REGISTRATION SUMMARY**

**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **80** | 1,671 | 118 | 39 | 12 | 8 | 329 | **2,177** |
| **92** | 1,536 | 37 | 15 | 3 | 5 | 229 | **1,825** |
| **93** | 1,699 | 50 | 25 | 3 | 7 | 267 | **2,051** |
| **94** | 2,046 | 65 | 21 | 7 | 7 | 326 | **2,472** |
| **95** | 1,677 | 61 | 18 | 8 | 6 | 269 | **2,039** |
| **96** | 2,449 | 77 | 27 | 8 | 11 | 375 | **2,947** |
| **97** | 1,421 | 62 | 23 | 7 | 4 | 238 | **1,755** |
| **98** | 2,078 | 57 | 25 | 8 | 12 | 305 | **2,485** |
| **99** | 1,712 | 60 | 22 | 8 | 11 | 322 | **2,135** |
| **100** | 2,668 | 50 | 29 | 7 | 5 | 375 | **3,134** |
| **101** | 1,569 | 58 | 18 | 4 | 6 | 207 | **1,862** |
| **102** | 2,641 | 84 | 32 | 5 | 16 | 357 | **3,135** |
| **103** | 3,529 | 96 | 42 | 14 | 12 | 548 | **4,241** |
| **104** | 3,404 | 101 | 42 | 12 | 15 | 544 | **4,118** |
| **105** | 2,566 | 83 | 23 | 7 | 10 | 444 | **3,133** |
| **106** | 2,877 | 76 | 26 | 6 | 13 | 431 | **3,429** |
| **107** | 1,777 | 74 | 16 | 5 | 8 | 272 | **2,152** |
| **108** | 1,075 | 32 | 3 | 0 | 3 | 131 | **1,244** |
| **109** | 935 | 29 | 4 | 4 | 1 | 121 | **1,094** |
| **110** | 3,849 | 105 | 27 | 8 | 10 | 462 | **4,461** |
| **111** | 2,613 | 70 | 34 | 17 | 8 | 442 | **3,184** |
| **113** | 2,265 | 61 | 24 | 9 | 9 | 309 | **2,677** |
| **132** | 2,107 | 58 | 23 | 5 | 7 | 353 | **2,553** |
| **TOTALS** | **50,164** | **1,564** | **558** | **167** | **194** | **7,656** | **60,303** |

**D.C. BOARD OF ELECTIONS**
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**
**WARD 8 REGISTRATION SUMMARY**
**As Of October 31, 2020**

| PRECINCT | DEM | REP | STG | LIB | OTH | N-P | TOTALS |
|---|---|---|---|---|---|---|---|
| **112** | 2,280 | 67 | 19 | 1 | 7 | 329 | **2,703** |
| **114** | 4,100 | 173 | 57 | 24 | 25 | 868 | **5,247** |
| **115** | 2,799 | 94 | 32 | 9 | 13 | 612 | **3,559** |
| **116** | 4,170 | 118 | 50 | 11 | 14 | 682 | **5,045** |
| **117** | 2,338 | 64 | 25 | 14 | 7 | 405 | **2,853** |
| **118** | 2,977 | 99 | 47 | 9 | 14 | 464 | **3,610** |
| **119** | 2,718 | 110 | 34 | 10 | 16 | 475 | **3,363** |
| **120** | 2,314 | 52 | 15 | 9 | 3 | 333 | **2,726** |
| **121** | 3,579 | 115 | 32 | 15 | 4 | 548 | **4,293** |
| **122** | 1,836 | 63 | 23 | 4 | 8 | 303 | **2,237** |
| **123** | 2,562 | 217 | 30 | 22 | 11 | 530 | **3,372** |
| **124** | 2,670 | 69 | 26 | 8 | 8 | 373 | **3,154** |
| **125** | 4,642 | 122 | 44 | 14 | 18 | 778 | **5,618** |
| **126** | 4,132 | 149 | 61 | 19 | 16 | 820 | **5,197** |
| **133** | 1,342 | 55 | 9 | 3 | 0 | 180 | **1,589** |
| **134** | 2,304 | 63 | 29 | 3 | 6 | 316 | **2,721** |
| **140** | 1,914 | 66 | 13 | 5 | 12 | 295 | **2,305** |
| **TOTALS** | **48,677** | **1,696** | **546** | **180** | **182** | **8,311** | **59,592** |

**D.C. BOARD OF ELECTIONS**

**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**

**CITYWIDE REGISTRATION ACTIVITY**

***For voter registration activity between 9/30/2020 and 10/31/2020***

| NEW REGISTRATIONS | DEM | REP | STG | LIB | OTH | N-P | TOTAL |
|---|---|---|---|---|---|---|---|
| **Beginning Totals** | **386,917** | **28,677** | **3,630** | **1,950** | **1,384** | **81,485** | **504,043** |
| Board of Elections Over the Counter | 421 | 22 | 2 | 3 | 2 | 82 | **532** |
| Board of Elections by Mail | 1,526 | 172 | 19 | 20 | 10 | 494 | **2,241** |
| Board of Elections Online Registration | 5,865 | 640 | 66 | 78 | 19 | 1,729 | **8,397** |
| Department of Motor Vehicle | 687 | 89 | 14 | 8 | 1 | 300 | **1,099** |
| Department of Disability Services | 6 | 4 | 0 | 0 | 0 | 7 | **17** |
| Office of Aging | 1 | 0 | 0 | 0 | 0 | 0 | **1** |
| Federal Postcard Application | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Department of Parks and Recreation | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Nursing Home Program | 78 | 6 | 0 | 0 | 1 | 11 | **96** |
| Dept. of Youth Rehabilitative Services | 12 | 0 | 0 | 0 | 0 | 2 | **14** |
| Department of Corrections | 68 | 7 | 15 | 4 | 0 | 15 | **109** |
| Department of Human Services | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Special / Provisional | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| All Other Sources | 759 | 83 | 42 | 7 | 3 | 230 | **1,124** |
| **+Total New Registrations** | **9,424** | **1,023** | **158** | **120** | **36** | **2,870** | **13,631** |

| ACTIVATIONS | DEM | REP | STG | LIB | OTH | N-P | TOTAL |
|---|---|---|---|---|---|---|---|
| Reinstated from Inactive Status | 1,237 | 75 | 22 | 2 | 1 | 256 | **1,593** |
| Administrative Corrections | 142 | 9 | 90 | 0 | 54 | 436 | **731** |
| **+TOTAL ACTIVATIONS** | **1,379** | **84** | **112** | **2** | **55** | **692** | **2,324** |

| DEACTIVATIONS | DEM | REP | STG | LIB | OTH | N-P | TOTAL |
|---|---|---|---|---|---|---|---|
| Changed to Inactive Status | 7 | 2 | 0 | 0 | 0 | 0 | **9** |
| Moved Out of District (Deleted) | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Felon (Deleted) | 0 | 0 | 0 | 0 | 0 | 0 | **0** |
| Deceased (Deleted) | 307 | 16 | 5 | 1 | 1 | 41 | **371** |
| Administrative Corrections | 6,705 | 70 | 9 | 11 | 2 | 103 | **6,900** |
| **-TOTAL DEACTIVATIONS** | **7,019** | **88** | **14** | **12** | **3** | **144** | **7,280** |

| AFFILIATION CHANGES | DEM | REP | STG | LIB | OTH | N-P | |
|---|---|---|---|---|---|---|---|
| + Changed To Party | 1,538 | 289 | 140 | 87 | 25 | 889 | |
| - Changed From Party | -858 | -385 | -80 | -68 | -58 | -1,305 | |
| **ENDING TOTALS** | **391,381** | **29,600** | **3,946** | **2,079** | **1,439** | **84,487** | **512,932** |

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**DISTRICT OF COLUMBIA COMMISSION ON CLIMATE CHANGE AND RESILIENCY**

**NOTICE OF PUBLIC MEETING**

The Commission meeting will be held on Thursday December 10, 2020 from 3:00 p.m. to 5:30 p.m. The meeting will be held virtually at:

https://georgetown.zoom.us/s/98556618559

The final agenda will be posted on the Commission website at https://doee.dc.gov/publication/commission-climate-change-and-resiliency.

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

**Draft Meeting Agenda**

1. Call to Order
2. Approval of Minutes
3. Chairman's Remarks
4. Presentation: DC Water – 2020 Flood Events
    - Maureen Holman
5. DOEE Agency Update
    - Kate Johnson
    - Melissa Deas
6. Public Comment Period (15 minutes)
7. Review of Schedule
8. Adjournment

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**NOTICE OF FILING OF AN APPLICATION**
**TO PERFORM VOLUNTARY CLEANUP**

**313-317 Kennedy Street NW**
**Case No. VCP2020-070**

Pursuant to § 601 of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312, as amended April 8, 2011, D.C. Law 18-369; D.C. Official Code § 8-636.01), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The applicant for the property located at 313-317 Kennedy Street NW, Washington, DC 20011, Square 3295 and lot 806 is 1101 Connecticut Ave NW #450, Washington, DC 20036. The application identifies the presence of Total Petroleum Hydrocarbon (TPH) and chlorinated solvent contamination, in soil and groundwater. The Subject Property will be redeveloped for residential building.

Pursuant to D.C. Official Code § 636.01(b), this notice will also be mailed to the Advisory Neighborhood Commission (ANC-4D02) for the area in which the property is located. The application is available for public review at the following location:

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

Interested parties may also request a copy of the application and supporting documents by contacting the Voluntary Cleanup Program at the above address or by calling (202) 535-1771. An electronic copy of the application may be obtained by contacting Kokeb Tarekegn, Environmental Engineer at Kokeb.Tarekegn@dc.gov.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within fourteen (14) business days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2020-070 in any correspondence related to this application.

**DEPARTMENT OF ENERGY AND ENVIRONMENT**

**NOTICE OF FILING OF A**
**VOLUNTARY CLEANUP ACTION PLAN**

**925 5th Street, NW**
**Case No. VCP2019-064**

Pursuant to § 601 of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312, as amended April 8, 2011, D.C. Law 18-369; D.C. Official Code §§ 8-636.01), the Voluntary Cleanup Program in the Department of Energy and Environment (DOEE), Land Remediation and Development Branch, is informing the public that it has received a Voluntary Cleanup Action Plan (VCAP) requesting to perform a remediation action. The applicant for the property located at 925 5th Street, NW, Washington, DC 20002 is 923/927 Hotel LLC, 11716 Woodthrush Lane, Potomac, 20854

The application identifies the presence of petroleum compound, VOCs and chlorinated solvent in soil and groundwater.. The proposed redevelopment involves mass excavation for the purpose of constructing multi-tenant residential building on the Site.

Pursuant to § 636.01(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (6E05) for the area in which the property is located. The VCAP is available for public review at the following location:

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

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

Written comments on the Voluntary Cleanup Action Plan must be received by the VCP at the address listed above within fourteen (14) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2019-068 in any correspondence related to this application.

**FRIENDSHIP PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

Friendship Public Charter School is seeking bids from prospective vendors to provide:

- **Legal Services and Support** for the refinancing of series bonds and other related matters.

The competitive Request for Proposal can be found on FPCS website at http://www.friendshipschools.org/procurement. Proposals are due no later than 4:00 P.M., EST, Tuesday, December 8, 2020. No proposals will be accepted after the deadline. All proposal not addressing areas as outlined in the RFP will not be considered. Questions can be addressed to ProcurementInquiry@friendshipschools.org.

**DEPARTMENT OF HEALTH CARE FINANCE**

**PUBLIC NOTICE**

**MEDICAID FEE SCHEDULE FOR HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUAL AND FAMILY SUPPORT (IFS)**

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR § 988.4, announces publication of the Medicaid Fee Schedule setting forth the reimbursement rates, effective January 1, 2021, for services available to participants under the Home and Community Based Services Waiver for IFS.

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), operates the IFS Waiver under the supervision of DHCF. The IFS Waiver was approved by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 1, 2020.

DHCF is providing this notice of the reimbursement rates for IFS Waiver services rendered on or after January 1, 2021. The services are set forth in the IFS Waiver application, are fully described in a new 29 DCMR Chapter 90 (Home and Community-Based Services Waiver for Individual and Family Support), and will be listed in the new 29 DCMR § 9001, upon publication of the new regulations in the *D.C. Register*. The new rates align with ID/DD waiver service rates and follow the same rate methodology, except for Education Support Services, which is a unique service added to this waiver. Education Support Services will be reimbursed at $1250/class and not-to-exceed $35,000 toward tuition for classes in the participant's lifetime. The rates include the 2021 D.C. Living Wage, where required, are expressly subject to the service and other limitations described in the IFS Waiver and applicable rules.

DHCF is publishing reimbursement rates for sixteen (16) IFS Waiver services as follows: (1) Assistive Technology Services (new 29 DCMR § 9015; *cf.* 29 DCMR § 1941); (2) Behavioral Support Services (new 29 DCMR § 9016; *cf.* 29 DCMR § 1919); (3) Companion Services (new 29 DCMR § 9017; *cf.* 29 DCMR § 1939); (4) Creative Arts Therapies Services (new 29 DCMR § 9018; *cf.* 29 DCMR § 1918); (5) Day Habilitation Services (new 29 DCMR § 9019; *cf.* 29 DCMR § 1920); (6) Employment Readiness Services (new 29 DCMR § 9022, *cf.* 29 DCMR §1922); (7) Family Training Services (new 29 DCMR § 9023; *cf.* 29 DCMR § 1924); (8) Individualized Day Supports Services (new 29 DCMR § 9024; *cf.* 29 DCMR § 1925); (9) In-Home Supports Services (new 29 DCMR § 9025; *cf.* 29 DCMR § 1916); (10) Occupational Therapy Services (new 29 DCMR § 9026; *cf.* 29 DCMR § 1926); (11) Parenting Supports Services (new 29 DCMR § 9027; *cf.* 29 DCMR § 1942); (12) Physical Therapy Services (new 29 DCMR § 9029; *cf.* 29 DCMR § 1928); (13) Respite Services (new 29 DCMR § 9030; *cf.* 29 DCMR § 1930); (14) Speech, Hearing and Language Services (new 29 DCMR § 9032; *cf.* 29 DCMR § 1932); (15) Supported Employment Services – Individual and Small Group Services (new 29 DCMR § 9033; *cf.* 29 DCMR § 1933); and (16) Wellness Services (new 29 DCMR § 9034; *cf.* 29 DCMR § 1936).

