

***District of Columbia***

**REGISTER**

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**HIGHLIGHTS**

- D.C. Council schedules a public hearing on Bill 23-0637, Warehousing and Storage Eminent Domain Authority Act of 2020
- D.C. Council schedules a public hearing on Bill 23-641, Dynamic Performance Parking Zone Amendment Act of 2020
- Contract Appeals Board updates the Board’s rules, practices and procedures
- Office of State Superintendent of Education imposes an 18-month suspension of educator preparation provider approvals and renewals pending the promulgation of new regulations
- Department of Energy and Environment announces funding for the Fiscal Year 2021 Clean Water Construction Treatment Works Projects
- Department of Energy and Environment establishes new requirements for underground storage tanks
- Department of Health updates procedures for maternal mortality reporting
- D.C. Water and Sewer Authority revises engineering review fees and charges

# DISTRICT OF COLUMBIA REGISTER

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

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## DISTRICT OF COLUMBIA OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ROOM 520S – 441 4<sup>th</sup> STREET, ONE JUDICIARY SQUARE - WASHINGTON, D.C. 20001 - (202) 727-5090

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ADMINISTRATOR

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COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 23-48

"Fiscal Year 2020 Budget Support Clarification Temporary Amendment Act of 2019"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 23-503 on first and second readings October 22, 2019 and November 5, 2019, respectively. Pursuant to Section 404(e) of the Charter, the bill became Act 23-175 and was published in the December 13, 2019 edition of the D.C. Register (Vol. 66, page 16179). Act 23-175 was transmitted to Congress on December 12, 2019 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 23-175 is now D.C. Law 23-48, effective January 28, 2020.

  
Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December 12, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, 30, 31  
January 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 21, 22, 23, 24, 27

COUNCIL OF THE DISTRICT OF COLUMBIA

NOTICE

D.C. LAW 23-49

"Federal Worker Housing Relief Extension Temporary Act of 2019"

Pursuant to Section 412 of the District of Columbia Home Rule Act, P.L. 93-198 (the Charter), the Council of the District of Columbia adopted Bill 23-527 on first and second readings November 5, 2019, and November 19, 2019, respectively. Following the signature of the Mayor on December 5, 2019, pursuant to Section 404(e) of the Charter, the bill became Act 23-177 and was published in the December 13, 2019 edition of the D.C. Register (Vol. 66, page 16185). Act 23-177 was transmitted to Congress on December 12, 2019 for a 30-day review, in accordance with Section 602(c)(1) of the Home Rule Act.

The Council of the District of Columbia hereby gives notice that the 30-day Congressional review period has ended, and Act 23-177 is now D.C. Law 23-49, effective January 28, 2020.



Phil Mendelson  
Chairman of the Council

Days Counted During the 30-day Congressional Review Period:

December 12, 13, 16, 17, 18, 19, 20, 23, 24, 26, 27, 30, 31  
January 2, 3, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 21, 22, 23, 24, 27

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

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

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

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

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|---------|---|
| B23-661 | Surplus Green Space Retention Amendment Act of 2020<br><br>Intro. 2-13-20 by Councilmember Cheh and referred to the Committee on Facilities and Procurement   |
| <hr/>   |   |
| B23-663 | Nuisance Property Lien Attachment Amendment Act of 2020<br><br>Intro. 2-14-20 by Councilmember Todd and referred to the Committee on Judiciary and Public Safety  |
| <hr/>   |   |
| B23-664 | Access to Jobs Amendment Act of 2020<br><br>Intro. 2-18-20 by Councilmembers R. White, Grosso, Allen, T. White, Cheh, Bonds, Nadeau, and Todd and referred to the Committee on Facilities and Procurement with comments from the Committee on Labor and Workforce Development |
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B23-665 Public Facilities Environmental Safety Amendment Act of 2020  
Intro. 2-18-20 by Councilmembers R. White, Nadeau, Gray, Cheh, Bonds, and Allen and referred to the Committee on Facilities and Procurement with comments from the Committee on Transportation and the Environment and the Committee on Recreation and Youth Affairs

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B23-666 Washington Mystics Motor Vehicle Identification Tags Amendment Act of 2020  
Intro. 2-18-20 by Chairman Mendelson and Councilmembers McDuffie, Grosso, Allen, Nadeau, Bonds, Todd, Cheh, T. White, R. White, and Silverman and referred to the Committee on Transportation and the Environment

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### **PROPOSED RESOLUTIONS**

PR23-688 Real Property Tax Appeals Commission Edwin Dugas Confirmation Resolution of 2020  
Intro. 2-11-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-689 Real Property Tax Appeals Commission Ronald Hudson Confirmation Resolution of 2020  
Intro. 2-11-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Housing and Neighborhood Revitalization

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PR23-690 Food Policy Council Ronnie Webb Confirmation Resolution of 2020  
Intro. 2-11-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Transportation and the Environment

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PR23-691 Police Complaints Board Bobbi Strang Confirmation Resolution of 2020  
Intro. 2-11-20 by Chairman Mendelson at the request of the Mayor and referred to the Committee on Judiciary and Public Safety

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PR23-693 Sense of the Council Supporting the National League of Cities' Leading Together Cities Agenda for the 2020 U.S. Presidential Election Resolution of 2020

Intro. 2-12-20 by Councilmember Todd and Retained by the Council

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PR23-694 Commission on the Arts and Humanities Dr. Heran Sereke-Brhan Confirmation Resolution of 2020

Intro. 2-13-20 by Chairman Mendelson at the request of the Commission on the Arts and Humanities and referred to the Committee of the Whole

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PR23-696 Sense of the Council Opposing Implementation of Public Charge Rule Resolution of 2020

Intro. 2-18-20 by Councilmembers Todd, Allen, Gray, R. White, Grosso, Cheh, Nadeau, and Bonds 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**

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**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON**  
**COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

**ANNOUNCE A PUBLIC HEARING ON**

**B23-0577 – THE “CHILDREN’S HOSPITAL RESEARCH AND INNOVATION CAMPUS  
EQUITABLE TAX RELIEF ACT OF 2019”**

**B23-0637 – THE “WAREHOUSING AND STORAGE EMINENT DOMAIN AUTHORITY  
ACT OF 2020”**

**Tuesday, March 10, 2020, 10:00 a.m.**  
**Room 123, John A. Wilson Building**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington, D.C. 20004**

On **Tuesday, March 10, 2020** Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development will hold a public hearing to consider Bill 23-0577, the “Children’s Hospital Research and Innovation Campus Equitable Tax Relief Act of 2020”.

The stated purpose of Bill 23-0577, the “Children’s Hospital Research and Innovation Campus Equitable Tax Relief Act of 2019” is to amend Chapter 10 of Title 47 of the District of Columbia Official Code to provide a real property tax exemption to the properties designated as square 2950, lots 824 and 826, and to provide recordation and transfer tax exemptions for the documents recorded with respect to such properties. The properties so designated are owned by Children’s National at Walter Reed, LLC, a wholly owned subsidiary of Children’s Hospital, which is a District of Columbia nonprofit corporation.

The stated purpose of Bill 23-0637, the “Warehousing and Storage Eminent Domain Authority Act of 2020” is to amend the Warehousing and Storage Eminent Domain Authority Act of 2019 to expand the lots which the Mayor is authorized to acquire via the exercise of eminent domain, for the purposes of warehousing and storage. The District government’s need for warehousing and storing equipment, records, property, and supplies nearly exceeds current capacity at District owned facilities. The Warehousing and Storage Eminent Domain Authority Act of 2019 authorized the Mayor to acquire, through exercise of eminent domain, a property located on W Street, N.E. for warehousing and storage purposes, but that authorization does not include all of the lots on that property associated with the trash transfer station business and does not meet the

District's significant warehousing and storage needs. Bill 23-0637 would authorize the Mayor to acquire all lots associated with the trash transfer business, through the exercise of eminent domain, for the purposes of warehousing and storage for the District.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee on Business and Economic Development via email at [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us) or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Friday, March 6, 2020.** Witnesses who anticipate needing language interpretation or who require sign language interpretation are requested to inform the Committee on Business and Economic Development office of the need as soon as possible, but no later than five (5) business days before proceeding. We 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. Representatives of organizations will be allowed a maximum of five minutes for oral testimony and individuals speaking in their own capacity will be allowed a maximum of three minutes.