For Personal Care Services (new 29 DCMR § 9028; *cf.* 29 DCMR § 1910) and Skilled Nursing Services (new 29 DCMR § 9031; *cf.* 29 DCMR § 1931), DHCF will reimburse providers at the rates set forth in the Medicaid Fee Schedule for the Medicaid State Plan.

These reimbursement rates for each service will be included on the Medicaid Fee Schedule for the ID/DD Waiver/IFS Waiver and will become effective January 1, 2021. The Medicaid Fee Schedule for the ID/DD Waiver/IFS Waiver is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload. For further information or questions regarding this fee schedule update, please contact Samuel Woldeghiorgis, Reimbursement Analyst, DHCF, at samuel.woldeghiorgis@dc.gov or via telephone at (202) 442 9240.

**DEPARTMENT OF HEALTH CARE FINANCE**

**PUBLIC NOTICE**

**MEDICAID FEE SCHEDULE FOR**
**HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUALS**
**WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES**

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR §§ 988.4 and 1901.2, announces publication of the Medicaid Fee Schedule setting forth the reimbursement rates, effective January 1, 2021, for services available to participants under the Medicaid Home and Community-Based Services Waiver for Individuals with Intellectual and Developmental Disabilities (ID/DD Waiver).

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), operates the ID/DD Waiver under the supervision of DHCF. The ID/DD Waiver was renewed by the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), for a five-year period beginning November 20, 2017, and recently amended to be effective November 1, 2020.

As required under 29 DCMR § 1901.2, DHCF is identifying through this Public Notice the changes in the reimbursement rates for services rendered on or after January 1, 2021, for certain ID/DD Waiver services listed in 29 DCMR § 1901.1. The new rates align with ID/DD Renewal Waiver Year 4 rate methodology, include the 2021 D.C. Living Wage where required, and are expressly subject to the service and other limitations described in the ID/DD Waiver and applicable rules.

DHCF is increasing the reimbursement rates for Nineteen (19) ID/DD Waiver services as follows: 1) Assistive Technology Services, 29 DCMR § 1941; (2) Behavioral Support Services, 29 DCMR § 1919; (3) Companion Services, 29 DCMR § 1939; (4) Creative Arts Therapies Services, 29 DCMR § 1918; (5) Day Habilitation Services, 29 DCMR § 1920; (6) Employment Readiness Services, 29 DCMR § 1922; (7) Family Training Services, 29 DCMR § 1924; (8) Host Home without Transportation Services, 29 DCMR § 1915; (9) Individualized Day Supports Services, 29 DCMR § 1925; (10) In-Home Supports Services, 29 DCMR § 1916; (11) Occupational Therapy Services, 29 DCMR § 1926; (12) Physical Therapy Services, 29 DCMR § 1928; (13) Residential Habilitation Services, 29 DCMR § 1929; (14) Respite Services, 29 DCMR § 1930; (15) Speech, Hearing and Language Services, 29 DCMR § 1932; (16) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 1933; (17) Supported Living Services, 29 DCMR § 1934; (18) Parenting Support Services 29 DCMR § 1942; and (19) Wellness Services, 29 DCMR § 1936.

For Personal Care Services, 29 DCMR § 1910, and Skilled Nursing Services, 29 DCMR § 1931, DHCF will reimburse providers at the rate set forth in the Medicaid Fee Schedule for the Medicaid State Plan. For Dental Services, 29 DCMR § 1921, DHCF will continue to reimburse providers at the rate set forth in the Medicaid Fee Schedule for the Medicaid State Plan increased by twenty (20) percent.

These reimbursement rates for each service will be included on the Medicaid Fee Schedule for the ID/DD Waiver and will become effective January 1, 2021. These new rates do not replace the rates established in response to the District of Columbia Public Health Emergency. The Medicaid Fee Schedule for the ID/DD Waiver is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload. For further information or questions regarding this fee schedule update, please contact Samuel Woldeghiorgis, Reimbursement Analyst, DHCF, at samuel.woldeghiorgis@dc.gov or via telephone at (202) 442 9240.

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE

## MEDICAID FEE SCHEDULE UPDATES FOR ADULT DAY HEALTH PROGRAM (ADHP) SERVICES

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR § 9723 and 29 DCMR § 988.4, announces changes to the Medicaid reimbursement rates for ADHP services. The changes to the rates will become effective on January 1, 2021.

DHCF is increasing the uniform reimbursement rates for ADHP services covered under the State Plan. The table below provides a listing of both the billing codes and new rates for ADHP services that will be effective January 1, 2021.

| Code | Service Description | Reimbursement Rate |
|---|---|---|
| S5100-U1 | State Plan | $108.56, Daily |
| S5100-U2 | State Plan | $138.34, Daily |

These reimbursement rates for each service will be included on the Medicaid Fee Schedule and will become effective on January 1, 2021. The Medicaid Fee Schedule for the ADHP services is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload.

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

**DEPARTMENT OF HEALTH CARE FINANCE**

**PUBLIC NOTICE**

**MEDICAID FEE SCHEDULE UPDATES FOR HOME HEALTH SERVICES**

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in Sections 9903.8, 9904.8, and 9905.9 of Chapter 99 and Section 988 of Chapter 9 of Title 29 of the District of Columbia Municipal Regulations, announces changes to the Medicaid reimbursement rates for home health physical therapy services, home health speech pathology and audiology services, and home health occupational therapy services provided to beneficiaries enrolled in the District Medicaid program. The changes to the rates will become effective on January 1, 2021, or at a later effective date, pending approval of the corresponding State Plan Amendment by the federal Centers for Medicare and Medicaid Services.

Home health agencies provide an array of services for Medicaid beneficiaries in need of long term care services and supports. DHCF is updating the Medicaid fee schedule to ensure reimbursement rates are equitable and reflective of reasonable costs incurred by home health providers in delivering physical therapy, occupational therapy, and speech pathology and audiology services. The Medicaid Fee Schedule is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/home.

For further information or questions regarding this fee schedule update, please contact Andrea Clark, Reimbursement Analyst, Department of Health Care Finance, at Andrea.Clark@dc.gov, or via telephone at (202) 724-4096.

**DEPARTMENT OF HEALTH CARE FINANCE**

**PUBLIC NOTICE**

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

The Department of Health Care Finance (DHCF), in accordance with the requirements in 29 DCMR §§ 988.4 and 5015.3, announces changes to the Medicaid reimbursement rates for PCA services provided by Home Health Agencies. The changes to the rates will become effective on January 1, 2021.

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

The PCA rates will be included on the Medicaid Fee Schedule and will become effective January 1, 2021. The Medicaid Fee Schedule for the PCA services is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload.

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

## DEPARTMENT OF HEALTH CARE FINANCE

## PUBLIC NOTICE

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

The Department of Health Care Finance (DHCF), in accordance with the requirements set forth in 29 DCMR §§ 988.4 and 4209.7, announces changes to the Medicaid reimbursement rates for EPD waiver services. The changes to the rates will become effective on January 1, 2021.

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

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

These reimbursement rates for each service will be included on the Medicaid Fee Schedule for the EPD Waiver and will become effective on January 1, 2021. The Medicaid Fee Schedule for the EPD Waiver is located on the DHCF website at https://www.dc-medicaid.com/dcwebportal/nonsecure/feeScheduleDownload.

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

**INGENUITY PREP PUBLIC CHARTER SCHOOL**

**NOTICE: FOR PROPOSALS**

The Ingenuity Prep Public Charter School solicits proposals for the following services:

- Talent Search Services

Full RFP available by request. Proposals shall be emailed as PDF documents no later than 5:00 PM on Tuesday, December 8, 2020. Contact: bids@ingenuityprep.org

**MUNDO VERDE PUBLIC CHARTER SCHOOL**

**REQUEST FOR PROPOSALS**

**Knowledge Management System**

MVPCS is seeking proposals for an enterprise-wide knowledge management system(s) to facilitate document retrieval and integrate existing communications platforms.

Please contact Elle Carne at ecarne@mundoverdepcs.org and jhalperin@mundoverdepcs.org for full RFP details, including bid due date. Note that the contract may not be effective until reviewed and approved by the District of Columbia Public Charter School Board.

**Government of the District of Columbia**
**Public Employee Relations Board**

| | |
|---|---|
| In the Matter of: | |
| Washington Teachers' Union, Local #6, American Federation of Teachers, AFL-CIO | |
| Petitioner | PERB Case No. 20-U-30 |
| v. | Opinion No. 1762 |
| District of Columbia Public Schools | |
| Respondent | |

## DECISION AND ORDER

### A. Statement of the Case

On July 8, 2020, the Washington Teachers' Union, Local # 6, American Federation of Teachers, (WTU) filed an Unfair Labor Practice Complaint (Complaint) against the District of Columbia Public Schools (DCPS), alleging violations of the Comprehensive Merit Personnel Act (CMPA)[1] by DCPS' refusal to bargain health and safety protections and protocols related to WTU's bargaining unit members return to in-person learning during the COVID-19 pandemic.

A hearing was held on August 28, 2020. On October 1, 2020, the parties submitted post-hearing briefs. On October 19, 2020, the Hearing Examiner submitted a Report and Recommendations (Report). On October 20, 2020, the Board ordered preliminary relief that required the parties to bargain and additional preliminary relief. Thereafter, on October 26, 2020, the Respondent filed Exceptions to the Report. On October 28, 2020, the Complainant filed an Opposition to the Exceptions.

### B. Exceptions

In its Exceptions, DCPS focused on its post-hearing conduct to argue that the record does not support the Hearing Examiner's finding of a refusal to bargain.[2] However, its post-hearing conduct, if accurately reported, does not excuse DCPS' refusal to bargain, its bargaining in bad

[1] D.C. Official Code § 1-617.04(a)(1) and (a)(5).
[2] Exceptions at 5. DCPS list 17 bargaining sessions that occurred after the hearing and mentions an October 14, 2020, tentative agreement on matters related to health and safety.

faith, or its direct dealing to undermine the WTU. Post-hearing conduct is in fact irrelevant to the findings of the Hearing Officer.

There is ample evidence in the record that DCPS asserted that it had no duty to bargain over health and safety issues and, as the Hearing Examiner found, DCPS' actions amounted to a refusal to bargain over these issues.[3]DCPS (1) refused to bargain and made unilateral changes by issuing guidelines for new working conditions without negotiation,[4] (2) engaged in direct dealing by issuing surveys to the bargaining unit regarding returning to work,[5] and (3) breached its duty to bargain by declaring mandatory health and safety proposals as non-negotiable[6] despite clear precedent from the Board.[7]

The Board has explained that the declaration of a public emergency will not excuse the bargaining obligations of the parties when there is time to negotiate.[8] Here, the Hearing Examiner found that DCPS delayed re-opening for in-person instruction on several occasions and consulted numerous sources in formulating its pandemic action plan without engaging in good faith bargaining with WTU.[9]

In its Opposition to the Exceptions, WTU argues that DCPS "failed to identify any plausible grounds for its Exceptions to the Hearing Examiner's decision."[10] WTU asserts that the record supports the Hearing Examiner's findings because DCPS failed to engage in the "give and take" of bargaining and violated its duty to negotiate in good faith.[11] WTU urges the Board to adopt the Report.[12]

The Board denies DCPS' Exceptions. The Board finds that the Hearing Examiner's Report is reasonable, supported by the record, and consistent with Board precedent.[13]

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[3] Report at 16.
[4] Report at 16. The record is clear that DCPS implemented changes prior to substantive bargaining and impact and effects bargaining despite a clear request from WTU.
[5] DCPS concedes this point and raises no Exception to the Hearing Examiner's findings on this issue.
[6] *Teamsters, Local 639 v. DCPS*, Slip Op. No. 267 at n.9, PERB Case No. 90-U-05 (1991) (finding "that in an unfair labor practice proceeding, the negotiability of a subject and therefore the respondent's duty to bargain may well be the first question, but the final question will be whether the challenged conduct was a breach of such a duty. A negotiability appeal "pure" will not present that second question.").
[7] *AFGE Local 631 v. OLRCB*, 67 D.C. Reg. 8882, Slip Op. No. 1743 at 9, PERB Case No. 20-U-23 (2020).
[8] *FOP/ DOC Labor Comm. v. DOC*, 67 D.C. Reg. 8532, Slip Op. No. 1744 at 5, PERB Case No. 20-U-24 (2020) (citing *Port Printing & Specialties*, 351 NLRB 1269, 1270 (2007), which held that the company committed an unfair labor practice when it failed to bargain over the decision to use nonbargaining unit employees to finish work because the time for immediate decision-making had passed.).
[9] Report at 20.
[10] Opposition to Exceptions at 11.
[11] Opposition to Exceptions at 8.
[12] Opposition to Exceptions at 11.
[13] *WTU, Local 6 v. DCPS*, 65 D.C. Reg. 7474, Slip Op. No. 1668 at 6, PERB Case No. 15-U-28 (2018). *See AFGE, Local 1403 v. D.C. Office of the Attorney General*, 59 D.C. Reg. 3511, Slip Op. No. 873, PERB Case No. 05-U-32 and 05-UC-01 (2012).

**C. Conclusion**

The Board has considered the Hearing Examiner's Report that is attached to this Decision and Order, and the record in light of the Exceptions, Opposition to Exceptions, and briefs. The Board affirms the Hearing Examiner's rulings, findings, and conclusions, and adopts the recommended Order, as modified, and set forth below.