Witnesses are encouraged to bring **five single-sided copies** of their written testimony and, if possible, to submit a copy of their testimony electronically to [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us) in advance of the hearing. For witnesses who are unable to testify at the hearing, submitted written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us), or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Friday, March 13, 2020.**



COUNCIL OF THE DISTRICT OF COLUMBIA  
**COMMITTEE ON TRANSPORTATION & THE ENVIRONMENT**  
MARY M. CHEH, CHAIR

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**NOTICE OF PUBLIC HEARING ON**

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

Monday, April 6, 2020, at 2:00 PM  
in Room 123 of the John A. Wilson Building  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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On Monday, April 6, 2020, Councilmember Mary M. Cheh, Chairperson of the Committee on Transportation and the Environment, will hold a public hearing on B23-641, the Dynamic Performance Parking Zone Amendment Act of 2020. The hearing will begin at 2:00 PM in Room 123 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

B23-641 would make several changes to the District's existing performance parking zones in order to give the Mayor more flexibility when setting rates in the zones. The bill would amend the Performance Parking Pilot Zone Act of 2008 to allow the Mayor to set temporary parking rates in a performance parking zone for a set duration of time when anticipating a special event; would raise the limit of the amount the Mayor may increase curbside parking fees in a performance parking zone during any one month period; would raise the limit on the amount the Mayor may increase parking fees in a performance parking zone over a three month period; would remove the cap on the maximum hourly rate the Mayor may set in a performance parking zone; would allow the Mayor to adjust parking rates in performance parking zones in real time based on demand; and would require the Mayor to publish data on curbside usage on a public website

The Committee invites the public to testify or to submit written testimony, which will be made a part of the official record. Anyone wishing to testify should contact Ms. Aukima Benjamin, Staff Assistant to the Committee on Transportation and the Environment, at (202) 724-8062 or via e-mail at [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Persons representing organizations will have five minutes to present their testimony. Individuals will have three minutes to present their testimony. Witnesses should bring eight copies of their written testimony and should submit a copy of their testimony electronically to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us). Witnesses who anticipate needing language interpretation, or requiring sign language interpretation, are requested to inform the Committee of the need as soon as possible but no later than 2:00pm on Monday March 30<sup>th</sup>. We will make every effort to fulfill timely requests, however requests received in less than five business days may not be fulfilled and alternatives may be offered.

If you are unable to testify in person, written statements are encouraged and will be made a part of the official record. Copies of written statements should be submitted to Ms. Benjamin at the following address: Committee on Transportation and the Environment, John A. Wilson

Building, 1350 Pennsylvania Avenue, N.W., Suite 108, Washington, D.C. 20004. Statements may also be e-mailed to [abenjamin@dccouncil.us](mailto:abenjamin@dccouncil.us) or faxed to (202) 724-8118. The record will close at the end of the business day on April 20, 2020.

**COUNCIL OF THE DISTRICT OF COLUMBIA  
COMMITTEE OF THE WHOLE  
COMMITTEE ON EDUCATION  
NOTICE OF JOINT PUBLIC ROUNDTABLE**  
1350 Pennsylvania Avenue, NW, Washington, DC 20004

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**CHAIRMAN PHIL MENDELSON  
COMMITTEE OF THE WHOLE  
&  
COUNCILMEMBER DAVID GROSSO  
COMMITTEE ON EDUCATION  
ANNOUNCE A JOINT PUBLIC ROUNDTABLE**

on

PR23-0658, the “Public Charter School Board James Sandman  
Confirmation Resolution of 2020”

On

**Thursday, March 26, 2020  
2:00 p.m., Hearing Room 123, John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004**

Chairman Phil Mendelson and Councilmember David Grosso announce the scheduling of a joint public roundtable of the Committee of the Whole and the Committee on Education on PR23-0658, the “Public Charter School Board James Sandman Confirmation Resolution of 2020.” The roundtable will be held on Thursday, March 26, 2020 at 2:00 p.m. or immediately following the joint Budget Oversight Hearing on the Public Charter School Board, in Room 123 of the John A. Wilson Building.

The stated purpose of PR23-0658 is to confirm the reappointment of James Sandman as a member of the Public Charter School Board in accordance with section 2 of the Confirmation Act of 1978, effective March 3, 1979 (D.C. Law 2-142; D.C. Official Code § 1-523.01), and pursuant to section 2214 of the District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1802.14).

Those who wish to testify may sign-up online at [bit.do/EducationHearings](http://bit.do/EducationHearings) or call the Committee on Education at (202) 724-8061 by 5:00 p.m. on Tuesday, March 24. Persons wishing to testify are encouraged, but not required, to submit 10-15 copies of written testimony. Witnesses appearing on his or her own behalf should limit their testimony to three minutes; witnesses representing organizations should limit their testimony to five minutes.

If you are unable to testify at the hearing, written statements are encouraged and will be made a part of the official record. Statements should be submitted by email to Ashley Strange, Committee Assistant, at [astrange@dccouncil.us](mailto:astrange@dccouncil.us), or by post to the Committee on Education, Council of the District of Columbia, Suite 116 of the John A. Wilson Building, 1350

Pennsylvania Avenue, NW, Washington, D.C. 20004. The record will close at 5:00 p.m. on Thursday April 9, 2020.

Witnesses who anticipate needing spoken language interpretation, or require sign language interpretation, are requested to inform Education Committee of the need as soon as possible but no later than five (5) business days before the proceeding. We 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.

**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**

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**COUNCILMEMBER KENYAN R. MCDUFFIE, CHAIRPERSON  
COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT**

**ANNOUNCES A PUBLIC ROUNDTABLE ON**

**PR23-0661 - THE “WASHINGTON LATIN PUBLIC CHARTER SCHOOL REVENUE  
BONDS PROJECT APPROVAL RESOLUTION OF 2020”; AND**

**PR23-0687 - THE “VITAL VOICES GLOBAL PARTNERSHIP, INC., REVENUE BONDS  
PROJECT APPROVAL RESOLUTION OF 2020”**

**Wednesday, February 26, 2020, 10:00 a.m.  
Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

On **Wednesday, February 26, 2020**, Councilmember Kenyan R. McDuffie, Chairperson of the Committee on Business and Economic Development, will hold a public roundtable in the matter of Proposed Resolution 23-0661, the “Washington Latin Public Charter School Revenue Bonds Project Approval Resolution of 2020”; and Proposed Resolution 23-0687, the “Vital Voices Global Partnership, Inc., Revenue Bonds Project Approval Resolution of 2020”.

The stated purpose of PR23-0661, the “Washington Latin Public Charter School Revenue Bonds Project Approval Resolution of 2020” is to authorize and provide for the issuance, sale, and delivery of District of Columbia revenue bonds, in one or more series, and in an aggregate principal amount not the exceed \$15,500,000, and to authorize and provide for the loan of proceeds of such bonds to Vital Voices Global Partnership, Inc. Such authorized loan will be used to assist The Corporation of the Washington Latin School – A Public Charter School (WLPCS), in the financing, refinancing, or reimbursing of costs associated with an authorized project. WLPCS is a liberal arts college preparatory school serving grades 5-12. The authorized loan will be used to refinance certain indebtedness, the proceeds of which were used to acquire, finance, or refinance the costs of leasehold improvements to WLPCS’s facility located at 5200 2<sup>nd</sup> Street N.W.

The stated purpose of PR23-0687, the “Vital Voices Global Partnership, Inc., Revenue Bonds Project Approval Resolution of 2020” is to authorize and provide for the issuance, sale, and

delivery of District of Columbia revenue bonds, in one or more series, and in an aggregate principal amount not to exceed \$28,000,000, and to authorize and provide for the loan of proceeds of such bonds to Vital Voices Global Partnership, Inc. Such authorized loan will be used to assist Vital Voices Global Partnership, Inc. in the financing, refinancing, or reimbursing of costs associated with an authorized project. Vital Voices Global Partnership, Inc. is an international nonprofit organization headquartered in the District, which works to support and invest in women leaders in the areas of economic empowerment, political participation, human rights, and ending gender-based violence.<sup>1</sup> The authorized project is the acquisition, construction, renovation, and equipping of a building located at 1509 16<sup>th</sup> Street, N.W. and the adjoining parcel of real property located at 1522-1526 Church Street, N.W. The building located on 16<sup>th</sup> Street, N.W. will serve as the organization's new administrative headquarters and the adjoining parcel of real property located on Church Street, N.W. will be used for parking for the headquarters building.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the roundtable should contact the Committee on Business and Economic Development via email at [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us) or at (202) 724-8053, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Tuesday, February 25, 2020.** Witnesses who anticipate needing language interpretation, or require sign language interpretation, should inform the Committee as soon as possible but no later than five (5) business days before the proceeding. The Committee will make every effort to fulfill the timely request, however, in the event that the request is received in less than five (5) business days, the request may not be granted and an alternative maybe offered.

In addition, representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **five single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us). For witnesses who are unable to testify at the roundtable, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee on Business and Economic Development at [jroberts@dccouncil.us](mailto:jroberts@dccouncil.us) or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on Wednesday, February 26, 2020.**

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<sup>1</sup> *About Us*, VITAL VOICES GLOBAL PARTNERSHIP, <https://www.vitalvoices.org/who-we-are/> (last visited Feb. 11, 2020).

**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 23-66:** FY 2020 Grant Budget Modifications of January 15, 2020

RECEIVED: 14-day review begins February 14, 2020

Council of the District of Columbia  
1350 Pennsylvania Avenue, NW  
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 (15) days on PR 23-696, the “Sense of the Council Opposing Implementation of Public Charge Rule Resolution of 2020” to ensure the resolution can be considered as soon as possible. The proposed resolution was introduced on February 18, 2020, and a public roundtable will be held in the coming weeks. 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: February 21, 2020  
 Protest Petition Deadline: April 6, 2020  
 Roll Call Hearing Date: April 20, 2020  
 Protest Hearing Date: June 10, 2020

License No.: ABRA-116420  
 Licensee: 7DrumLessons, LLC  
 Trade Name: 7DrumCity  
 License Class: Retailer's Class "D" Tavern  
 Address: 1506 North Capitol Street, N.W.  
 Contact: Ryan Miles: (978) 430-1528

WARD 5

ANC 5E

SMD 5E05

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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> 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 **June 10, 2020 at 1:30 p.m.**

**NATURE OF OPERATION**

A new D Tavern specializing in musical instruction and rehearsal space rentals. Seating Capacity of 72, and a Total Occupancy Load of 99. One Summer Gardens with 12 Seats in the front of the premises and another Summer Garden with 15 Seats in the back portion of the premises. Entertainment Endorsement with Dancing and Cover Charge for the inside of the premises only.

**HOURS OF OPERATION INSIDE OF THE PREMISES AND FOR THE OUTDOOR SUMMER GARDEN**

Sunday 10am – 2am, Monday through Friday 1pm – 2am, Saturday 10am – 2am

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

Sunday 10am – 2am, Monday through Friday 1pm – 2am, Saturday 10am – 2am

**HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDEN**

Sunday 10am – 12am, Monday through Friday 1pm – 12am, Saturday 10am – 12am

**HOURS OF LIVE ENTERTAINMENT INSIDE OF THE PREMISES**

Sunday 10am – 12am, Monday through Friday 1pm – 12am, Saturday 10am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020
Protest Hearing Date: June 10, 2020

License No.: ABRA-116422
Licensee: 7DrumLessons, LLC
Trade Name: 7DrumCity
License Class: Retailer's Class "D" Tavern
Address: 1508 North Capitol Street, N.W.
Contact: Ryan Miles: (978) 430-1528

WARD 5

ANC 5E

SMD 5E05

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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The Protest Hearing date is scheduled on June 10, 2020 at 1:30 p.m.

NATURE OF OPERATION

A new D Tavern specializing in musical instruction and rehearsal space rentals. Seating Capacity of 62, and a Total Occupancy Load of 99. One Summer Gardens with 12 Seats in the front of the premises, and a second Summer Garden with 25 Seats in the back portion of the premises. Entertainment Endorsement with Dancing and Cover Charge for the inside of the premises only.

HOURS OF OPERATION INSIDE OF THE PREMISES AND FOR THE OUTDOOR SUMMER GARDENS

Sunday 10am - 2am, Monday through Friday 1pm - 2am, Saturday 10am - 2am

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

Sunday 10am - 2am, Monday through Friday 1pm - 2am, Saturday 10am - 2am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION FOR THE OUTDOOR SUMMER GARDENS

Sunday 10am - 12am, Monday through Friday 1pm - 12am, Saturday 10am - 12am

HOURS OF LIVE ENTERTAINMENT INSIDE OF THE PREMISES

Sunday 10am - 12am, Monday through Friday 1pm - 12am, Saturday 10am - 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020
Protest Hearing Date: June 10, 2020

License No.: ABRA-116399
Licensee: Graystone, LLC
Trade Name: 9 Bars Street Art Café
License Class: Retailer’s Class “C” Tavern
Address: 4602 14th Street, N.W., 1st Floor
Contact: Arthur Grayson: (760) 300-8981

WARD 4

ANC 4C

SMD 4C03

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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The Protest Hearing date is scheduled on June 10, 2020 at 1:30 p.m.

NATURE OF OPERATION

A new C Tavern. Seating Capacity of 40. Total Occupancy Load of 47. License will include an Entertainment Endorsement.

HOURS OF OPERATION

Sunday 1pm – 8pm, Monday through Thursday 6:30am – 10pm, Friday 6:30am – 12am, Saturday 8am – 12am

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

Sunday 1pm – 8pm, Monday through Thursday 1pm – 10pm, Friday and Saturday 1pm – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-000931
Licensee: Harco, Inc.
Trade Name: Archibald's/ Fast Eddies Billiards Cafe
License Class: Retailer's Class "C" Nightclub
Address: 1520 K Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2B SMD 2B05

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

CURRENT HOURS OF OPERATION

Sunday through Thursday 11am - 4am, Friday and Saturday 11am - 5am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday through Thursday 11am - 2am, Friday and Saturday 11am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-071156
Licensee: Bar 9, LLC
Trade Name: DC 9
License Class: Retailer's Class "C" Nightclub
Address: 1940 9th Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 11am - 2am, Friday and Saturday 11am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020
Protest Hearing Date: June 10, 2020

License No.: ABRA-116408
Licensee: Ezra S Inc.
Trade Name: Dix Market
License Class: Retailer's Class "A" Liquor Store
Address: 6221 Dix Street, N.E.
Contact: Adanech Gebremeskel: (240) 491-1145

WARD 7

ANC 7C

SMD 7C05

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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline. The Protest Hearing date is scheduled on June 10, 2020 at 4:30 p.m.

NATURE OF OPERATION

A new Retailer's Class A Liquor Store.

HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES

Sunday through Saturday 7am - 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-105646
Licensee: 2012 9th Street Café, LLC
Trade Name: Echo Park
License Class: Retailer’s Class “C” Tavern
Address: 2012 9th Street, N.W.
Contact: Candace Fitch, Esq.: (202) 258-8634

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Applicant requests to expand the premises to reflect 2012 – 2014 9th Street, N.W. The establishment’s Occupancy Load will not change.

CURRENT HOURS OF OPERATION AND HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION INSIDE OF THE PREMISES AND FOR THE OUTDOOR SUMMER GARDEN

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-001269
Licensee: Exchange Industries, Incorporated
Trade Name: Exchange, LTD.
License Class: Retailer's Class "C" Restaurant
Address: 1730 Pennsylvania Avenue, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2A SMD 2A08

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

CURRENT HOURS OF OPERATION

Sunday through Thursday 10am - 2am, Friday and Saturday 10am - 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday through Thursday 10:30am - 2am, Friday and Saturday 10:30am - 3am



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-076649
Licensee: Par Bar, LLC
Trade Name: H Street Country Club
License Class: Retailer's Class "C" Tavern
Address: 1335 H Street, N.E.
Contact: Stephen O'Brien: (202) 625-7700

WARD 6 ANC 6A SMD 6A06

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

CURRENT HOURS OF OPERATION

Sunday through Thursday 11am - 2am, Friday and Saturday 11am - 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday through Thursday 11am - 1:45am, Friday 11am - 3am and, Saturday 11am - 2:45am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-112965
Licensee: Piazzmia, LLC
Trade Name: Hopscotch Bar & Grill
License Class: Retailer's Class "C" Restaurant
Address: 1837 1st Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 5 ANC 5E SMD 5E07

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 11am - 1am, Friday and Saturday 11am - 2am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-103082
Licensee: Barlender, LLC
Trade Name: Kingfisher
License Class: Retailer's Class "C" Tavern
Address: 1414 14th Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 2 ANC 2F SMD 2F02

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 11am - 2am, Friday and Saturday 11am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020  
 Protest Petition Deadline: April 6, 2020  
 Roll Call Hearing Date: April 20, 2020

License No.: ABRA-099695  
 Licensee: 727 Concepts, LLC  
 Trade Name: L8  
 License Class: Retailer’s Class “C” Nightclub  
 Address: 727 15<sup>th</sup> Street, N.W.  
 Contact: Andrew Kline, Esq.: (202) 686-7600

WARD 2                      ANC 2C                      SMD 2C01

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

**NATURE OF SUBSTANTIAL CHANGE**

Applicant requests to increase its capacity from 142 to a Total Occupancy Load of 414.

**CURRENT HOURS OF OPERATION**

Sunday through Saturday 8am – 4am

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION**

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
NOTICE OF PUBLIC HEARING

**\*\*CORRECTION**

Placard Posting Date: February 7, 2020  
Protest Petition Deadline: March 23, 2020  
Roll Call Hearing Date: April 6, 2020

License No.: ABRA-109951  
Licensee: Chef Mikko, LLC  
Trade Name: Mikko Nordic Fine Foods  
License Class: Retailer’s Class “C” Restaurant  
Address: 1636 R Street, N.W.  
Contact: Mikko Kosonen: (202) 525-3919

WARD 2                      ANC 2B                      SMD 2B04

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 6, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

**NATURE OF SUBSTANTIAL CHANGE**

Request to change hours of operation and alcoholic beverage sales and service inside premises and for the Sidewalk Café.