**ORDER**

**IT IS HERBY ORDERED THAT:**

1. The District of Columbia Public Schools shall cease and desist from interfering with, restraining, or coercing employees in their rights guaranteed to them under D.C. Official Code § 1-617.04 (a)(1) and (a)(5).

2. The District of Columbia Public Schools shall cease and desist from directly dealing with bargaining unit members in a manner that serves to undermine the Washington Teachers' Union.

3. The District of Columbia Public Schools shall cease and desist from refusing to bargain in good faith with the Washington Teachers' Union.

4. The District of Columbia Public Schools shall cease and desist from implementing changes in employment pertaining to health and safety without fulfilling its bargaining obligation with the Washington Teachers' Union.

5. The District of Columbia Public Schools shall bargain in good faith with the Washington Teachers' Union until the parties have a signed agreement or the parties reach impasse.

6. Within ten (10) days from service of this Decision and Order, the District of Columbia Public Schools shall post the attached notice conspicuously where notices to bargaining unit employees in this bargaining unit are customarily posted and electronically distribute to each bargaining unit member the notice through email or similar means in which notices are customarily distributed. Once posted, the Notice must remain posted until thirty (30) days after all bargaining unit members return to work.

7. The District of Columbia Public Schools shall notify the Board of the posting within fourteen (14) days after issuance of the Decision and Order requiring posting.

**BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD**
By vote of Members Ann Hoffman, Barbara Somson, Mary Anne Gibbons, and Peter Winkler. (Chair Douglas Warshof recused.)

Washington, D.C.
October 29, 2020

# NOTICE

**TO ALL EMPLOYEES REPRESENTED BY THE WASHINGTON TEACHERS' UNION, LOCAL 6 AT THE DISTRICT OF COLUMBIA PUBLIC SCHOOLS, THIS OFFICIAL NOTICE IS POSTED BY ORDER OF THE DISTRICT OF COLUMBIA PUBLIC EMPLOYEE RELATIONS BOARD PURSUANT TO ITS DECISION AND ORDER IN OPINION NO. 1762, PERB CASE NO. 20-U-30.**

**WE HEREBY NOTIFY** our employees that the District of Columbia Public Employee Relations Board has found that we violated the Comprehensive Merit Personnel Act and has ordered us to take certain actions and post this notice.

**WE WILL** cease and desist from interfering with, restraining, or coercing our employees represented by the Washington Teachers' Union, Local 6 in the exercise of their rights under the Comprehensive Merit Personnel Act.

**WE WILL** cease and desist from refusing to bargain in good faith.

**WE WILL** negotiate in good faith until we reach written agreement with the Washington Teachers Union, Local 6, or reach impasse in negotiations before implementing changes over mandatory subjects of bargaining.

**WE WILL NOT** attempt to circumvent the union by directly dealing with employees represented by the Washington Teachers' Union, Local 6 concerning return to in-person teaching and learning.

**District of Columbia Public Schools**

Date: _____

By: _____

(Chancellor)

**This Notice must remain posted for thirty (30) consecutive days after all bargaining unit members return to work and must not be altered.**

If employees have any questions concerning the Notice or compliance with any of its provisions, they may communicate directly with the Public Employee Relations Board, by email at perb@dc.gov, by mail at 1100 4th Street SW, Suite 630E, Washington, D.C. 20024, or by phone at 202-727-1822.

RECEIVED
Oct 19 2020 10:38AM EDT
DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD
Transaction ID: 66031597

GOVERNMENT OF THE DISTRICT OF COLUMBIA
PUBLIC EMPLOYEE RELATIONS BOARD

Washington Teachers' Union, Local 6,
American Federation of Teachers, AFL-CIO

(Complainant)

PERB Case No. 20-U-30

:

District of Columbia Public Schools

(Respondent)

*Lee W. Jackson, Esq., Daniel M. Rosenthal, Esq., and Michael P. Element, Esq.,*
for the Complainant
*Stephanie T. Maltz, Esq., Kathryn Nayor, Esq., Michael Levy, Esq.*
for the Respondent

**Report and Recommendation**

Statement of the Case

Eric M. Fine, Hearing Examiner. This case was tried before me on August 28, 2020, via a virtual proceeding implemented in Washington D.C, pursuant to a complaint filed on July 8, 2020, by the Washington Teachers' Union Local 6, American Federation of Teachers, AFL-CIO (Complainant, Union or WTU) against the District of Columbia Public Schools (DCPS or Respondent).[1] On July 8, the Union filed a Request for Preliminary Relief, and by letter dated August 3, PERB's Executive Director denied that request. On August 13, the Union filed a motion to file an amended complaint, along with a first amended complaint. By letter dated August 20, PERB's Executive Director stated, "WTU will have the opportunity to present facts to support the allegation of the complaint during the hearing. The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. Therefore, the Motion is denied."[2]

Issues

The complaint alleges that on June 30, 2020, DCPS sent WTU bargaining unit members

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[1] All dates herein are in 2020, unless otherwise stated. For purposes of brevity, all individuals will be identified, to the extent permitted, by their full name and title, and thereafter respectfully referred to by their last name.

[2] During the day of the hearing, the parties discussed the inclusion in the record of joint exhibits 1 to 44, with Joint Exhibit 44 being a stipulation of certain facts. At my request, following the hearing, DCPS forwarded these exhibits to the court reporter, although their entrance into the record does not appear in the transcript. Nevertheless, the parties have relied on these exhibits in their post-hearing briefs, the witnesses testified concerning some of the exhibits, they are part of the administrative record, and I am correcting the transcript to include these exhibits as part of the hearing record in this case.

two documents via email: (1) DCPS Return to In-Person Work Guidelines ("Guidelines"); and (2) DCPS Employee Return to In Person Work Intent Form ("Intent Form"). It is asserted that the documents were shared with Union officials only a few hours before they were sent to teachers. It is asserted the two documents unilaterally imposed new terms and conditions of employment on teachers without first bargaining with the Union, including terms and conditions that affect the health and safety of bargaining unit members and subject members to new categories of discipline. It is asserted that the Guidelines state that an operational guidebook will be forthcoming, the contents of which had not been bargained with the Union. It is asserted that on July 2, 2020, the Union sent Chancellor Ferebee a request to bargain regarding the Guidelines and the Intent Form. The complaint alleges that by refusing to bargain with the WTU, unilaterally imposing changes on bargaining unit members without bargaining, and dealing directly with bargaining unit members regarding mandatory subjects of bargaining, DCPS has interfered with, restrained and coerced employees in the exercise of their rights, and has restrained and coerced employees, in violation of D.C. Code§§ 1-617.04(a)(1) and (a)(5).[3]

Findings of Fact

I. Jurisdiction

DCPS is an agency of the District of Columbia as defined in D.C. Official Code, Section 1-603.01(1). The Union is a labor organization within the meaning of the Comprehensive Merit Personnel Act of 1978. The Union has been certified by the PERB as the exclusive representative for the employees in question specified in PERB Case No. 80-R-09, Certification No. 12, August 30, 1982 and PERB Case No. 88-R-09, Certification No. 56, September 21, 1989. Both parties are subject to the PERB's jurisdiction in accordance with D.C. Official Code § 1-602.01.

II. Alleged Unfair Labor Practices

A. Findings of Fact[4]

The Union and DCPS are parties to a Collective Bargaining Agreement covering employees in the Union's bargaining unit. The parties' most recent CBA is dated October 1, 2016, through September 30, 2019, and remains in effect between the Parties while a successor agreement is negotiated. On March 10, 2020, Union President Elizabeth A. Davis sent a letter to DCPS Chancellor Lewis Ferebee requesting information about the protocols that DCPS planned +o out in place to prevent the spread of COVID-19. Davis testified she wrote the letter due to teachers expressing concern as to whether or not they would be required to report to their schools for in-person teaching, given that many of them had underlying health

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3 The Union attached what is has labeled as WTU Ex's. 2 and 3, to its post-hearing brief, pertaining to DCPS mailings to bargaining unit members on September 29, and the Union's response thereto arguing that I should reopen this record asserting that these documents show a continuation of the conduct at issue herein by DCPS, and therefore there is a compelling reason for me to reopen the record for their admission. This I decline to do. Aside from the obvious due process considerations for DCPS, this case apparently involves an ongoing dispute amongst the parties, and the admission of evidence of post-hearing events would serve to delay this decision.

4 There were three witnesses who testified at the hearing in this proceeding. Taking into consideration their demeanor, I have concluded that all testified in a credible fashion, to the extent their memories would permit.

conditions. Davis testified that most of the schools were old with faulty ventilation systems. Davis testified that, based on information the teachers were hearing from various sources, DC Health and the CDC, they raised concerns about whether or not it would be safe for them to be required to do in-person teaching in their buildings.

On March 11, DC Mayor Muriel Bowser declared a state of emergency and a public health emergency resulting from the COVID-19 pandemic. On March 13, the Mayor announced that the D.C. government would adjust its operating status, beginning March 16, to mitigate the spread of COVIJ-9. On March 13, Chancellor Ferebee announced that DCPS would begin modifying school operations on March 16 through April 1. Specifically, teachers and staff would report to school to plan for distance learning while students would not report to school. The announcement stated that from March 24 to March 31, students will participate in distance learning, and that on April 1, schools will resume operations. On March 20, Ferebee announced that the schools would remain closed, and distance learning continued through April 24, with classes resuming on April 27. On April 17, Ferebee announced the schools would remain closed and distance learning would continue through the end of the school year stated to be May 29.

On May 8, Union bargaining unit members met virtually with Ferebee and other DCPS representatives to discuss ideas and recommendations regarding DCPS's plans to reopen schools for in-person learning during the COVID-19 pandemic. On May 9, Davis sent Ferebee an email thanking him for joining contract negotiations on May 8, with a list of 16 items to be discussed as they move forward in their contract talks. Ferebee responded by email dated May 11, thanking Davis for the comprehensive list of issues regarding reopening the schools, stating DCPS looked forward to continuing discussions and working with the Union to address complex issues in reopening the schools, but stating that the May 8 meeting was not a contract negotiation session.

Davis testified that the Union created a taskforce on re-opening schools. Davis, who had not been a clas .m"Jm teacher for six years, testified she wanted active teachers to provide input on some of the structures they needed to have in place for teachers and students if the schools re-opened. The task force consisted of over 200 teachers, as Davis wanted to hear from teachers pre-K through 12, as well as groups pertaining to special education and English language learners to cover a broad spectrum of concerns. Davis testified, in particular, early grade teachers pointed out why it would be a problem for students at certain grade levels and ages to be expected to wear PPE all day in a school, and whether they were able to understand the need for social distancing. Davis testified that counselors, social workers, and other service providers were also on the taskforce. Davis testified the task force developed recommendations as teachers wanted to see specific details as to what should be in place in every school in order to re-open for in-person learning.

On June 22, Davis sent DCPS officials a copy of recommendations prepared by the Union's task force on reopening DC Schools. Davis invited DCPS officials to attend a briefing by the chairs of the taskforce on June 23, and on June 24, Union taskforce members met virtually with DCPS officials to brief them on the taskforce's recommendations. They met again with DCPS officials, including Ferebee, on June 26 to brief them on the taskforce's recommendations.

On June 30, DCPS sent Union bargaining unit members two documents via email: (1) DCPS Return to In-Person Work Guidelines ("Guidelines"); and (2) DCPS Employee Return to

In Person Work Intent Form ("Intent Form"). DCPS sent the documents via email to Union representatives the same day that they were sent to teachers.

The Intent Form states that "As the District government begins to return to normal operations, and we prepare for the School Year 2020-21 reopening, we are asking all employees to complete and submit this form to assist with planning." The Intent Form states that the "in-person return to work date for employees will be determined based on public health data... ". However, it states, in bold print, "Please complete all sections of this form and submit no later" than July 10. The Intent Form gives employees two options to choose from under the heading "Work Setting Considerations:"

> I plan return to in-person work, with the provision of safety measures aligned to DC Health recommendations.; or
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> I believe I have a qualifying medical condition pursuant to FMLA and/or ADA and I plan to apply for leave or I do not have a qualifying medical condition, but I believe I am at higher risk (Higher Risk Guidance) for severe illness due to COVID-19 pursuant to the Families First Coronavirus Relief Act (FFCRA) and do not plan to return in person for safety and/or health reasons for myself or someone in my household.

The Intent Form states, "If there are other concerns not related to FMLA, ADA, and/or FFCRA, please follow up directly with your supervisor." The Form ends with an "Acknowledgment" section stating that "By typing my name below, I certify that I have answered all questions to the best of my ability, and I acknowledge that DCPS will use this information to assist with planning for the in-person return to work for DCPS staff."

Davis testified, concerning the Intent Form, that the first time she saw the Form was when a teacher took a photo of the form and texted it to Davis. Davis testified that DCPS did not present it to her in the course of contract bargaining. Davis testified that, after receiving the Form from the teacher, Davis checked her email and discovered that DCPS sent the Form to her on the same morning it was sent out to teachers. However, Davis identified the email to herself and Ngwa sent from Powe, dated June 30, at 2:08p.m. to which the Intent Form was attached. The email also references the "In Person Return to Work Guidelines" as an attachment. The email states, "we are asking staff to please review the attached Guidelines and complete the attached DCPS Employee Return to In-Person Work Intent Form no later than Close of Business (COB) Friday, July 10, 2020. The responses we receive will be considered as we continue planning for the in-person return to work for DCPS staff."

Davis testified that most teachers report questions to one of the Union's five field representatives. Davis testified when she read the Form, she contacted the field representatives, and they reported to her that they had received a flurry of calls from teachers who did not feel comfortable signing the Form. The teachers wanted to know if the Union had approved it and, if the Union was were even aware of it. Davis testified the teachers felt they did not have sufficient information to maK.e an informed decision about whether or not to sign. Davis testified that one of the concerns expressed by the teachers was they had not received enough information about what was to be expected if they returned to in-person teaching. They did not know what safety protocols had been instituted in their schools. Davis testified they knew the condition of their buildings, before the pandemic, and that many of them knew there were issues about having buildings cleaned on a daily basis. Davis testified the Union sent a notice to all of their members asking them to hold off on signing the form until the Union had an opportunity to communicate with DCPS.