**CURRENT HOURS OF OPERATION INSIDE OF THE PREMISES**

Sunday 10am – 6pm, Monday through Saturday 7am – 10pm

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

Sunday 10am – 6pm, Monday through Saturday 11am – 9:30pm

**CURRENT HOURS OF OPERATION FOR THE SIDEWALK CAFÉ**

Sunday 10am – 4pm, Monday through Saturday 7am – 10pm

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE SIDEWALK CAFÉ**

Sunday 10am – 4pm, Monday through Saturday 11am – 9:30pm

**PROPOSED HOURS OF OPERATION INSIDE OF THE PREMISES**

Sunday 9am – 12am, Monday through Friday 8am – 2am, Saturday 9am – 2am

**\*\*PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION INSIDE OF THE PREMISES**

Sunday 9am – 12am, Monday through Saturday 9am–\*\*2am

**PROPOSED HOURS OF OPERATION FOR THE SIDEWALK CAFE**

Sunday 9am – 11pm, Monday through Thursday 7am – 11pm, Friday and Saturday 7am – 12am

**PROPOSED HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR SIDEWALK CAFÉ** Sunday 9am – 11pm, Monday through Thursday 8am – 11pm, Friday 8am – 12 am, Saturday 9am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
NOTICE OF PUBLIC HEARING

**\*\*RESCIND**

Placard Posting Date: February 7, 2020  
Protest Petition Deadline: March 23, 2020  
Roll Call Hearing Date: April 6, 2020

License No.: ABRA-109951  
Licensee: Chef Mikko, LLC  
Trade Name: Mikko Nordic Fine Foods  
License Class: Retailer’s Class “C” Restaurant  
Address: 1636 R Street, N.W.  
Contact: Mikko Kosonen: (202) 525-3919

WARD 2                      ANC 2B                      SMD 2B04

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 6, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, DC 20009**. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

**NATURE OF SUBSTANTIAL CHANGE**

Request to change hours of operation and alcoholic beverage sales and service inside premises and for the Sidewalk Café.

**CURRENT HOURS OF OPERATION INSIDE OF THE PREMISES**

Sunday 10am – 6pm, Monday through Saturday 7am – 10pm

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

Sunday 10am – 6pm, Monday through Saturday 11am – 9:30pm

**CURRENT HOURS OF OPERATION FOR THE SIDEWALK CAFÉ**

Sunday 10am – 4pm, Monday through Saturday 7am – 10pm

**CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION FOR THE SIDEWALK CAFÉ**

Sunday 10am – 4pm, Monday through Saturday 11am – 9:30pm

**PROPOSED HOURS OF OPERATION INSIDE OF THE PREMISES**

Sunday 9am – 12am, Monday through Friday 8am – 2am, Saturday 9am – 2am

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

Sunday 9am – 12am, Monday through Saturday 9am– \*\*2pm

**PROPOSED HOURS OF OPERATION FOR THE SIDEWALK CAFE**

Sunday 9am – 11pm, Monday through Thursday 7am – 11pm, Friday and Saturday 7am – 12am

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

Sunday 9am – 11pm, Monday through Thursday 8am – 11pm, Friday 8am – 12 am, Saturday 9am – 12am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-095033
Licensee: Mythology, LLC
Trade Name: Mythology, Lore & Dirty Water/ Beetle House DC
License Class: Retailer's Class "C" Tavern
Address: 816 H Street, N.E.
Contact: Stephen O'Brien: (202) 625-7700

WARD 6 ANC 6A SMD 6A01

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 11am - 2am, Friday and Saturday 11am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-110437
Licensee: Pitchers, LLC
Trade Name: Pitchers
License Class: Retailer's Class "C" Restaurant
Address: 2317 18th Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 1 ANC 1C SMD 1C07

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

CURRENT HOURS OF OPERATION

Sunday through Thursday 12pm - 2am, Friday and Saturday 12pm - 3am

HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE AND CONSUMPTION

Sunday through Thursday 12pm - 1:45am, Friday and Saturday 12pm - 2:45am



ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ON  
2/7/2020

**\*\*RESCIND**

Notice is hereby given that:

License Number: ABRA-109849

License Class/Type: C Tavern

Applicant: Final Jahanbin

Trade Name: Sister's Mediterranean Corner Cafe

ANC: 1B09

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

2827 Sherman AVE NW, WASHINGTON, DC 20001

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR  
3/23/2020

A HEARING WILL BE  
4/6/2020

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

ENDORSEMENT(S): Sidewalk Cafe

Days	Hours of Operation	Hours of Sales/Service	Hours of Entertainment
Sunday:	9 am - 2 am	9 am - 2 am	-
Monday:	9 am - 2 am	9 am - 2 am	-
Tuesday:	9 am - 2 am	9 am - 2 am	-
Wednesday:	9 am - 2 am	9 am - 2 am	-
Thursday:	9 am - 2 am	9 am - 2 am	-
Friday:	9 am - 2 am	9 am - 2 am	-
Saturday:	9 am - 2 am	9 am - 2 am	-

	Hours Of Sidewalk Cafe	Hours Of Sales Sidewalk Cafe
Sunday:	9 am - 11 pm	9 am - 11 pm
Monday:	9 am - 11 pm	9 am - 11 pm
Tuesday:	9 am - 11 pm	9 am - 11 pm
Wednesday:	9 am - 11 pm	9 am - 11 pm
Thursday:	9 am - 11 pm	9 am - 11 pm
Friday:	9 am - 11 pm	9 am - 11 pm
Saturday:	9 am - 11 pm	9 am - 11 pm

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-075811
Licensee: Liquid Inspiration, LLC
Trade Name: Solly's U Street Tavern
License Class: Retailer's Class "C" Tavern
Address: 1942 11th Street, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 1 ANC 1B SMD 1B02

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 9am - 2am, Friday and Saturday 9am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*READVERTISEMENT**

Placard Posting Date: \*\*February 21, 2020  
 Protest Petition Deadline: \*\*April 6, 2020  
 Roll Call Hearing Date: \*\*April 20, 2020  
 Protest Hearing Date: \*\*June 10, 2020

License No.: ABRA-116144  
 Licensee: Tonari, LLC  
 Trade Name: Tonari  
 License Class: Retailer’s Class “C” \*\*Restaurant  
 Address: 707 6<sup>th</sup> Street, N.W.  
 Contact: Jeff Jackson: (202) 251-1566

WARD 2

ANC 2C

SMD 2C03

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 \*\*April 20, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, D.C. 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 **\*\*June 10, 2020 at 4:30 p.m.**

**NATURE OF OPERATION**

A new class C \*\*Restaurant with a seating capacity of 114 and a Total Occupancy Load of 187.

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

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

**\*\*RESCIND**

Placard Posting Date:           \*\*January 17, 2020  
 Protest Petition Deadline:   \*\*March 2, 2020  
 Roll Call Hearing Date:       \*\*March 16, 2020  
 Protest Hearing Date:         \*\*May 6, 2020

License No.:                    ABRA-116144  
 Licensee:                        Tonari, LLC  
 Trade Name:                    Tonari  
 License Class:                 Retailer’s Class “C” \*\*Tavern  
 Address:                         707 6<sup>th</sup> Street, N.W.  
 Contact:                         Jeff Jackson: (202) 251-1566

WARD 2

ANC 2C

SMD 2C03

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 \*\*March 16, 2020 at 10 a.m., 4th Floor, 2000 14<sup>th</sup> Street, N.W., Washington, D.C. 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 **\*\*May 6, 2020 at 4:30 p.m.**

**NATURE OF OPERATION**

A new class C \*\*Tavern with a seating capacity of 114 and a Total Occupancy Load of 187.

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

Sunday through Thursday 10am – 2am, Friday and Saturday 10am – 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-071352
Licensee: 1420 Pennsy, LLC
Trade Name: Trusty's Bar
License Class: Retailer's Class "C" Tavern
Address: 1420 Pennsylvania Avenue, S.E.
Contact: Stephen O'Brien: (202) 625-7700

WARD 6 ANC 6B SMD 6B06

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 10am - 2am, Friday and Saturday 10am - 3am

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: February 21, 2020
Protest Petition Deadline: April 6, 2020
Roll Call Hearing Date: April 20, 2020

License No.: ABRA-108985
Licensee: Wingos 3, LLC
Trade Name: Wingos
License Class: Retailer's Class "C" Restaurant
Address: 2218 Wisconsin Avenue, N.W.
Contact: Stephen O'Brien: (202) 625-7700

WARD 3 ANC 3B SMD 3B02

Notice is hereby given that this licensee has requested a Substantial Change to their 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 April 20, 2020 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

The licensee is requesting to install three (3) Dragon's Ascent electronic games of skill machines.

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

Sunday through Thursday 10am - 1am, Friday and Saturday 10am - 3am

**DEPARTMENT OF INSURANCE, SECURITIES AND BANKING****NOTICE OF PUBLIC HEARING****FOUNDERS BANK CHARTER APPLICATION****March 9, 2020****2:00 p.m.****Department of Insurance, Securities and Banking  
1050 First Street, N.E., Suite 801  
Washington, D.C. 20002**

The organizers for the proposed Founders Bank filed an application with the Department of Insurance, Securities and Banking (the "Department") to establish a de novo community bank in the District of Columbia.

Pursuant to section 5(b)(1)(B) of the District of Columbia Regional Banking Act of 1995 (D.C. Official Code § 26-704(b)(1)(B) (2001)), Acting Commissioner Karima Woods hereby gives notice that a public hearing on the Founders Bank charter application will be held on March 9, 2020 at 2:00 p.m. at the Department's offices located at 1050 First Street, N.E., Suite 801, Washington, D.C. 20002.

The public file for this application is available for inspection at the Department's offices located at 1050 First Street, N.E., Suite 801, Washington, D.C. 20002 during regular business hours from 8:30 a.m. to 5:00 p.m.

Any person that would like to testify at the public hearing should contact Brian P. Williams, Associate Commissioner for Banking at 202-727-8000. Testimony should be limited to five minutes in duration.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC HEARING NOTICE  
WEDNESDAY, APRIL 15, 2020  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**WARD SIX**

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

**WARD EIGHT**

20252  
ANC 8A                    **Appeal of Citizens Against Developers Greatly Obfuscating**, pursuant to 11 DCMR Subtitle Y § 302, from the decision made on July 5, 2019 by the Zoning Administrator, Department of Consumer and Regulatory Affairs, to issue building permit B1707176, to construct a new two-story principal dwelling unit on a vacant lot in the R-3 Zone at premises 1602 V Street, S.E. (Square 5777, Lot 694).

**WARD ONE**

20255  
ANC 1A                    **Application of Mid City Builders, LLC**, pursuant to 11 DCMR Subtitle X, Chapters 9, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.5, and under the Voluntary Inclusionary Zoning modifications of Subtitle E § 5206.2 from minimum lot width requirements of Subtitle E § 201.4, and pursuant to Subtitle X, Chapter 10, for a variance from the minimum lot width requirements of Subtitle E § 201.1, to subdivide the lot into two record lots with one flat on each lot in the RF-1 Zone at premises 3534 13th Street, N.W. (Square 2834, Lot 167).



## BZA PUBLIC HEARING NOTICE

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**WARD FOUR**

20256  
ANC 4C           **Application of 3905 Kansas LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the RF-use requirements of Subtitle U § 320.2, to permit the conversion of an existing semi-detached principal dwelling into a three-unit apartment house in the RF-1 Zone at premises 3905 Kansas Avenue N.W. (Square 2906, Lot 830).

**WARD TWO**

20258  
ANC 2B           **Application of William G Springer and Forrest Kettler**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle F § 5201 from the maximum lot occupancy requirements of Subtitle F § 604.1, to construct a two-story rear addition to an existing attached principal dwelling in the RA-8 Zone at premises 1416 15th Street, N.W. (Square 195, Lot 104).

## PLEASE NOTE:

**Failure of an applicant or appellant to appear at the public hearing will subject the application or appeal to dismissal at the discretion of the Board, pursuant to Subtitle Y § 600.4.**

Failure of an applicant or appellant to be adequately prepared to present the application or appeal to the Board, and address the required standards of proof for the application or appeal, may subject the application or appeal to postponement, dismissal or denial. The public hearing in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Pursuant to Subtitle Y, Chapter 2 of the Regulations, the Board will impose time limits on the testimony of all individuals. Individuals and organizations interested in any application may testify at the public hearing or submit written comments to the Board.

Except for the affected ANC, any person who desires to participate as a party in this case must clearly demonstrate that the person's interests would likely be more significantly, distinctly, or uniquely affected by the proposed zoning action than other persons in the general public. **Persons seeking party status shall file with the Board, not less than 14 days prior to the date set for the hearing, a Form 140 – Party Status Application Form.\*** This form may be obtained from the Office of Zoning at the address stated below or downloaded from the Office of Zoning's website at: [www.dcoz.dc.gov](http://www.dcoz.dc.gov). All requests and comments should be submitted to the Board through the Director, Office of Zoning, 441

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4<sup>th</sup> Street, NW, Suite 210, Washington, D.C. 20001. Please include the case number on all correspondence.

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

**Do you need assistance to participate?**

Amharic

ለመሳተፍ ዕርዳታ ያስፈልግዎታል?

የተለየ እርዳታ ካስፈለገዎት ወይም የቋንቋ እርዳታ አገልግሎቶች (ትርጉም ወይም ማስተርጎም)

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

0312 ወይም በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነዚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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

French

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

Korean

참여하시는데 도움이 필요하세요?

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

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

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

**CONTRACT APPEALS BOARD****NOTICE OF FINAL RULEMAKING**

The District of Columbia Contract Appeals Board, pursuant to the Contract Appeals Board Rulemaking Amendment Act of 2017, effective December 13, 2017 (D.C. Law 22-0033; D.C. Official Code § 2-361.06(a)(3) (2019 Supp.)), hereby gives notice of the adoption of the following amendments to Chapters 1 (General Rules of the Contract Appeals Board), 2 (Appeal Procedures of the Contract Board), 3 (Protest Procedures of the Contract Appeals Board), and 4 (Electronic Filing) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (DCMR).

The purposes of this rulemaking include harmonizing the Board's rules with existing District of Columbia procurement statutes, including 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.* (2016 Repl.)), as amended, and The Procurement Integrity, Transparency, and Accountability Amendment Act of 2016, effective October 8, 2016 (D.C. Law 21-0158, D.C. Official Code §§ 2-221.01 *et seq.* (2016 Repl. & 2019 Supp.)), as well as clarifying the Board's existing practices and procedures.

The Notice of Proposed Rulemaking was published in the *D.C. Register* on November 22, 2019 at 66 DCR 15488. The District of Columbia Office of the Attorney General, Government Contracts Section, submitted comments on the proposed rulemaking. Responses to those comments have resulted in alterations to Subsections 100.3, 104.1(c), 107.7, 107.8, 109.1, 110.7, 202.2, 217.2(a), 305.4, 314.1, 403.1, and 409.1 of the proposed rules that include the addition or deletion of material that serves only to clarify the intent, meaning, or application of this Notice of Final Rulemaking in the *D.C. Register*.

These rules were adopted as final on January 30, 2020 and will be effective on April 6, 2020.

**Title 27 DCMR, CONTRACTS AND PROCUREMENT, is amended as follows:**

**Chapter 1, GENERAL RULES OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

**100 GENERAL PROVISIONS**

- 100.1 Scope. These rules, consisting of Chapters 1, 2, 3 and 4 of Title 27 DCMR, govern all proceedings in all cases filed with the District of Columbia Contract Appeals Board (Board).
- 100.2 Codification. These rules shall amend Chapters 1, 2, 3, and 4 of Title 27 of the District of Columbia Municipal Regulations (DCMR) and shall be cited with the appropriate reference to the publication of these rules in the *D.C. Register*, indicating the volume number, page number and the date of publication.

- 100.3 Application. These rules shall apply to all appeals and protests filed with the Board on or after April 6, 2020, and to all further proceedings in appeals and protests pending before the Board at that time.
- 100.4 Transition. If, however, the Board determines that the application of a rule in a particular case pending before the Board on the effective date of these rules would be impracticable or would work an injustice on a party, the Board may order that all or a portion of the former rules shall apply to further proceedings in the case.
- 100.5 Construction. These rules shall be construed to obtain the just, expeditious, and inexpensive resolution of every case. In addition to the Board's own precedent, the Board will be guided by (i) precedent of the District of Columbia courts in construing those Board rules that are analogous to the Rules of Civil Procedure of the DC Superior Court; and (ii) precedent of the United States Government Accountability Office in construing those Board rules that are analogous to protest rules of the Government Accountability Office.

## **101 BOARD**

- 101.1 The name of the Board is the District of Columbia Contract Appeals Board.
- 101.2 The Board's membership shall consist of a Chief Administrative Judge (Chairperson) and other administrative judges, as provided by law.
- 101.3 Cases before the Board are assigned to panels consisting of three administrative judges as appropriate for final disposition or decision, except as determined by the Chief Administrative Judge in accordance with Subsection 215.5, or otherwise.
- 101.4 The presiding administrative judge designated to manage a particular case pursuant to Subsection 102.5 shall have the authority to administer oaths and affirmations, issue subpoenas, rule on all interlocutory matters and nondispositive motions, schedule and conduct proceedings and hearings, and take other action as necessary to prepare the case for final disposition or decision.
- 101.5 Except for appeals processed under the small claims (expedited) procedure, as prescribed in Section 215, the final disposition of a case shall be made by majority vote of the administrative judges assigned to the panel.
- 101.6 The Board's final decision in a case shall be in writing and based solely on the record, including such matters as the Board may expressly take notice of. A copy of the decision shall be dated and forwarded to the parties by first class mail or electronically. All decisions which constitute a final adjudication of a case, except decisions issued on cases under the optional small claims procedures of Section 215, shall be published in the *District of Columbia Register*.
- 101.7 The Board shall hear and decide de novo all cases under its jurisdiction.

101.8 If any contracting agency, which is exempt from coverage of the Procurement Practices Reform Act, wishes to have the Board hear and decide appeals and/or protests, the Board shall do so only in accordance with a written agreement with the agency. The cost of processing cases involving such an agency shall be on a reimbursable basis agreed to by the Board and the agency.

101.9 Proceedings before the Board shall be conducted at its offices, unless otherwise ordered by the Board.

## **102 CHIEF ADMINISTRATIVE JUDGE (CHAIRPERSON)**

102.1 The chairperson of the Board shall serve as the Chief Administrative Judge of the Board.

102.2 In addition to participating in the hearing of cases, the Chief Administrative Judge shall oversee the administrative activities of the Board and shall provide, within approved budgetary ceilings, for the staffing of the Board with nonmember personnel. These persons shall be responsible to and shall function under the direction, supervision, and control of the Chief Administrative Judge.