Davis testified the second option on the form spoke to those teachers who have qualifying medical conditions. Davis testified they did not have sufficient information to determine if it was okay for them to sign. Davis testified the teachers felt that even if they had underlying health conditions, they wanted to keep their jobs, and they did not see a place that suggested they would have the option of doing distance learning or teaching virtually if they had underlying health conditions. Davis testified they felt pressured to sign the document because they felt they did not have a choice. She testified the document did not suggest they had an option to continue with distance learning at the re-opening of schools. Davis testified the Union had an influx of calls from teachers who would qualify for retirement, and a number called making preparation to retire in the event that they would be forced to return to in-person teaching.

Davis testified, that to her knowledge, DCPS did not directly inform the teachers prior to the July 10 deadline that the teachers were not required to sign the Intent Form. Davis testified that, after the Cnhn expressed concern about the Form having been sent without the Union's knowledge, DCPS informed the Union in writing that staff were not required to complete the Form, and they would not be disciplined for not completing it. Davis testified that to her knowledge no teachers suffered any consequences for not completing the Form.

Union Field Representative Jared Catapano testified that he received calls from teachers upon their receipt of the Intent Form. He testified that teachers told him over the phone they were concerned about what would happen if they did not complete the form. Catapano testified teachers told him that it was their understanding they were required to sign the form, and that they were concerned that if they signed the document they would be asked to come to work in an unsafe condition. He testified they expressed concerns related to the pandemic, such as social distancing, contact tracing, etc. Catapano testified, to his knowledge, DCPS never told teachers directly that they would not receive consequences for failing to sign the form.

Donielle Powe is the Deputy Chief for Labor Management and Employee Relations for DCPS. Powe testified that no member of the Union's bargaining unit has been disciplined for failing to respond to the Intent Form. Powe identified a DCPS response to an information request by the Union, wherein the Union asked if DCPS intended to impose negative consequences on teachers who did not fill out the Intent Form by July 10, or by a later date. As part of DCPS response, it is stated, "Staff will not be disciplined for not completing the intent to return form." Powe testified that DCPS did not communicate this response directly to the teachers. Powe testified that DCPS did not bargain with the Union regarding the Intent Form or the Guidelines before they sent it to the teachers. When asked if DCPS included any option on the form or subsequent communications giving teachers the option to not return to work, if they did not have a qualifying medical condition, Powe pointed out that on the Intent Form it stated, after the choice of checking *off* one of two boxes on the form, that if there are other concerns not related to the medical issues, they should follow up directly with their supervisor. However, DCPS stated in the above referenced response to the Union's request for information page 2, item 6, that "If a staff person does not qualify for an approved leave or is not considered at risk, they will be expected to return to work. Before returning to work, DCPS will provide details on the health and safety measures put in place for a safe and strong reopening."

The Union alleges in its complaint that the Guidelines unilaterally imposed new terms and conditions of employment on bargaining unit members, including terms and conditions that affect the health and safety of bargaining unit members and subject members to new categories of discipline. The Union cites, in the complaint, certain language from the Guidelines, asserting, that the Guidelines state that:

a. "DCPS will implement a hybrid learning model for the 2020-21 School Year (SY) that will include continued virtual instruction and in-person instruction for a portion of our students";
b. "Central office staff whose roles require them to be on-site and can safely perform their roles will be expected to work on-site for their standard tour of duty. Central office staff whose work does not require them to be on-site to fulfill their roles will be provided options to work remotely through a modified rotational telework policy";
c. Employees must begin wearing face masks, and if they do not they "will be subject to progressive discipline";
d. DCPS will administer daily health screenings. If a bargaining unit member experiences certain symptoms listed in the Guidelines, DCPS will instruct the employee "to not enter DCPS buildings, to isolate immediately, and call their healthcare provider";
e. DCPS will provide "staff members working with students with high levels of need and staff members managing students and/or staff identified as potentially positive will receive additional PPE on top of the baseline mask distribution." But the Guidelines do not state specifically what staff members will be eligible for increased PPE, or what that increased PPE may include;
f. "All employees will be required to participate in a mandatory Return to In-Person Work webinar before their first day of in-person duty. This webinar will review standard safety protocols and expectations to ensure employee safety and wellbeing during the public health emergency. More information related to this training will be shared soon." The Guidelines do not state whether bargaining unit members will be paid for time spent attending the mandatory webinar.
g. Employees are eligible for several categories of leave if they meet certain criteria. However, the Guidelines require that "[o]nce an employee determines that they will be absent from work for more than five business days for one of the eligible reasons provided in the sections above, they must complete a Request for Leave of Absence and upload a medical certification in the Leave of Absence application in Quickbase.";
h. If an employee does "not qualify for paid leave through" one of the programs referenced in the guidelines, the employee must "use accrued annual leave" if they feel unsafe returning to work.

On July 5, Davis sent Ferebee an email requesting to bargain regarding the Guidelines and the Intent Form stating that to the "extent DCPS may assert that any of the foregoing is a nonnegotiable management right, WTU would dispute that assertion, but DCPS should nevertheless bargain with the WTU over the impact and effects of such decisions. Until the parties have had an opportunity to bargain over these matters, DCPS should withdraw both documents and inform teachers that they need not respond by the July 10 deadline." By email on July 6, Powe, responded to Davis' July 5, request to bargain by stating: "As previously discussed, DCPS is willing to engage in impacts and effects bargaining with you concerning reopening. Before we begin bargaining for the reopening, we should meet to discuss initial ground rules. We would like to be efficient while observing that everyone is busy at this time of year. Since we already have Thursdays set aside, are you available to meet on Thursday, July 9 (or 16), at 11:OOam?"

On July 7, Davis responded to Powe stating that the Union would agree to meet for bargaining on July 9 and further that "I also want to make clear that WTU is not only requesting to bargain over the impacts and effects of reopening, but also regarding DCPS's policies for reopening, whicn affect the health and safety of WTU members and, per the recently issued Guidelines, impose new discipline on teachers for failure to comply with DCPS policies." Davis

stated to Powe that you have refused to indicate whether DCPS will bargain over the Intent Form and Reopening Guidelines, and whether DCPS will rescind those documents pending the completion of negotiations. It is asserted that the negotiations could not be effective while those documents are in effect. Davis stated that the discussion of ground rules on July 9, was unnecessary, that the parties should proceed directly to substantive discussion in view of the July 10, deadline that DCPS has imposed on teachers to complete the Intent Form.

The parties met for bargaining on July 9, 15, 23, 30, August 6, 13, and 20. On July 9, the Union presented DCPS with a written proposed draft "Temporary Memorandum of Agreement during COVID19" (MOA) which detailed proposals that the Union sought to bargain over prior to the reopening of DCPS schools for in-person learning, including issues affecting the health and safety of returning teachers. Union bargaining representatives also presented the proposals orally to DCPS bargaining representatives on July 9. DCPS representatives asked questions regarding certain Union's proposals for in-person hybrid learning during that session. The parties did not reach agreement on any of WTU's proposals during that session. The MOA states it was drafted by a team of over 200 members and field representatives of the Union.

Davis testified one topic in the MOA related to cleaning of schools. Davis testified that, although this varies from school to school, it was reported that schools are under-staffed as far as custodial services, and that there are buildings that are not cleaned regularly. She testified that teachers thought if schools were short staffed before the pandemic, there was concern that buildings would not be adequately cleaned after the pandemic. Davis testified that even though DCPS had issued statements that they were going to ensure safety protocols would be instituted in every school, based on their experience, the teachers wanted something in writing that DCPS would comply with the safety guidelines that had already been issued by the Office of the State Superintendent, by the Department of Health and CDC. Davis testified that a lot of the language in the MOA was lifted from those guidelines from DCPS, from DC Health, from OSSE, with very little of this language being created by Union members. The Union members wanted it in writing and wanted the chancellor and Davis to agree that these safety protocols would be in place in all schools.

Davis testified there is a discussion in the MOA about changing the rules on large groups or large assemblies. Davis testified that for several years the Union had reports of class sizes that exceed the contract limits. Teachers have been flexible knowing that some schools have been under-staffed. Davis testified that now for in-person teaching those numbers would have to be drastically reduced in order for students to be able to socially distance in classrooms. Davis testified that from grade level to grade level, teachers express various concerns based on the behaviors of their students, especially early grade students and special needs students, and they wanted to ensure that class sizes were going to be adapted to comply with CDC guidelines for social distancing.

Concerning communication or signage about social distancing in the MOA, Davis testified they were offering a recommendation to have inspection teams for every school to put teachers and parents at ease about whether or not the schools will be ready when they re-open for in-person teaching. She testified from the very entry into the building, the hallways, into the bathrooms, into offices, the counselors' suites this was one of the recommendations. She testified the teachers wanted to see evidence that the buildings were actually going to be ready to receive students and teachers and other staff safely. Davis testified the teachers focused on details that were absent from the Mayor's re-open report, and the MOA

contains a lot of those issues.

Davis testified that at MOA page 13, subparagraph a, there's a reference to ensuring that ventilation systems operate properly. Davis testified there are a number of schools that have been modernized, but a lot of them have not. Davis testified they have a lot of very old buildings. Davis testified she has worked in several of them that are over 50 and 70 years old. Davis testified that concerning some of the newer facilities that have been modernized, such as Roosevelt High School, teachers constantly contacted the Union last year and the previous year about the facility having a ventilation system that had not worked properly since the school was constructed. Davis testified that one of the individuals that worked with the Union's task force was a former commissioner of health in D.C. Davis testified that he focused on ventilation, and that he attended one of Davis monthly meetings with Ferebee to talk about this issue because it is a critical area that cannot be fixed overnight. Davis testified that teachers who worked in those buildings before the pandemic kno.ving that they had faulty ventilation systems, and air conditioning that did not work, were concerned about whether those systems were going to be repaired before the schools were re-opened.

Catapano testified, that as a member of the Union's bargaining committee, he has participated discussions with DCPS representatives regarding reopening schools. Catapano testified that he attended the July meeting when the Union presented the MOA to DCPS. Catapano cited some of the provisions of the MOA during his testimony. He stated at page 12, paragraph 10 it states that DCPS shall comply with all CDC, OSSE, and DC Health policy guidelines for reopening schools. Catapano testified that page 23, section 19, provisions a through d, speak to group activities or large gatherings at schools in an effort to make sure that large gatherings would not happen which would increase the probability of contracting the virus. He testified that section c there is a reference to maintaining six feet of distance. Catapano testified that at page 10, there is a discussion about directions and assistance to schools in developing protocol. Catapano testified this was included to keep students and teachers safe, but specifically to help with contact tracing if there is a contamination. Catapano testified that page 20, subsection e, related to screening procedures, which was an attempt to keep students and teachers away from people who may be exhibiting symptoms.

Catapano testified, that as far as he knew, there is a mandate in D.C. to wear a mask in public. He testified that page 15, paragraph 14, there is a reference to face coverings being used at all times, ana tl.are is also a reference to exceptions to that rule. Concerning the exceptions, Catapano testified the Union knows that people have other underlying health conditions or have any number of reasons to struggle to wear a mask. Catapano testified that at page 16, paragraph 15, there is a reference to what to do if there is an exposure at a school in an effort to help with contact tracing. He testified that subsection c states that DCPS would shut down schools within 24 hours of a notification. Catapano testified the Union wanted this provision because they know that the virus is easily communicable and the short turnaround time trying to figure out who was infected and how. He testified that at page 24, paragraph 21, there is a reference to cleaning protocols. Catapano testified that, from his experience as a teacher at Lafayette Elementary School, they were historically shortchanged on custodial staff. Catapano testified the Union wanted to make sure that schools are as clean as possible for the safety of students and teachers. He testified that at page 19, paragraph 17, there's a reference to COVID testing at all school sites. Catapano testified the Union wanted to make sure that these tests were not only available, but were administered appropriately.

On July 15, DCPS presented an overview of its planned hybrid learning model to Union bargaining representatives. At a press conference on July 16, the Mayor announced that the

District would not make a final decision on implementing this hybrid learning model until July 31. On July 21, DCPS presented a draft of its "Reopen Strong COVID-19 Operations Handbook Guidance" for in-person hybrid operations/learning ("Handbook"). In her July 21, email to the Union, Powe stated that the Handbook was "to ensure processes and systems are in place that prioritize the health and safety of all students and staff should health conditions allow for learning at school." In a July 21, email to Powe, Ngwa stated "Can you confirm that DCPS will negotiate with WTU over the terms and conditions reflected in this document before taking any action to implement it?" Powe responded on July 23, stating that "By and large, the Operations Manual reflects the exercise of management's rights, including to determine educational policy and mission as well as to determine internal security controls and protocols to safeguard students and all employees against the spread of COVID 19 in schools with the reopening of in- person school operations. As such, management intends to negotiate this as part of the impact and effects on reopening." On July 23, DCPS Deputy Chancellor Amy Maisterra orally presented the draft Handbook to the Union's bargaining committee members. Davis testified there was no bargaining over the specific terms of the Handbook at the July 23, session, and no bargaining since that time.

On July 30, the Mayor announced that DCPS schools would begin the year with all-virtual learning for the first term until at least November 6. Beginning with the July 30, bargaining session, the Parties focused on proposals and counterproposals regarding the impending start of the first term of the school year with all virtual instruction. At bargaining on July 30, the Union highlighted the specific Union MOA proposals that the Union identified as applicable to a virtual only setting.

On August 6, DCPS sent a tracked changes document to the Union with proposed edits and deletions to the Union's MOA proposals. DCPS also included comment bubbles in the document indicAting provisions of the MOA that DCPS asserted were non-negotiable. On August 6, Powe presented DCPS' comments and counter proposal to Union's MOA and the topics that DCPS asserted were non-negotiable, as reflected in the August 6 tracked changes document. A general review of the DCPS response to the Union's MOA reveals that most of the Union's 46-pages of proposals were lined over in the form of a cross-out by DCPS, along with comments along the side. In response to what had been MOA page 12, paragraph 10 stating that DCPS shall comply with all CDC, OSSE, and DC Health policy guidelines for reopening schools; DCPS responded, "Non-negotiable management right to determine operation and requires compliance with guidance that is not law and is fluid." Concerning MOA page 23, section 19, provisions a through d, which Catapano testified speak to group activities or large gatherings at schools, DCPS responded, "All of 19 and subsections is non-negotiable, management right to determine operation, budget and employees needed." Catapano testified that page 20, subsection e, related to screening procedures, which was an attempt to keep people in the building safe, students and teachers, from people who may be exhibiting symptoms. DCPS response was that "All struck language (section 18 and its subsections below) is non-negotiable, management right to determine operation, budget and employees needed. Additionally, places requirements on equipment/duties of employees outside of the bargaining unit." In this regard, Davis testified that, during the August 6 session, DCPS was presenting their response, and most of the comments and responses from DCPS where there were strikethroughs, was this is a management's right. Davis testified that whenever it was designated that it was non-negotiable, DCPS stood on the notion that this is a non-negotiable management ri9ht.

On August 13, the Union provided DCPS with Revised MOA proposals which focused exclusively on distance learning. On August 20, the Parties exchanged multiple rounds of

counterproposals regarding the Revised MOA specifically focused on distance learning. Davis testified that on August 27, the parties finalized a short version of the MOA, only dealing with distance learning. Davis testified that they wanted to have something in place because on Monday, students are going to report to D.C. Public Schools virtually for the first time, and the Union wanted to have an agreement that we could share with their members about some of the guidelines around distance learning.

Davis testified the Union team saw the need for an agreement for distance learning so they were willing to delay any discussions about the language pertaining to in-person teaching until after the agreement on distance learning was reached. Davis testified there was one advisory for distance learning, in that the Mayor and Chancellor announced the distance learning period will be from August 31 until November 6, and the Union did not know what would happen as of November 6, or when schools would open for in-person learning. Davis testified the Union wants to have something more specific in place about in-person teaching before it begins. Davis testified that the Union has never withdrawn its request to bargain over health and safety matters for in-person learning. Davis testified that the Union had never withdrawn its request to bargain over the specifics of the Handbook that had been presented to the Union. Davis testified, in her view, as a former educator, the schools are not ready to receive students based on what she knew about the 115 schools in the DCPS chain. Davis testified the buildings are not ready, and the fact they *we:e* '1ot given funds for PPE is a red flag. Davis testified that the Union thought re-opening 100 percent was a problem they could work with DCPS and the Council to get the additional resources needed to ensure that all of the schools would be able to institute the safety protocols that DC Health and CDC says should be in place.

Davis testified that at some time in the future, DCPS will open for in-person learning. She testified the Union maintains that prior to that time it would like to negotiate over health and safety policies at DCPS schools. When asked if she had received any further communication from DCPS notifying her that the topics they identified as non-negotiable in the track changes document, that they are now willing to negotiate about, Davis testified, "No, not really. We're hoping that further discussions with them would nudge them into agreeing to that, but I have not gotten any such notice, no." Powe testified that for all of the items in the Union's initial MOA that DCPS marked as non-negotiable on August 6, that DCPS continues to assert that those items are non-negotiable.

Analysis

a. *Legal Principles*

In *AFGE, Local631 v. D.C. Office of Labor Relations & Collective Bargaining*, PERB Case 20-U-23, ( 3/31/2020), at 1, motion for reconsideration denied. (5/8/20), the Board issued a decision pertaining to a "Motion for Preliminary Relief." It was noted that the "Union alleges that the Agencies violated the Comprehensive Merit Personnel Act (CMPA) by refusing to negotiate over the changes in working conditions unilaterally implemented in response to the coronavirus pandemic (COVID-19) and by failing to provide information necessary for the Union to fulfill its responsibilities." It was stated therein that:

> On March 11, 2020, the Mayor of the District of Columbia issued an Executive Order declaring a state of emergency in response to the public health emergency caused by COVID-19.4 On March 17, 2020, the Council of the District of Columbia enacted the COVID-19 Response Emergency Amendment Act of 2020, (COVID-19 Emergency Act), which amended the District of Columbia Public Emergency Act and

provided the Mayor with enumerated personnel powers to address COVID-19.5 The language of the new section states in pertinent part:

> Notwithstanding any provision of the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139, D.C. Official Code§ 1-601.01 *et* seq.) ("CMPA") or the rules issued pursuant to the CMPA, . . . or any other personnel law or rules, the Mayor may take the following personnel actions regarding executive branch subordinate agencies that the Mayor determines necessary and appropriate to address the emergency:
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> (A) Redeploying employees within or between agencies;
> (B) Modifying employees' tours of duty;
> (C) Modifying employees' places of duty;
> (D) Mandating telework;
> (E) Extending shifts and assigning additional shifts;
> (F) Providing appropriate meals to employees required to work overtime or work without meal breaks;
> (G) Assigning additional duties to employees;
> (H) Extending existing terms of employees;
> (I) Hiring new employees into the Career, Education, and Management Supervisory Services without competition;
> (J) Eliminating any annuity offsets established by any law; or
> (K) Denying leave or rescinding approval of previously approved leave.6

The Board pointed out that the Agencies raise D.C. Official Code Sec. 1-617.08(a)(6), stating that management has the right "to take whatever actions may be necessary to carry out the mission of the District government in emergency situations." The Board went on to state:

> The first issue before the Board is whether the Agencies had a statutory duty to bargain during the emergency. In general, it is an unfair labor practice to refuse to bargain in good faith.18 D.C. Official Code§ 1-617.08 affords certain rights to management, which are nonnegotiable. However, even as to such nonnegotiable management rights, management must, upon request by the union, still bargain the impact and effects of its exercise of those rights.
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> Specifically relevant to the current dispute, D.C. Official Code §1-617.08(a)(6) states that management retains the sole right to "take whatever actions may be necessary to carry out the mission of the District government in emergency situations."19 That right must be read in conjunction with the COVID-19 Emergency Act, which contains language enumerating the personnel actions the Mayor may take in section 301(a)(16), subsections (A)-(K).20 The Council, by using the broad "notwithstanding clause," evidenced its intent to have the newly enacted amendment narrow the scope of the statute's earlier iteration.21 The Board holds that the Council limited the authority of the Mayor during the pandemic emergency with respect to personnel actions and thereby limited the potential for broader action and impermissible erosion of collective bargaining rights in the name of an emergency. Therefore, the Board will treat actions enumerated in subsection (A)-(K) of the COVID-19 Emergency Act22 taken during the pandemic as management rights, and those unilateral personnel actions are permitted in response to the current emergency. As stated above, management rights are nonnegotiable but are subject to impact and effects bargaining upon request.23
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> The Board also recognizes that some emergencies call for immediate action resulting in the suspension of the duty to bargain. However, the Board, like the NLRB, adopts a narrow view in applying this exception to the general duty to bargain. In *Port*

*Printing,24* the NLRB explained a narrow exception to the duty to bargain during a financial emergency. The NLRB explained that the economic exigency exception is "limited to extraordinary events, which are an unforeseen occurrence, having major economic effect requiring that the company take immediate action."25 "Absent a dire financial e ergency . . . economic events such as a loss of significant accounts or contracts, operation at a competitive disadvantage, or supply shortages do not justify unilateral action." *!d.* at p 4.

The Board went on to state:

> The Board finds this reasoning persuasive. The Board holds that, in an instance of an extraordinary event, which was an unforeseen occurrence, requiring an agency to take immediate action, management has the right to take actions it deems necessary to carry out its mission. But it must bargain the impact and effects of its decision. Moreover, if during the state of emergency the need for immediate decision-making has passed, then management must engage in substantive bargaining over mandatory subjects of bargaining. The COVID-19 emergency and the law enacted by the D.C. Council permitted DPW to make the decision to transition to a 10-hour shift. The decision is a nonnegotiable management right.
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> A union has the right to impact and effects bargaining over a management right only when it makes a timely request to bargain. An unfair labor practice is not committed until there Decision and is a request to bargain and a "blanket" refusal to bargain.35 Absent a request to bargain, management does not violate the CMPA by unilaterally implementing a management right.36 But even a broad, general request for bargaining "implicitly encompasses all aspects of that matter, including the impact and effect of a manage.nPnt decision that is otherwise not bargainable." */d.* at 5-6.
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> Impact and effects bargaining is not waived, suspended, or "on pause" during an emergency, as suggested by the Agencies' representative.41 The refusal to bargain is an unfair labor practice. It should also be noted that the CMPA states that "an effective collective bargaining process is in the general public interest and will improve the morale of public employees and the quality of service to the public."42 The Board is unconvinced by the Agencies' claim of having no time to bargain. Bargaining cannot be postponed until the end of the emergency, at which time the Board's ultimate remedy may be inadequate. The Agencies' posture is incompatible with an effective collective bargaining process. */d.* at 6.
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> In the instant case, the Agencies' repeated assertions that they have no duty to bargain are clear-cut and flagrant conduct. The Agencies have taken the declaration of an emergency as *carte blanche* to refuse to bargain and to implement unilateral changes. The very serious nature of the COVID-19 pandemic calls for swift and deliberate action, but that does not excuse the Agencies' refusal to participate in collective bargaining. The Agencies' actions seriously interfere with the Board's process. The Board notes that, had the Agencies included the Union in its deliberations, they would likely not be hearing this case. */d.* at 8.

The Boad also noted that, "the health and safety of employees is a mandatory subject of bargaining which must be negotiated." */d.* at 9. Similarly, in *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections,* Case 20-U-24 (4/6/2020), at 7, motion for reconsideration denied. (5/8/20), the Board held "that the subjects of official time, as well as health and safety conditions of

employment, are mandatory subjects of bargaining and the Agency is not relieved of its duty to bargain because of the pandemic." In that case, also involving a Motion for Preliminary Relief, the Board ordered the agencies unilateral elimination of official time to be restored to the status quo; it ordered the agency to bargain "forthwith" about health and safety during the pandemic; and it also order the agency to bargain with the union concerning the impact and effects of the transition to a 12-hour shift.[5]

In *AFSCME Counci/20, Local 2921, AFL-CIO v. District of Columbia Public Schools,* PERB Case 1O-U-49(a), 2010, at 5, the Board stated that:

> Management violates its statutory duty to bargain when it implements a management decision in the face of a timely union request to bargain over impact and effects. See *American Federation of Government Employees, Local 383 v. D.C. Department of Human Services*, 49 D.C. Reg. 770, Slip Op. No. 418, PERB Case No. 94-U-09 (2002); *International Brotherhood of Police Officers, Local 446 v. D.C. General Hospital*, 41 D.C. Reg. 2321, Slip Op. No. 312, PERB Case No. 91-U-06 (1994). Further, the Board has determined that the duty to bargain "extends to matters addressing the impact and effect of management actions on bargaining unit employees as well as procedures concern1nhow these rights are exercised." *Teamsters, Loca/639 and District of Columbia Public Schools*, 38 D.C. Reg. 6693, Slip Op. No. 263, PERB Case No. 90-N-02 (1991); *AFSCME, Counci/20 v. District of Columbia General Hospital and Office of Labor Relations and Collective Bargaining*, 36 D.C. Reg. 7101, Slip Op. No. 227, PERB Case No. 88-U-29 (1989).

Concerning the Union's allegation of direct dealing, the Board in *Fraternal Order of Police v. D.C. Metro. Police Dept's,* PERB Case 99-U-27 (2001), 3-4, stated the following:

> This Board has issued decisions in cases involving direct dealing; however, it has not decided whether polling employees in the context of these facts constitutes direct dealing. In cases where the Board has considered the issue of direct dealing, it has ruled that "mere communication with membership", "is not violative of the Comprehensive Merit Personnel Act (CMPA)." *AFSCME D.C. Counci/20 v. GOG, et. at.,* 36 OCR 427, Slip Op. No. 200, PERB case No. 88-U-32 (1988) cited in *FOP/MPD Labor Committee v. D.C. Metropolitan Police Department,* 47 OCR 1449 (2000) Slip Op. No. 607, PERB Case No. 99-U-44 (1999).[11]
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> In the present case, we believe that MPD's actions went beyond "mere information gathering." Specifically, MPD's actions can be more accurately characterized as seeking employee views on alternate proposals regarding tour of duty and days off schedules. As a result, we conclude that MPD's actions constituted improper polling.
>
> Our finding is based on the following two determinations. First, we view MPD's letter and questionnaire as proposals, and not as an information gathering tool. Second, contrary to the Hearing Examiner's finding, we believe that MPD made a decision to

[5] See, *AFSCME, District Council 20, Locals 1200, 2776, 2401, and 2087 v. D.C. Gov't,* PERB Case 97-U-15A, (1999) at 7, fn. 10, holding that "An employer's unilateral changes in existing negotiable terms and conditions of employment constitute per se violations of the duty to bargain. A violation exists even if it is found that the unilateral changes were made in good faith. See, *NLRB v. Katz,* 369 U.S. 736 (1962)." There, the Board ordered, as part of the remedy, the rescission of the unilateral changes found.

> implement changes to the tour of duty and days off schedule.[12] Further, we believe that when management has competing proposals and *decides* that it *needs* input from employees, it *must* go through the employee's exclusive bargaining agent for that inputY This is the case even when the subject matter involves a management right that may be implemented without bargaining. In the present case, MPD had competing proposals. However, MPD did not go through the exclusive bargaining agent to get input concerning the proposals. Instead, they elected to contact bargaining unit members directly. In addition, MPD refused to bargain with FOP over the impact and effect of the change. As a result, the Board finds that MPD improperly bypassed the union and committed an unfair labor practice.