102.3 In the case of a vacancy in the position of the Chief Administrative Judge, or his or her absence or disability, the administrative judge who has the senior length of service shall serve as the Acting Chief Administrative Judge and exercise all of the authority, duties, and responsibilities of the Chief Administrative Judge.

102.4 When by reason of a vacancy, disability, or absence, neither the Chief Administrative Judge nor the member who has the senior length of service is available to exercise the duties of the Chief Administrative Judge, the administrative judge next in length of service shall serve as the Acting Chief Administrative Judge. Should there not be an administrative judge with a senior length of service, the Chief Administrative Judge shall designate a Board member to serve as Acting Chief Administrative Judge.

102.5 The Chief Administrative Judge shall assign and, as necessary, reassign cases and administrative judges to panels and shall designate one of the panel members as the presiding judge having the lead responsibility for the management of a particular case.

102.6 The Chief Administrative Judge may authorize the performance by another administrative judge or Board employee of any function of the Chief Administrative Judge, except that, as provided by law, only administrative judges may hear and decide cases. The attendance of at least two members of the Board shall constitute a quorum.

**103 BOARD OPERATIONS**

- 103.1 The Board's office shall be open for the transaction of business from 9:00 a.m. until 5:00 p.m. daily, except Saturdays, Sundays, and legal holidays.
- 103.2
- (a) Unless otherwise directed by an administrative judge, all paper pleadings, briefs, motions, and any other submissions to the Board shall be filed at the Board's office during business hours.
  - (b) Subject to Chapter 4, documents can be filed electronically at any time. As stated in Chapter 4, electronic filing is the electronic submission of documents to the Board via the Board's designated electronic file and serve system. Sending an email to the Board is not a proper method of electronic filing.
- 103.3 Upon the receipt of a paper appeal or a protest, the Board shall stamp the date of filing next to the title of the case. Upon receipt of an electronic filing, the Board's designated vendor shall issue a confirmation showing the authorized date and time of filing. If a person filing requests a Board certification, a copy of the submission provided by the person shall be marked to show the time and date of the filing and it shall be initialed by the Board.
- 103.4 The Board shall keep and maintain: all incoming pleadings, motions, and other communications to the Board, and all outgoing notices, correspondence, and Board actions; a monthly docket of current cases under the Board's jurisdiction; copies of decisions and final orders of the Board; and copies of the Board's rules.
- 103.5 Subject to the provisions of Section 104, the case docket, and copies of decisions, final orders, and rules shall be available for inspection by the public at the Boards' office. Copies of Board decisions and final orders shall be available to the public at a reasonable cost. Consistent with the requirements of the District of Columbia Freedom of Information Act, the Board shall provide access to electronic records not subject to a Protective Order under Section 104 during normal business hours.
- 103.6 The Board shall maintain records that contain the date of mailing, or delivery, of all papers that are served or delivered.
- 103.7 Cases before the Board shall be assigned consecutive numbers in the appropriate docket books in order of their filing, one sequence for appeals bearing the letter "D" as a prefix, and another sequence for protests bearing the letter "P" as a prefix.

- 103.8 Upon request, the Board shall furnish to the public the names of its members, and the identity of the Board members comprising the panel to which a particular case has been assigned.
- 103.9 The Board shall maintain a case docket, updated monthly, which provides the names of the appellant or protester, the name of the contracting agency, the case number, the date the case was filed with the Board, the name of the presiding judge, the date of any scheduled hearing on the merits of the case, and an identification of accelerated and small claims appeals.
- 103.10 Active case files containing all pleadings and other records of the case, except as provided by Section 104, shall be available for inspection by the public at the Board's office. However, the public may not remove any pleadings or other records from the case file nor remove the case file from the Board's office without the express written authorization of an administrative judge.

#### **104 PROTECTIVE ORDERS; IN CAMERA REVIEW**

##### 104.1

- (a) At the request of a party to a protest or appeal or on its own initiative, the Board may issue a protective order controlling the treatment of protected information. Such information may include proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms. The protective order shall establish procedures for application for access to protected information, identification and safeguarding of that information, and submission of redacted copies of documents omitting protected information. For informational purposes only, a sample protective order, as well as sample applications for access to materials under a protective order, are available on the Board's website: [www.cab.dc.gov](http://www.cab.dc.gov).
- (b) If a party to a protest or appeal seeks to have its initial filing in a case sealed, it must submit with the filing a motion for a protective order pursuant to this Rule, or submit an explicit request for a protective order in the filing, as well as a redacted copy of the filing that would be accessible to the public. If, a party seeks to have a subsequent filing or specified exhibits sealed, it must first file a motion for a protective order pursuant to this rule. Redacted copies of the exhibits need not be submitted, however. Only the specific document or exhibit that is to be filed under seal shall be designated as sealed. For any party that has not been allowed access under the protective order, the filing party shall serve notice of the filing and that the served party must request admission under the protective order to access the documents filed.



- (c) If no protective order has been issued, the agency may withhold from the parties those portions of a document submission which would ordinarily be subject to a protective order. The Board will review in camera all information not released to the parties.
- (d) After a protective order has been issued, counsel or consultants retained by counsel appearing on behalf of a party may apply for admission under the protective order by submitting an application to the Board, with copies furnished simultaneously to all parties. The application shall establish that the applicant is not involved in competitive decision making for any firm that could gain a competitive advantage from access to the protected information and that there will be no significant risk of inadvertent disclosure of protected information. Objections to an applicant's admission shall be raised within two (2) days after receipt of the application, although the Board may consider objections raised after that time.
- (e) Any violation of the terms of a protective order may result in the imposition of sanctions as the Board deems appropriate, including referral to appropriate bar associations or other disciplinary bodies and restricting the violator's practice before the Board.

104.2 At the request of a party or on its own initiative, the Board may order that specific documents or tangible articles be submitted for in camera review by the Board, and not be available for inspection, if they are asserted to contain privileged information. A party by motion may challenge another party's assertion of privilege.

104.3 Information subject to a protective order under this Rule may be used in any appellate matter filed with the Superior Court of the District of Columbia or the District of Columbia Court of Appeals (collectively, "Court"), without the Board's prior authorization, provided that the information is filed under seal with the Court, that the Court is informed by the Appellant(s) of the Board's protective order, and that the Appellant(s) request the Court to issue its own protective order to cover the protected material. Use of information protected under the Board's protective order in such appellate proceedings will be governed by the protective order issued by the Court.

## **105 EX PARTE COMMUNICATIONS**

105.1 *Ex parte* communications, as defined in Subsection 199.1, shall be prohibited.

105.2 Excluded from *ex parte* communications are those that:

- (a) Are specifically authorized by law to be made on an *ex parte* basis; or
- (b) Relate to the Board's administrative functions or procedures; or

- (c) Are matters of public record; or
- (d) Are communications among Board members, and/or communications among Board members and staff.

105.3 An administrative judge or a staff member of the Board who receives an ex parte communication prohibited by this section, shall immediately report its receipt to the Chief Administrative Judge and prepare a memorandum describing in detail the substance of the communication. The memorandum shall be placed in the case file, along with the actual communication if it is in written form. The Board shall provide a copy of the memorandum to all parties.

## **106 APPEARANCE AND REPRESENTATION**

106.1 In a proceeding before the Board, an individual, receiver, or trustee may appear in his or her behalf; a general partner of a partnership may represent the partnership; and an officer of a corporation may represent the corporation. The Office of the Attorney General for the District of Columbia shall represent the District. Independent agencies of the District of Columbia may be represented by agency counsel.

106.2 A party may be represented in a proceeding by an attorney at law admitted to practice before the District of Columbia Court of Appeals or before the highest court of the state where he or she resides or maintains an office. An attorney at law employed by the District of Columbia government may represent an agency in accordance with the requirements of Rule 49(c)(4) of the Rules of the District of Columbia Court of Appeals.

106.3 An individual appearing before or transacting business with the Board in a representative capacity pursuant to the provisions of Subsection 106.1 may be required to establish his or her authority to act in that capacity.

106.4 Notice of Appearance. Each person, including an Assistant Attorney General, representing a party in a case pending before the Board shall file with the Board a written notice of appearance containing the following:

- (a) The signature of the representative;
- (b) The typed or printed name of the representative;
- (c) The business address and telephone number of the representative; and
- (d) The name of the party for whom the appearance is made.

106.5 The notice of appearance shall become a part of the record.

- 106.6 Each person who has entered an appearance shall be deemed to continue as representative of the named party unless there is filed with the Board any of the following:
  - (a) A notice of withdrawal of appearance signed by both the representative and the party; or
  - (b) A notice signed by the party stating that the representation has been concluded, together with proof of service upon the representative; or
  - (c) A notice of substitution of a representative that conforms to the requirements of Subsection 106.4.

106.7 If two or more persons have entered their appearance for a party, service on one representative shall be service on the party, unless one of the representatives has been designated for service.

**107 FORM AND FILING OF PLEADINGS, MOTIONS, AND OTHER SUBMISSIONS**

107.1 For documents, such as protests, agency reports, complaints, answers, motions, and responses thereto, filed on paper, an original and two (2) copies shall be filed with the Board. All paper filings shall contain proof of service, in accord with Section 109.