*In ReEl Paso Elec.* Co., 355 NLRB 544, 545 (2010), the NLRB stated as to direct dealing that:

> The established criteria for finding that an employer has engaged in unlawful direct dealing are "(1) that the [employer] was communicating directly with union represented employees; (2) the discussion was for the purpose of establishing or changing wages, hours, and terms and conditions of employment or undercutting the Union's role in bargaining; and (3) such communication was made to the exclusion of the Union." *Permanente Medical Group,* 332 NLRB 1143, 1144 (2000), citing *Southern California Gas* Co., 316 NLRB 979 (1995).
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> "[A]n employer has a fundamental right ... to communicate with its employees concerning its position in collective-bargaining negotiations," *United Technologies Corp.,* 274 NLRB 1069, 1074 (1985), but is obligated "to deal with the employees through the union, and not with the union through the employees." *General Electric* Co., 150 NLRB 192, 195 (1964). In this case, Hedrick dealt with the Union through Enriquez, thereby undercutting the Union's status as exclusive bargaining representative, in violation of Section 8(a)(5) of the Act.

In *Holly Farms Corp. v. NLRB*, 48 F.3d, 1360, 1368 (4th Cir. 1995), cert. granted in nonpertinent part 515 U.S. 963 (1995), affd. 517 U.S. 392 (1996), the Fourth Circuit stated the following in enkrcing an NLRB order:

> An employer's duty to bargain with its union encompasses the obligation to bargain over the following mandatory subjects-"wages, hours, and other terms and conditions of employment." 29 U.S.C. § 158(d); see id. § 158(a)(5). That obligation includes a duty to bargain about the "effects" on employees of a management decision that is not itself subject to the bargaining obligation. See *First Nat'/ Maintenance Corp. v. NLRB,* 452 U.S. 666, 679-[6]82, 101 S.Ct. 2573, 2581-[25]83, 69 L.Ed.2d 318 (1981); *NLRB v. Litton Fin. Printing Div.,* 893 F.2d 1128, 1133-[11]34 (9th Cir. 1990), rev'd in part on other grounds, 501 U.S. 190, 111 S.Ct. 2215, 115 L.Ed. 2d 177 (1991). Where changes in employee working conditions constitute such a bargainable effect, an employer violates § 8(a)(5) and (1) of the Act by implementing those changes without bargaining with the union. See *Litton,* 893 F.2d at 1133-[11]34. The employer also violates§ 8(a)(5) and (1) if it negotiates directly with its employees, rather than with their union representative, about such changes. See *EPE,* 845 F.2d at 491.

*b. Direct Dealing, the Unilateral Changes, and the Refusal to Bargain*

In the instant case, I find for the following reasons that DCPS engaged in unlawful direct dealing with employees and in unlawful unilateral changes by its actions on June 30, when

DCPS sent Union bargaining unit members two documents via email: (1) DCPS Return to In-Person Work Guidelines ("Guidelines"); and (2) DCPS Employee Return to In Person Work Intent Form ("Intent Form"). In this regard, on May 8, Union bargaining unit members met virtually with Fere;.,ee and other DCPS representatives to discuss ideas and recommendations regarding DCPS's plans to reopen schools for in-person learning during the COVID-19 pandemic. On May 9, Davis sent Ferebee an email with a list of 16 items to be discussed as they move forward. Ferebee responded by email dated May 11, thanking Davis for the comprehensive list of issues regarding reopening the schools, but stating that the May 8 meeting was not a contract negotiation session.

Davis testified that the Union created a taskforce on re-opening schools. On June 22, Davis sent DCPS officials a copy of recommendations prepared by the Union's taskforce on reopening DC Schools. Davis invited DCPS officials to attend a briefing by the chairs of the taskforce on June 23, and on June 24, Union taskforce members met virtually with DCPS officials to brief them on the taskforce's recommendations. They met again with DCPS officials, including Ferebee, on June 26 concerning the taskforce's recommendations. Thus, it was readily apparent to DCPS officials that safety concerns relating to in-person opening of the schools was of prime importance to the Union and its bargaining unit employees.

Yet, without warning to the Union, on June 30, DCPS sent Union bargaining unit members two documents via email: (1) DCPS Return to In-Person Work Guidelines ("Guidelines"); and (2) DCPS Employee Return to In Person Work Intent Form ("Intent Form"). DCPS sent the documents via email to Union representatives the same day that they were sent to teachers. The Intent Form gave the employees a July 10, deadline for a signed return, and it gave them two cht..ices with respect to their return to work for in-person teaching. The Intent Form by its terms states that the return relates to employees' health and safety as it states the "in- person return to work date for employees will be determined based on public health data...". The Intent Form did not state the consequences of not filling out the form, as to whether there would be any disciplinary action or status forfeiture for failing to timely comply, and it gave the employees the Hobson's choice of not signing, or electing one of the two alternatives without knowing the consequences of each, that is possibly returning to an unsafe work environment, or the result of their job status if they claimed a "qualifying medical condition." The accompanying Guidelines also contained items relating to employee health and safety such as: whether certain employees could "safely perform their roles" on-site; the wearing of masks and discipline related thereto; the administration of health screenings; the provision of PPE and circumstances related thereto; training on safety protocols; the use of leave and requirements relating to leave pertaining to the pandemic.

Both Davis and Field Representative Catapano testified to concerns raised by teachers to Union officials upon their receipt of the Intent Form. Davis testified, that to her knowledge, DCPS did not directly inform the teachers prior to the July 10 deadline that the teachers were not required to sign the Intent Form. Davis testified that, after the Union expressed concern about the Form having been sent without the Union's knowledge, DCPS informed the Union in writing that staff were not required to complete the Form, and they would not be disciplined for not completing it. DCPS official Powe testified that no member of the Union's bargaining unit has been disciplineu f::r failing to respond to the Intent Form. Powe identified a DCPS response to an information request by the Union, wherein the Union asked if DCPS intended to impose negative consequences on teachers who did not fill out the Intent Form by July 10, or by a later date. As part of DCPS response, it is stated, "Staff will not be disciplined for not completing the intent to return form." Powe testified that DCPS did not communicate this response directly to the teachers. Powe testified that DCPS did not bargain with the Union regarding the Intent Form or

the Guidelines before they sent it to the teachers. DCPS stated in the above referenced response to the Union's request for information page 2, item 6, that "If a staff person does not qualify for an approved leave or is not considered at risk, they will be expected to return to work. Before returning to work, DCPS will provide details on the health and safety measures put in place for a safe and strong reopening."

On July 5, Davis sent Ferebee an email requesting to bargain regarding the Guidelines and the Intent Form stating that to the "extent DCPS may assert that any of the foregoing is a nonnegotiable management right, WTU would dispute that assertion, but DCPS should nevertheless bargain with the WTU over the impact and effects of such decisions. Until the parties have had an opportunity to bargain over these matters, DCPS should withdraw both documents and inform teachers that they need not respond by the July 10 deadline." By email on July 6, Powe, responded by email to Davis' July 5, request to bargain by stating: "As previously discussed, DCPS is willing to engage in impacts and effects bargaining with you concerning reopening. Before we begin bargaining for the reopening, we should meet to discuss initial ground rules."

On July 7, Oavis responded to Powe stating that the Union would agree to meet for bargaining on July 9 and further that "I also want to make clear that WTU is not only requesting to bargain over the impacts and effects of reopening, but also regarding DCPS's policies for reopening, which affect the health and safety of WTU members and, per the recently issued Guidelines, impose new discipline on teachers for failure to comply with DCPS policies." Davis stated to Powe that you have refused to indicate whether DCPS will bargain over the Intent Form and Reopening Guidelines, and whether DCPS will rescind those documents pending the completion of negotiations. It was asserted that the negotiations could not be effective while those documents are in effect. Davis stated that the discussion of ground rules on July 9, was unnecessary, that the parties should proceed directly to substantive discussion in view of the July 10, deadline that DCPS has imposed on teachers to complete the Intent Form.

In *AFGE, Local631 v. D.C. Office of Labor Relations & Collective Bargaining*, PERB Case 20-U-23, 2020, at 9, the Board noted that, "the health and safety of employees is a mandatory subject of bargaining which must be negotiated." Similarly, in *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections,* Case 20-U-24 (2020), at 7, the Board held "that the subjects of official time, as well as health and safety conditions of employment, are mandatory subjects of bargaining and the Agency is not relieved of its duty to bargain because of the pandemic." Moreover, as a discussion in those cases reveals, that even if the implementation of a change is a management right, DCPS still had an obligation to bargain about the impact and effects of those changes with the Union prior to Lheir implementation. See also, *Holly Farms Corp. v. NLRB,* 48 F.3d, 1360, 1368 (4th Cir. 1995), cert. granted in nonpertinent part 515 U.S. 963 (1995), affd. 517 U.S. 392 (1996).

Here, DCPS engaged in direct dealing with employees by soliciting alternate options as to their return to work during the pandemic with a fixed deadline; and implemented unilateral changes with respect to its distribution of the Intent Form and Guidelines directly to unit members without first presenting the Union with the opportunity to bargain. Given the parties recent contacts concerning the Union's concerns about safely reopening, DCPS' actions were designed to or had the clearly foreseeable effect of undermining the Union before its membership. These actions were a fait accompli. Nevertheless, the Union requested bargaining after the fact, and the recission of the unilateral changes, which DCPS refused to do. I find by its actions, DCPS violated CMPA as alleged in the complaint.

I do not find cases cited by DCPS concerning the issuance of the June 30, Intent form to require a different result to my conclusion that it involved unlawful direct dealing. For example, in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. DC Metropolitan Police Department,* Case 09-U-55 (2016), at 4, it was stated:

> The Board has held that "[a]lleged examples of direct dealing must be examined in context to determine whether the agency intended to disparage or undermine the union's leadership."[19] The context here is that no evidence was presented that the Union ever negot;ated on behalf of individuals for leave on a particular day or played any role in leave requests. Article 15 of the CBA, entitled "Leave" does not refer to any such role nor does it make any provision for procedures for leave requests. It contains sections on "Funeral Leave" (section 1), "Leave for Convention and Union Functions" (section 2), "Leave for Membership Meetings" (section 3), sick leave (sections 4 and 5), and performance-of-duty injuries (section 6). Article 15 has no provisions on annual leave taken for personal reasons.[20] Rather than being a departure from the norm that could be seen as disparaging, the procedure followed here seems to be the ordinary procedure contemplated by the District Personnel Manual.

In the instant case, the issuance of the Intent Form, was not announced to the Union, although the parties were in the process of meeting regarding the safe re-opening of schools, and DCPS knew that the Union had expressed a clear intent to bargain on these matters. There was no set policy in effect at the time concerning the resumption of in-person work during the pandemic, and the choices presented to employees raised safety concerns, with a fixed deadline of July 10 to choose between two options, without a clear consequence of picking either, or not returning the form at all. I do not find as persuasive DCPS' contention that no employee was disciplined for not returning the form, as the employees had no way of knowing that at the time the form issued, or by the July 10 deadline for its return. Moreover, as set forth above, bypassing the Union with new policies pertaining to health and safety, with new options presented, during a pandemic, could only have the foreseeable effect of undermining the Union amongst its membership.

On July 9, one day after its filing of the complaint with PERB in this matter, the Union presented and discussed with DCPS a written proposed draft "Temporary Memorandum of Agreement during COVID19" (MOA) which detailed proposals that the Union sought to bargain over prior to the reopening of DCPS schools for in-person learning, including issues affecting the health and safety of returning teachers. The MOA states it was drafted by a team of over 200 members and field representatives of the Union.

On July 21, DCPS presented to the Union a draft of its "Reopen Strong COVID-19 Operations Handbook Guidance" for in-person hybrid operations/learning ("Handbook"). In her July 21, email to the Union, Powe stated that the Handbook was "to ensure processes and systems are in place that prioritize the health and safety of all students and staff should health conditions allow for learning at school." In a July 21, email to Powe, Ngwa stated "Can you confirm that DCPS will negotiate with WTU over the terms and conditions reflected in this document before taking any action to implement it?" Powe responded on July 23, stating that "By and large, the Operations Manual reflects the exercise of management's rights, including to determine educational policy and mission as well as to determine internal security controls and protocols to safeguard students and all employees against the spread of COVID 19 in schools with the reopening of in-person school operations. As such, management intends to negotiate

this as part of the impact and effects on reopening."

On July 30, the Mayor announced that DCPS schools would begin the year with all-virtual learning for the first term until at least November 6. On August 6, DCPS sent a tracked changes document to the Union with proposed edits and deletions to the Union's MOA proposals. DCPS also included comment bubbles in the document indicating provisions of the MOA that DCPS asserted were non-negotiable. A general review of the DCPS response to the Union's MOA reveals that most of the Union's 46-page proposals was lined over in the form of a cross-out by DCPS, along with comments along the side.

The Union argues in its brief with citations to the document in which DCPS responded to the Union's MOA, that the health and safety topics that DCPS declared nonnegotiable in the Union's MOA, included: supply of soap, water, paper towels, hand sanitizer, and cleaning supplies; requirements to wear face coverings in schools; COVID-19 testing at schools; health screening procedures; cleaning policies to prevent spread of COVID; social distancing measures, including limits on large gatherings and policies to avoid crowding; the protocol for notifying teachers of a confirmed case of COVID-19 at a school; policies regarding persons with COVID-19 symptoms or who have been exposed to the virus; and communication to teachers, staff, and students regarding preventing spread, including properly washing hands and properly wearing face coverings; ensuring proper ventilation in schools. DCPS' repeated response included statements that each of the particular proposals in the Union's MOA was a non-negotiable management right, as well as in certain instances that DCPS edited the proposed language to be r:onsistent with its Ops Manual Handbook that had been recently tendered to the Union without negotiation.

The Union contends, in its post-hearing brief, that DCPS, by the above-described conduct, has continued to refuse to bargain over health and safety matters for returning teachers in further violation of the CMPA. In this regard, the Union asserts that DCPS refused to negotiate on nearly all of the Union's MOA proposals and declared them non-negotiable. It is asserted that these proposals included some of the most basic protections for the health and safety of teachers during the pandemic. The Union contends its proposals are mandatory subjects of bargaining. The Union contends that in addition to DCPS' actions constituting a refusal to negotiate, DCPS citing its Handbook as another reason further compounds the problem since the Handbook was unilaterally developed by DCPS. The Union seeks a recommended order to the Board that DCPS be ordered to bargain in good faith concerning health and safety matters with the Union.

As set forth above, events taking place July 9, or thereafter, post dated the filing of the complaint in this case. On August 13, the Union filed a "Motion for Leave to File Amended Complaint," along with the "First Amended Unfair Labor Practice Complaint" with PERB. Paragraphs 28 and 29 of the proposed first amended complaint are new and appear to address conduct indicating a continuing refusal to bargain during negotiations subsequent to July 8. On August 20, PERB's Executive Director issued a directive denying the motion to amend the complaint. However, she stated, "In support of its Motion, WTU asserts that the amended complaint would add facts to support allegations of the complaint. WTU will have the opportunity to present facts to support the allegations of the complaint during the hearing. The purpose of a hearing is to develop a full and factual record upon which the Board may make a decision. The Motion is denied."

At the hearing, the parties took the above directive to heart, as they entered a joint stipulation of facts, which included a history beyond the July 8, filing of the complaint all the way

through August 20. The stipulation of facts included: the Union's July 9 presentation of its 46 page MOA to DCPS; DCPS July 21, presentation of its draft Covid-19 Operations Handbook to the Union; and DCPS August 6, tracked changes, proposed edits, deletions, and comments regarding the Union's MOA. Moreover, extensive testimony was drawn from the Union's witnesses as to the formulation and presentation of the MOA, and concerns regarding DCPS response to thereto. In this regard, DCPS witness Powe testified that it remained DCPS position that for all of the items in the Union's MOA that DCPS marked as non-negotiable on August 6, that DCPS continues to assert that those items are non-negotiable.

In its post-hearing brief, DCPS cites the Mayor's declaration of a public health emergency on March 11, as well as the emergency powers granted to the Mayor by the Council of the District of Columbia. It was noted that on March 13, that DCPS would modify school operations on March 16 to April 1 for distance learning. It was stated that distance learning was scheduled to take place from March 24 to March 31. On March 20, it was announced that the initial return date of April 1 to in-person learning was postponed, and that distance learning would continue o 4.pril 24 with in person learning scheduled to resume on April 27. On April 17, it was announced that distance learning would continue for the remainder of the school year ending on May 29. It was pointed out in DCPS brief DCPS efforts made in seeking input information pertaining to the safe opening of schools, with the Union amongst those sources. It is stated that safety and data points from where they are derived "is simply not a matter governed by collective bargaining." It was pointed out that on July 30, that the Mayor announced that DCPS schools would begin the 2020-2021 school year with all virtual learning.

DCPS cites in its brief various DC Code provisions and Mayor's Orders which on their face would not appear to disturb the Board's rulings in *AFGE, Local 631 v. D.C. Office of Labor Relations & Collective Bargaining,* PERB Case 20-U-23, ( 3/31/2020), at 1, Motion for Reconsideration denied. (5/8/20); and in in *Fraternal Order of Police/Department of Corrections Labor Committee v. District of Columbia Department of Corrections,* PERB Case No. 20-U-24 (4/6/2020), at 7, Motion for Reconsideration denied. (5/8/20) that bargaining over health and safety was a mandatory subject of bargaining during the pandemic. Some of the cited code provisions, in fact, were in effect prior to the time the Board's decisions issued. Moreover, arguments that the Board erred in those decisions is a matter for DCPS to take up with the Board.

DCPS also cites multiple cases contending that its actions were encompassed by management rights; and it argues in the alternative that it engaged in good faith impact and effects bargaining However, as set forth above, the Board has determined that bargaining about health and safety during the pandemic constitutes a mandatory subject of bargaining; and given DCPS uniform declaration of management rights, I do not find that it engaged in good faith impact and effects bargaining. This is particularly so since it ignored the Union's request to rescind the Intent Form and Guide as a prelude to good faith bargaining.

DCPS asserts that is obligation to bargain can only be decided by way of a negotiability appeal. However, in *Teamsters v. DCPS,* PERB Case 89-U-17 (1990), at fn. 4, the Board stated "We similarly reject DCPS's contention that the only way to raise issues concerning the negotiability of a subject matter is through a negotiability appeal. Such determinations may also be made in unfair labor practice proceedings as is the case herein." (Case citations omitted.) This is particularly apt in the instant case involving allegations of direct dealing and unilateral changes.

In sum, as set forth above, in *AFGE, Loca/631 v. D.C. Office of Labor Relations & Collective Bargaining,* PERB Case 20-U-23, at 9 ( 3/31/2020), a case involving the pandemic, the Board stated that, "the health and safety of employees is a mandatory subject of bargaining which must be negotiated." The Board further stated:

> In the instant case, the Agencies' repeated assertions that they have no duty to bargain are clear-cut and flagrant conduct. The Agencies have taken the declaration of an emergency as *carte blanche* to refuse to bargain and to implement unilateral changes. -:-he very serious nature of the COVID-19 pandemic calls for swift and deliberate action, but that does not excuse the Agencies' refusal to participate in collective bargaining. The Agencies' actions seriously interfere with the Board's process. The Board notes that, had the Agencies included the Union in its deliberations, they would likely not be hearing this case. */d.* at 8.

Here, although DCPS had been meeting with the Union concerning operations during the pandemic, on June 30, unbeknownst to the Union it sent the Intent Form and Guide out directly to bargaining unit members, and as the testimony reveals such action raised concerns amongst those employees. In the circumstances here, I have found DCPS actions to constitute direct dealing and unilateral actions which served to undercut the Union with its membership. While DCPS asserts its actions were warranted by the exigencies of the pandemic, it postponed opening the schools to in-person learning on several occasions; and it also as it reports in its brief consulted numerous sources in formulating its pandemic action plan. Thus, DCPS repeatedly postponed in-person re-opening and had time to consult multiple sources. It asserts it just did not have time to bargain in good faith with the Union concerning safety and health of the teachers concerning the pandemic, an assertion I reject for the reasons stated. Along these lines, OCPS and the Union were able to reach an understanding through an MOA on distance learning. As stated up above, had OCPS bargained with the Union in good faith concerning health and safety regarding the pandemic, it is not likely that the Board "would be hearing this case." Accordingly, I find violations of the CMPA as alleged in the complaint.

**Conclusions of Law**

1. DCPS is an employer and is subject to the jurisdiction of PERB in accordance with D.C. Code Section 1-602.01
2. The Union is a labor organization and is subject to the jurisdiction of PERB in accordance with D.C. Code Section 1-617.03
3. By engaging in direct dealing with the Union's bargaining unit members and implementing unilateral changes to terms and conditions of employment for those employees relating to health and safety by the issuance of its June 30, 2020, Intent Form to employees and its Guidelines DCPS has violated D.C. Code Sections 1-617.04(a)(1) and (5).

**Remedy**

Having found that DCPS engaged in certain unfair labor practices, I shall issue a recommended order that they cease and desist and to take certain affirmative action designed to effectuate the policies of the CMPA.

## RECOMMENDED ORDER

DCPS, its officers, agents, attorneys, successors and assigns shall:

1. Cease and desist from refusing to bargain in good faith with the Union concerning health and safety during the pandemic.
2. Cease and desist from implementing changes in employment pertaining to health and safety without fulfilling its bargaining obligation with the Union, and/or engage in direct dealing with employees concerning health and safety in a manner which will serve to undermine the Union.
3. Cease and desist in any like or related manner in interfering with, restraining or coercing employees in their rights guaranteed them under D.C. Code Sec. 1-617.04 (a)(1) and (a)(5).
4. DCPS shall negotiate in good faith with the Union forthwith, upon request, about health and safety issues concerning the pandemic.
5. DCPS shall retract in writing to employees the Intent Form and Guidelines issued to bargaining unit employees on around June 30, 2020, and notify the Union in writing that this has been done.
6. Within 14 days after service by the PERB, post at its facilities in Washington, D.C. copies of the attached notice marked "Appendix." Copies of the notice, on forms providec; b:· the PERB, after being signed by a DCPS authorized representative, shall be posted immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to bargaining unit employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by e-mail, posting on an intranet or an internet site, and/or other electronic means, if DCPS customarily communicates with their employees by such means. *Picini Flooring,* 356 NLRB No.9 (2010) and *U.S. DOJ, FED, BOP, Transfer CTR, OKLA. City, OKLA,* 67 FLRA 221 (2014). Reasonable steps shall be taken by DCPS to ensure that the posted notices are not altered, defaced, or covered by any other material.
7. Within 21 days after service by the PERB, file with the PERB sworn certification of a responsible official attesting to the steps that DCPS has taken to comply.

Dated, Washington, D.C. October 19, 2020

Eric M. Fine
Hearing Examiner

**APPENDIX** NOTICE TO
EMPLOYEES Posted by
Order of the
Public Employee Relations Board
An Agency of the District of Columbia

The Public Employees Relations Board has found that we violated the Comprehensive Management Personnel Act and has ordered us to post, mail, and obey this notice.

DISTRICT OF COLUMBIA LAW GIVES YOU THE RIGHT TO
Form, join, or assist a union
Choose a representative to bargain with us on your behalf
Act together with other employees for your benefit and protection
Ch:>ose not to engage in any of these protected rights.

WE WILL NOT refuse to bargain with the Washington Teachers Union, Local #6, American Federation of Teachers, AFL-CIO, (the Union) for employees in bargaining units in which the Union is the certified representative regarding health and safety during the pandemic.
WE WILL NOT implement changes in employment pertaining to health and safety without fulfilling our bargaining obligation with the Union, and/or engage in direct dealing with employees concerning health and safety in a manner which will serve to undermine the Union.
WE WILL NOT engage in any like or related conduct which interferes with, restrains or coerces employees in their rights guaranteed them under D.C. Code Sec. 1-617.04 (a)(1) and (a) (5).
WE WILL bargain with the Union forthwith in good faith, upon request, about health and safety issues concerning the pandemic.
WE WILL promptly retract in writing to employees the Intent Form and Guidelines issued to bargaining unit employees on around June 30, 2020, and notify the Union in writing that this has been done.

DISTRICT OF COLUMBIA PUBLIC SCHOOLS
Employer

De: _____By_____
Representative Title

**CERTIFICATE OF SERVICE**

This is to certify that the attached Decision and Order was served to the following parties on this the 2nd day of November 2020:

Via File & ServeXpress

Lee W. Jackson
James & Hoffman, P.C.
1130 Connecticut Avenue NW, Suite 950
Washington, D.C. 20036

Stephanie T. Maltz
District of Columbia
Office of Labor Relations and Collective Bargaining
441 4th Street NW, Suite 820 North
Washington, D.C. 20001

/s/ Royale Simms
Public Employee Relations Board

## DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

## NOTICE OF FUNDING AVAILABILITY

### FY21 Robust Retail: Citywide Grant 11/18/2020

The Department of Small and Local Business Development (DSLBD) is excited to announce that we will be accepting applications for the **2021 Robust Retail: Citywide grants starting December 7, 2020 and closing January 15, 2021.**

A robust retail sector is critical to maintaining the vibrancy of DC neighborhoods, but due to market realities of the past year, retail businesses are under threat of business decline and closure. Thus the 2021 Robust Retail Citywide grant(s) support existing DC-based retail businesses maintaining operations and viability during the current small business crisis.

DSLBD intends to award up to $7,500 per business to 106 businesses from the total $800,000 in available funding for Fiscal Year 2021. This grant will be operated as a reimbursement grant, awarded via lottery, to DC retail businesses that have met all eligibility requirements by the final deadline.

**Final Deadline**
The absolute final deadline to apply online is January 15, 2021 at 2:00 p.m. EST, no exceptions. Applications will only be accepted through the online application system listed in the Request for Applications (RFA) on DSLBD's website.

**Who can apply?**

Only for-profit consumer-facing, small retail businesses with fewer than 25 full-time employees (FTEs), with a licensed retail location in DC are eligible for Robust Retail Citywide Grants. ***Home-based, online-only, and non-profit businesses are not eligible for this grant opportunity.*** Applicants must be compliant with the Office of Tax & Revenue's Clean Hands requirements, be licensed as a retail business in the District, and have maintained active general liability insurance during the time for which they are requesting reimbursement for expenses.

**How can the funds be used?**
The funding may be used to reimburse for expenses the agency deems reasonable to support maintaining business viability between July 1, 2020 and January 15, 2021. Examples of allowable and disallowed uses are detailed in the full Request for Applications (RFA) available on DSLBD's website during the application period.

**NOTICE OF FUNDING AVAILABILITY (Page 2)**
**FY21 Robust Retail: Citywide Grant**

**How will awardees be selected?**
Grant recipients will be selected through a lottery process, with a weighted preference for selection from the lottery for businesses that were not permitted to resume operations until Phase 2 and Phase 3 of reopening. All applications deemed eligible and received by or before the deadline will be entered into the lottery system.

The Director of DLSBD will make the final approval of grant awards. Announcements of selected awards will be made on or around January 29, 2021.

**How do I apply?**
All instructions are included in the formal "Request for Applications" (RFA) available for download on DSLBD's website on or before December 7, 2020. Applicants are encouraged to read the full Request for Applications at https://dslbd.dc.gov/service/current-grant-opportunities.

**Questions?**
We will hold online, virtual information sessions. Applicants are highly encouraged to attend a virtual information session. Details on information sessions can be found on the Eventbrite page using the following link: http://bit.ly/DSLBDeventbrite.

All other questions not asked during an in-person information session must be submitted in writing to Inno.ED@dc.gov. We will begin answering questions after the grant opens on December 7, 2020.