107.2 A filing may be made by mail, hand-delivery or electronically in accordance with Chapter 4, unless otherwise ordered by the Board. Irrespective of the method used for filing, a submission shall only be considered timely filed if it is actually received in the Board's office during business hours or received by the electronic filing vendor within the time established by law, regulation, or Board order.

107.3 Complaints, protests, and other pleadings shall, on the first page, contain a caption setting forth the name of the Board, title of the case, and contain a heading under the caption describing the nature of the pleading, motion, or matter being brought to the attention of the Board. The caption and heading shall be in the following format:

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
 CONTRACT APPEALS BOARD [PROTEST] OR [APPEAL] OF: [NAME OF PROTESTER or APPELLANT] )  
 ([ADDRESS OF PROTESTER or APPELLANT]) CAB No.  
 (Under [IFB or RFP] or [Contract] No.) [HEADING]

107.4 In addition to the requirements of Subsection 107.3, the initial filing by or on behalf of a party shall have in the caption the name and full business or residence

address of the party. If the party is appearing pro se (without an attorney), the caption shall also include the party's business or personal email address, and a contact telephone number. In the initial filing by a non-governmental corporate body party, the party shall file a corporate disclosure statement identifying all parent companies, subsidiaries (except wholly-owned subsidiaries), and affiliates that have issued shares to the public.

- 107.5 A submission signed by an attorney shall contain the name, office address, telephone number, and bar identification number of the attorney. Notice of a change in address or telephone number of the attorney, or a party not represented by an attorney, shall be filed within five (5) business days of the change.
- 107.6 Unless they are changed by a notice filed with the Board, the address and telephone number of a party or any attorney noted on the first filing shall be conclusively taken as the last known address and telephone number of the party or attorney.
- 107.7 The original of a paper submission that is filed with the Board shall be signed in ink by the party, its attorney, or its authorized representative.
- 107.8 All submissions filed shall be typed (double spaced), reproduced by any duplicating or copying process that produces a clear black image on white 8½ x 11 inch size paper, and, unless filed electronically, fastened at the top.
- 107.9 A submission shall not include documents that are not relevant to the case. Irrelevant documents may be rejected by the Board.
- 107.10 Submissions that do not conform to the requirements of this Rule may be rejected either before or after filing. If the submission is rejected after filing, the effect shall be the same as if it had not been filed.

## **108 SERVICE OF PLEADINGS, MOTIONS, AND OTHER SUBMISSIONS**

- 108.1 Except as otherwise provided in the Board's rules or directed by an administrative judge, a pleading, motion, notice, appearance, or other submission filed with the Board subsequent to the filing of an appeal or a protest, shall be served by the filing party upon each party in the case.
- 108.2 Whenever, under this Rule or a Board order, service is required or permitted to be made upon a party who is represented by an attorney, the service shall be made upon the attorney.
- 108.3 Electronic service upon a party shall be as provided in Chapter 4. Non-electronic service upon a party, or an attorney representing a party, shall occur at the time of hand delivery; or, if by mail, to the address of record, by the postmark date plus three days as prescribed in Section 122.

108.4 The Board may waive the requirement of furnishing to other parties copies of bulky, lengthy, or out-of-size documents when the party, by written motion, has shown that service would impose an undue burden. The moving party shall notify the other parties that the documents are available for inspection at the office of the Board.

108.5 Notwithstanding the foregoing, any document may be served electronically pursuant to Chapter 4.

## **109 PROOF OF SERVICE**

109.1 This section only applies to non-electronic filing. A party filing a document with the Board shall furnish written proof that a copy also has been sent to every other party.

109.2 The proof shall show the date and manner of service and may be written acknowledgment of service, affidavit of the person making service, certificate of an attorney of record, or by other proof satisfactory to the Board.

109.3 Proof of service shall not be required if the document has been served electronically pursuant to Chapter 4.

## **110 MOTIONS PRACTICE**

110.1 Every application to the Board for an order or other relief shall be by motion. Before filing any motion, the moving party shall first ascertain whether other affected parties will consent to the relief sought. Only when the movant certifies in writing that despite diligent efforts consent could not be obtained, will the Board consider the motion as a contested matter. If the relief sought is consented to but requires Board approval, the moving party shall serve the other parties and file with the Board a motion which includes the word "Consent" in its title and states that all affected parties have consented to the relief sought.

110.2 With the exception of a motion made during a hearing or conference, all motions shall be in writing, unless otherwise directed by the Board. A motion shall be accompanied by a statement of its purpose, the grounds on which it is based, and the reasons for the order or relief sought.

110.3 A written motion shall include on separate page(s) following the signature page a proposed order for the Board's signature including, if paper filed, a list of all parties, and their current addresses.

110.4 A motion shall include within its body a statement setting forth specific points and authorities to support the motion, including a concise statement of facts

material to the issues raised in the motion. No separate memorandum of points and authorities shall be required.

- 110.5 A memorandum of opposing points and authorities may be filed with the Board and served on a party no later than ten (10) days after service of the motion, unless another Board rule prescribes a larger or shorter time. The Board may also grant or order a larger or shorter time for such filing. If a statement of opposing points and authorities is not filed within the prescribed time, the Board may treat the motion as conceded.
- 110.6 A reply memorandum may be filed with the Board and served on a party no later than seven (7) days after service of the opposition described in Subsection 110.5, or within a larger or shorter time as the Board may grant or order.
- 110.7 The Board may decide a motion without a hearing. The Board may also order a hearing on a motion upon the application of either party, or on the Board's initiative.
- 110.8 Despite the provisions of Subsection 110.5, for good cause shown, the Board may act upon a motion at any time without waiting for a response to the motion by the opposing party.
- 110.9 If a moving party fails to appear at a hearing on its motion, the Board may treat the motion as withdrawn and the motion may be refiled only with the permission of the Board. If the opposing party fails to appear at the hearing, the Board may treat the motion as conceded.
- 110.10 In addition to the statement of points and authorities required by Subsection 110.4 to be included within the body of the motion, a motion for summary judgment shall also include within the motion a separate statement of the material facts as to which the moving party contends there is no genuine issue.

## **111 STIPULATIONS**

- 111.1 The parties may stipulate to facts, issues, admission of relevant documents, testimony, discovery procedures, and other matters which may aid in expediting the proceedings in a case, subject to acceptance by the Board. A stipulation, however, may not extend a time limit established by a rule or order of the Board without its approval.

## **112 DISCOVERY**

- 112.1 The Board encourages all parties to engage in voluntary discovery. Discovery documents shall not be filed with the Board unless the Board, on its own initiative or by granting the motion of a party, orders that they be filed.

- 112.2 After an appeal has been docketed, a party may obtain discovery regarding a matter which is not privileged and is relevant to the case. It shall not be a ground for objection to a discovery request that the information will be inadmissible in the record of the case, if the information appears reasonably calculated to lead to the discovery of admissible evidence.
- 112.3 A party to a protest or a small claims (expedited) appeal may engage in discovery only to the extent it is acceptable to and ordered by the Board. The Board shall not permit discovery unless it is necessary to advance a fair and expeditious resolution.
- 112.4 A party may obtain discovery by one or more of the following methods:
- (a) Depositions upon oral examination or written questions, but said deposition testimony may only be used at the hearing of an appeal if the witness is unavailable, or to contradict or impeach the testimony of the deponent given at the hearing;
  - (b) Written interrogatories;
  - (c) Requests for production of documents or other tangible things; and
  - (d) Requests for admissions.
- 112.5 Written interrogatories and requests for admission shall be answered separately in writing, signed under oath by the person making the answers, within thirty (30) days after service. Requests for production of documents or other tangible things shall be answered within 30 days after service. Unless otherwise ordered by the Board, any objection to a discovery request must be filed within fifteen (15) days after service. A party shall fully respond to any discovery request to which it does not file a timely objection. The parties are required to make a good faith effort to resolve objections to discovery requests.
- 112.6 The use of the discovery methods set forth in Subsection 122.4 shall be limited by the Board if it determines that:
- (a) The discovery is unreasonably cumulative or duplicative or is obtainable from some other source that is more convenient, less burdensome, or less expensive; and
  - (b) The discovery is unduly burdensome and expensive, taking into account the needs of the case, amount involved in the controversy, limitations on the parties' resources, and importance of the issues at stake in the case.
- 112.7 The parties are encouraged to utilize electronic transmission to the maximum extent practicable. When discovery material is transmitted electronically, the

attorney or other person transmitting the material shall be deemed to have certified that the documents contained in the transmission are what they purport to be.

### **113 FAILURE TO MAKE OR COOPERATE IN DISCOVERY; SANCTIONS**

113.1 Before any motion to compel discovery is filed, the affected parties or counsel must meet for a reasonable period of time in an effort to resolve the disputed matter. The movant shall accompany any motion to compel discovery with a certification that despite a good faith effort to secure it, the discovery material sought has not been provided. This certification shall set forth specific facts describing the good faith effort, including a statement of the date, time, and place of the meeting required by this rule.