***Reservations***
*DSLBD reserves the right to issue addenda and/or amendments subsequent to the issuance of this Notice of Funding Availability (NOFA) or RFA, or to rescind the NOFA or RFA at any time.*

**TWO RIVERS PUBLIC CHARTER SCHOOL**

**INTENT TO AWARD A SOLE SOURCE CONTRACT**

**Onsite Learning Facilitator**

Two Rivers Public Charter School intends to enter into a sole source contract with AlphaBEST Education, Inc., to provide onsite facilitation of learning. The cost of this contract will be approximately $145,800. The decision to sole source was made because AlphaBEST is uniquely qualified to provide onsite facilitation of learning because it is the only vendor currently licensed by OSSE to provide care at Two Rivers' campuses and this service is needed ASAP due to the pandemic. Please contact Aurora Steinle with any questions at procurement@tworiverspcs.org.

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

**Application No. 20289 of 400 Seward Square LLC**, pursuant to 11 DCMR Subtitle X, Chapter 10, for an area variance from the lot area requirements of Subtitle E § 201.7, to permit an addition of 3 units to the existing 14-unit apartment building in the RF-3 Zone at premises 400 Seward Square S.E. (Square 819, Lot 28).

**HEARING DATES**: October 21, 2020, October 28, 2020, and November 4, 2020[1]
**DECISION DATE**: November 4, 2020

## SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.[2]

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report dated October 17, 2020, indicated that at a regularly scheduled, properly noticed public meeting on October 13, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 38.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 33.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 14.)
Persons in Support. One letter was submitted in support of the application. (Exhibit 34.)

[1] This application was originally scheduled for public hearing on October 21, 2020, but was postponed to October 28, 2020 then rescheduled for a virtual public hearing on November 4, 2020 to allow for clarification of the relief required for the self-certified application. The relief is appropriate as presented by the Applicant and captioned above.

[2] The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the *DC Register* less than 40 days. However, all other forms of notice were provided, and no prejudice resulted to any party.

Persons in Opposition. One letter from the Capitol Hill Restoration Society was filed in opposition to the application (Exhibit 37.)

**Variance Relief**

The Applicant seeks relief under Subtitle X § 1002.1 for an area variance from the lot area requirements of Subtitle E § 201.7, to permit an addition of three (3) units to the existing 14-unit apartment building in the RF-3 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof under 11 DCMR Subtitle X § 1002.1, that there exists an exceptional or extraordinary situation or condition related to the property that creates a practical difficulty, in the case of an area variance, or an undue hardship, in the case of a use variance, in complying with the Zoning Regulations, and that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan as embodied in the Zoning Regulations and Map.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[3] AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE**: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Anthony J. Hood to APPROVE; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 18, 2020

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL

[3] In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20303 of Government Properties Income Trust LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the penthouse use requirements of Subtitle C § 1500.3(c), and under the Capitol Security Sub-Area requirements of Subtitle I § 605.6, to renovate an office building to a mixed-use building with a rooftop restaurant in the D-3 Zone at premises 20 Massachusetts Avenue, N.W. (Square 626, Lot 78).

**HEARING DATE**: November 4, 2020
**DECISION DATE**: November 4, 2020

## SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.[1]

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commissions ("ANC") 6C and 6E (the adjacent ANC).

ANC Reports. The ANC 6C report, dated November 3, 2020, indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2020, at which a quorum was present, ANC 6C voted to support the application with one condition prohibiting the amplification of music on the roof terrace. (Exhibit 41.)

The report from adjacent ANC 6E, dated November 1, 2020, indicated that at a regularly scheduled, properly noticed public meeting on October 6, 2020, at which a quorum was present, ANC 6E also voted to support the application. (Exhibit 38.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 36.)

[1] The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the *DC Register* less than 40 days. However, all other forms of notice were provided, and no prejudice resulted to any party.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application on the condition that the Applicant implement the Transportation Demand Management ("TDM") Plan, as proposed by the Applicant in the September 16, 2020 Transportation Statement (Exhibit 31A), for the life of the project, unless otherwise noted. (Exhibit 35.) The Board adopted these conditions as part of this order.

Other Public Input. An unofficial letter (unsigned) was offered into the record in support of the Application from the Architect of the Capitol ("AOC"). The Board accepted the letter, and allowed one week for the letter to be replaced with a signed copy. However, no further filing was submitted from the AOC.

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the penthouse use requirements of Subtitle C § 1500.3(c), and under the Capitol Security Sub-Area requirements of Subtitle I § 605.6, to renovate an office building to a mixed-use building with a rooftop restaurant in the D-3 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT to the REVISED APPROVED PLANS[2] AT EXHIBIT 32A – REVISED PLANS and ELEVATIONS, and SUBJECT to the following CONDITIONS:**

A. The Applicant shall implement the TDM Plan, proposed in their Transportation Statement, dated Sept. 16, 2020 (Exhibit 31A), for the life of the project, unless otherwise noted.

   1. The Applicant shall identify Transportation Coordinators for the planning, construction, and operations phases of development. There shall be a Project Transportation

[2] In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

Coordinator as well as a Transportation Coordinator for each site use (office, hotel, and retail). The Transportation Coordinators shall act as points of contact with DDOT, goDCgo, and Zoning Enforcement.

2. The Applicant shall provide Transportation Coordinators' contact information to goDCgo, conduct an annual commuter survey of employees on-site, and report TDM activities and data collection efforts to goDCgo once per year. All employer tenants shall survey their employees and report back to the Transportation Coordinator.
3. The Applicant shall ensure Transportation Coordinators develop, distribute, and market various transportation alternatives and options to employees and patrons, including promoting transportation events (i.e., Bike to Work Day, National Walking Day, Car Free Day) on the property website and in any internal building newsletters or communications.
4. The Applicant shall ensure Transportation Coordinators receive TDM training from goDCgo to learn about the TDM conditions for this project and available options for implementing the TDM Plan.
5. The Applicant shall ensure Project Transportation Coordinators require, by lease or other agreement, that tenants with 20 or more employees on-site comply with the DC Commuter Benefits Law and participate in at least one of the three transportation benefits outlined in the law (employee-paid pre-tax benefit, employer-paid direct benefit, or shuttle service), as well as any other commuter benefits related laws that may be implemented in the future.
6. The Applicant shall provide a minimum of six (6) showers and 46 lockers for use by employees, complying with the ZR16 requirements for this project, based on its gross floor area and minimum required number of long-term bicycle parking spaces.
7. The Applicant shall provide 82 long-term and up to 40 short-term bicycle parking spaces free of charge to employees. This meets or exceeds the ZR16 requirements of 82 long-term spaces and 16 short-term spaces for this project.
8. The Applicant shall provide storage for two (2) child trailers/strollers and two (2) tandem bikes in the long-term bicycle storage room.
9. The Applicant shall provide outlets for charging electric bicycles and a bicycle repair station in the long-term bicycle storage room.

For the office portion of the project, the Applicant shall implement the following:

10. The Applicant shall unbundle the cost of parking from the cost to lease an office unit.
11. The Applicant shall notify goDCgo each time a new office tenant occupying more than 15% of the leasable area of the project moves in and provide TDM information to each tenant as they move in.
12. The Applicant shall provide links to CommuterConnections.com and goDCgo.com on property websites.
13. The Applicant shall ensure the Transportation Coordinator implements a carpooling

system such that individuals working in the building who wish to carpool can easily locate other employees who live nearby.

14. The Applicant shall distribute information on the Commuter Connections Guaranteed Ride Home (GRH) program, which provides commuters who regularly carpool, vanpool, bike, walk, or take transit to work with a free and reliable ride home in an emergency.

15. The Applicant shall provide employees who wish to carpool with detailed carpooling information and shall refer them to other carpool matching services sponsored by the Metropolitan Washington Council of Governments (MWCOG) or other comparable service if MWCOG does not offer this in the future.

16. The Applicant shall designate up to five (5) of the total 186 proposed parking spaces as preferential carpooling spaces in a convenient location within the parking garage for employee use.

For the retail portion of the project, the Applicant shall implement the following:

17. The Applicant shall unbundle the cost of parking from the cost to lease an office unit.

18. The Applicant shall post "getting here" information in a visible and prominent location on the website with a focus on nonautomotive travel modes. Also, links shall be provided to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for customers, attendees, and patrons discouraging parking on-street in Residential Permit Parking (RPP) zones.

19. The Applicant shall provide employees who wish to carpool with detailed carpooling information and shall refer them to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this in the future.

For the hotel portion of the project, the Applicant shall implement the following:

20. The Applicant shall require that front office and customer-facing staff are provided training by goDCgo (either in-person or webinar) to learn of the non-automotive options for traveling to the property.

21. The Applicant shall provide guests with goDCgo's Get Around Guide by making it available on the property website and in printed format for front office or customer-facing staff.

22. The Applicant shall ensure the Transportation Coordinator subscribes to goDCgo's hospitality newsletter.

23. The Applicant shall post "getting here" information in a visible and prominent location on the website with a focus on nonautomotive travel modes. The Applicant shall also provide links to goDCgo.com, CommuterConnections.com, transit agencies around the metropolitan area, and instructions for patrons discouraging parking on-street in RPP zones.

24. The Applicant shall provide comprehensive transportation information and directions on the hotel website, including promoting the use of non-automotive modes of transportation

and links to website for goDCgo, Capital Bikeshare, DC Circulator, and the Washington Metropolitan Area Transit Authority (WMATA).

25. The Applicant shall provide brochures with information on non-automotive options for traveling to the property, and make them available at all times in a visible location in the lobby.

26. The Applicant shall provide employees who wish to carpool with detailed carpooling information and refer them to other carpool matching services sponsored by MWCOG or other comparable service if MWCOG does not offer this in the future.

B. The Applicant shall not permit the use of any outdoor amplification device that plays or projects music from the Project's rooftop terrace.

**VOTE**: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to APPROVE; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 17, 2020

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

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

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR

STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20305 of FLORIDA 21 LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201, from the court requirements of Subtitle F § 202.1, to construct a partial fourth-story addition to an existing attached principal dwelling unit and convert it into a 4-unit apartment house in the RA-8 Zone at premises 2152 Florida Avenue, N.W. (Square 66, Lot 828).

**HEARING DATE**: November 4, 2020
**DECISION DATE**: November 4, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 44A – Revised Zoning Self-Certification; Exhibit 4 - Original).

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.[1]

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2B.

ANC Report. The ANC's report, dated September 17, 2020, indicated that at a regularly scheduled, properly noticed public meeting on September 9, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 27.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 34.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 35.)

[1] The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the *DC Register* less than 40 days. However, all other forms of notice were provided, and no prejudice resulted to any party.

Persons in Support. Two letters were submitted by neighbors in support of the application. (Exhibits 36 and 41.)

Persons in Opposition.
Two letters were submitted by neighbors in opposition to the application. (Exhibits 28 and 29.) Also, two witnesses testified in opposition to the application.

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle F § 5201, from the court requirements of Subtitle F § 202.1, to construct a partial fourth-story addition to an existing attached principal dwelling unit and convert it into a 4-unit apartment house in the RA-8 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[2] AT EXHIBIT 6 – ARCHITECTURAL PLANS.**

**VOTE**: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to APPROVE; one Board seat vacant).

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 2020

[2] In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20310 of Robert and Stefanie Wehagen,** pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a one-story rear addition to an existing attached flat in the RF-1 Zone at premises 128 12th Street, N.E. (Square 988, Lot 40).

**HEARING DATE:** November 4, 2020
**DECISION DATE:** November 4, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.[1]

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 8, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 31.)

OP Report. The Office of Planning submitted a report, dated October 23, 2020, recommending approval of the application. (Exhibit 28.)

DDOT Report. The District Department of Transportation submitted a report, dated October 20, 2020, indicating that it had no objection to the application. (Exhibit 29.)

Persons in Support. The Board received three letters from neighbors in support of the application. (Exhibits 12, 13 and 26.) The Board also received a letter of support from the Capitol Hill Restoration Society. (Exhibit 30.)

**Special Exception Relief**

[1]The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the DC Register less than 40 days. All other forms of notice were provided, and no prejudice resulted to any party.

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle E § 5201 from the lot occupancy requirements of Subtitle E § 304.1, to construct a one-story rear addition to an existing attached flat in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS[2] AT EXHIBIT 6 – ARCHITECTURAL PLANS AND ELEVATIONS.**

**VOTE**: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to Approve; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** November 13, 2020

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

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN

[2]Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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

**Application No. 20311 of Jennifer Duck,** 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, and from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone at premises 646 E Street, N.E. (Square 861, Lot 157).

**HEARING DATE:** November 4, 2020
**DECISION DATE:** November 4, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.[1]

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6C.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on October 14, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 35.)

OP Report. The Office of Planning submitted a report, dated October 23, 2020, recommending approval of the application. (Exhibit 30.)

DDOT Report. The District Department of Transportation submitted a report, dated October 20, 2020, indicating that it had no objection to the application. (Exhibit 31.)

Persons in Support. The Board received three letters from neighbors in support of the application. (Exhibits 24, 29 and 36.)

[1] The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the *DC Register* less than 40 days. All other forms of notice were provided, and no prejudice resulted to any party.

Persons in Opposition. The Board received a letter from the Capitol Hill Restoration Society in opposition to the application. (Exhibit 32.)

Other Public Input.
Thomas McDowell, a neighbor, testified at the hearing seeking clarity about the application. His testimony was neither in support of, nor in opposition to, the application.

**Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.4, and from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition to an existing attached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED REVISED PLANS[2] AT EXHIBIT 27 – REVISED ARCHITECTURAL PLANS.**

**VOTE**: **4-0-1** (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Peter A. Shapiro to APPROVE; one Board seat vacant.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**
A majority of the Board members approved the issuance of this order.

[2] Self-certification: In granting the self-certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**FINAL DATE OF ORDER:** November 18, 2020

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.