113.2 If a party fails to obey an order to provide or permit discovery, the Board may make:

- (a) An order that certain facts shall be taken to be established in accordance with the claim of the moving party;
- (b) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting that party from introducing designated matters in evidence;
- (c) An order striking pleadings, staying further proceedings until the order is obeyed, dismissing the case or proceeding or any part thereof, or rendering a judgment by default against the disobedient party; or
- (d) An order imposing such other sanctions as the Board deems appropriate.

113.3 When the Board believes that the circumstances warrant either dismissing the case or rendering a default judgment against the disobedient party as a discovery sanction, it will issue an order to show cause pursuant to Subsection 121.3.

### **114 SUBPOENAS**

114.1 A party is expected to cooperate in good faith by making available witnesses and evidence under the party's control, when requested by another party, without issuance of a subpoena and by securing the voluntary attendance of third-party witnesses and the production of evidence by third parties.

114.2 The presiding judge may issue, on his or her initiative or upon written motion of a party, a subpoena that commands the person to whom it is directed to:

- (a) Attend and give testimony at a deposition;



- (b) Attend and give testimony at a hearing; and
  - (c) Produce the books, papers, documents, and other tangible things designated in the subpoena.
- 114.3 A request for subpoena shall be filed at least fifteen (15) calendar days before the testimony of a witness or evidence is to be provided, and shall state the relevancy, materiality, and scope of the testimony or documentary evidence sought, including, as to documentary evidence, the identification of all documents desired and the facts to be proved by them in sufficient detail to indicate materiality and relevancy. The Board may, in its discretion, honor requests for subpoenas not made within the time limit provided by this rule.
- 114.4 The party requesting a subpoena shall arrange for its service. The service shall be made as soon as practicable after the subpoena has been issued.
- 114.5 A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place consistent with the rules of the D.C. Superior Court. A subpoena may be served by registered or certified mail, by a United States Marshal or his or her deputy, or by any other person who is not a party and is not less than eighteen (18) years of age.
- 114.6 The service of a subpoena upon a person named in the subpoena shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage allowed by law. However, where the subpoena is issued on behalf of the District government, the fees and mileage allowance need not be tendered in advance of attendance.
- 114.7 The person serving the subpoena shall make proof of the service to the Board promptly, and, in any event, before the date on which the person served must respond to the subpoena. The proof of service shall be made by completing and executing the "Return on Service" portion of a duplicate copy of the subpoena issued by an administrative judge and returning it to the Board. If service is made by a person other than a United States Marshal or his or her deputy, that person shall make an affidavit as proof by executing the "Return on Service" in the presence of a notary.
- 114.8 Upon written motion by the person subpoenaed or by a party, made within ten (10) days after service, but in any event not later than the time specified in the subpoena for compliance, the Board may:
  - (a) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or
  - (b) Require the party in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed documentary evidence.

114.9 In a case of contumacy or refusal to obey a subpoena by a person who resides, is found, or transacts business within the jurisdiction of the D.C. Superior Court, the Board shall apply to the D.C. Superior Court for an order requiring the person to appear before the Board to give testimony, produce evidence, or both. If a person fails to obey the order, without adequate excuse, the Board may apply for an order that the person be held in contempt by the Court.

## **115 JURISDICTION**

115.1 The Board at any time may consider the question of its jurisdiction to decide a case.

## **116 SUSPENSION OF RULES**

116.1 In the interest of expediting a decision in a case or for other good cause shown, the Board may, except for the time requirements for filing a protest or an appeal, suspend or dispense with the filing requirements and procedural provisions of these rules on the motion of a party or on its own initiative and may order proceedings in accordance with its direction.

## **117 RECONSIDERATION**

117.1 A party to an appeal or a protest may by motion request the Board to reconsider its decision or order for the reasons stated below:

- (a) To clarify the decision;
- (b) To present newly discovered evidence which by due diligence could not have been presented to the Board prior to the rendering of its decision;
- (c) If the decision contains typographical, numerical, technical or other clear errors that are evident on their face; or
- (d) If the decision contains errors of fact or law, except that parties shall not present arguments substantially identical to those already presented to the Board.

117.2 For appeals, a motion for reconsideration shall be filed within (30) thirty days after the Board's decision or order is transmitted to a party. For protests, a motion for reconsideration shall be filed within the time period set forth in Subsection 313.2.

117.3 A motion for reconsideration shall set forth the following:

- (a) The particular points of fact or law which the moving party believes the Board has overlooked or misapprehended;
- (b) Any argument the moving party wishes to make in support of the motion; and
- (c) The relief sought and the reasons for seeking the relief.

117.4 For appeals, a party may file an opposition to a motion for reconsideration no later than fifteen (15) days after the motion is served. For protests, a party may file an opposition no later than seven (7) days after the motion is served.

117.5 If a motion for reconsideration is granted, the Board may make a final disposition of the case without reargument, permit reargument, or issue an appropriate order regarding further proceedings.

117.6 A motion of reconsideration does not affect the finality of the Board's decision or suspend its operation except that the Board may stay its decision for good cause shown.

## **118 CONSOLIDATION OF CASES**

118.1 When cases involving a common question of law or facts are pending before the Board, consolidation may be ordered by the Board on its own initiative, or on the motion of a party in order to avoid unnecessary costs or delay.

## **119 SEPARATE DETERMINATION OF LIABILITY**

119.1 The Board may limit a hearing to those issues of law and fact relating to the right of a party to recover, reserving the determination of the amount of recovery, if any, for another proceeding.

## **120 BURDEN OF PROOF**

120.1 Except as otherwise provided by law, the burden of persuasion by a party to establish a fact or facts in dispute shall be met by a preponderance of the evidence.

## **121 DISMISSAL OF CASES**

121.1 A case may be dismissed by an appellant or protester as a matter of right by filing a notice of dismissal at any time prior to the service of an answer or motion on the appellant or protester, or by filing a stipulation signed by each party.

121.2 A dismissal initiated by an appellant or protester not covered by Subsection 121.1 shall be approved by the Board upon terms and conditions as it deems proper.

121.3 Whenever either party fails to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicate an intention not to continue the prosecution or defense of a case, the Board may issue an order to show cause why the case should not be dismissed for failure to prosecute or defend.

121.4 The Board shall specify whether a dismissal is with or without prejudice.

## **122 COMPUTATION OF TIME**

122.1 In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default from which the designated period of time begins to run shall not be included.

122.2 The last day of each period computed pursuant to Subsection 122.1 shall be included unless it is a Saturday, Sunday, or legal holiday, or, when the act to be done is the filing of a paper with the Board, a day or any part of a day in which the Board's office is closed, in which event the period shall run until the end of the next day which is not one of the aforementioned days.

122.3 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period.

122.4 Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other document upon the party and the notice or document is served upon the party electronically in accordance with Chapter 4, the notice or document shall be considered as served when the transmission is completed ("authorized date and time"), provided, however, for the purpose of computing time for the served party to respond, any notice or document served on a day or at a time when the Board is not open for business shall be deemed to have been served on the day and at the time of the next opening of the Board for business.

## **123 ENLARGEMENT OF TIME**

123.1 The Board, for good cause shown, may enlarge the time prescribed by the Board rules, or by its order, for doing any act, or may permit an act to be done after the expiration of the prescribed time. The Board, may not, however, enlarge the time for filing a protest or an appeal.

**124 CONTINUANCES**

- 124.1 Any party may move in writing to request a continuance of any scheduled hearing, or to extend the time to file a pleading, or for leave to amend a pleading if the motion is served on opposing parties and the Board at least five (5) business days before the hearing or the time limit.
- 124.2 Continuance shall be approved only for good cause shown.
- 124.3 Conflicting engagements of counsel, absence of counsel, or the employment of new counsel shall not be regarded as good cause for continuance unless set forth promptly.

**125 UNEXCUSED ABSENCE OF A PARTY**

- 125.1 The unexcused absence of a party at the time set for a motion or merits hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the motion or case will be regarded as submitted on the record by the absent party.

**126 EVIDENCE**

- 126.1 The Board shall follow the rules of evidence of the D.C. Superior Court. However, oral and documentary evidence not ordinarily admissible under those rules may be received in evidence at the discretion of the Board.

**127 SANCTIONS**

- 127.1 If a party or the party's representative fails or refuses to comply with a Board order or rule, or engages in unreasonable or vexatious conduct, the Board may, on its own initiative or on motion of a party, sanction the offending party or representative as it considers necessary to the just and expeditious conduct of the case.
- 127.2 The Board may deny any party's representative from appearing in a case currently before it if that individual is found by the Board, after hearing, either to be lacking in the requisite qualifications to represent others or to have engaged in unethical, improper or unprofessional conduct.

**128 CONFLICT OF INTEREST**

- 128.1 Board employees may not engage in outside employment, including the practice of law, that is incompatible with their duties and responsibilities on the Board or as District government employees, as provided in Title 6-B, Chapter 18, of the District of Columbia Municipal Regulations, as amended.

**129 SEAL OF THE BOARD**

- 129.1 The seal of the Board shall be a circular boss, the center portion of which shall depict the flag of the District of Columbia and flag of the United States. The outer margin of the seal shall bear the legend, "CONTRACT APPEALS BOARD, D.C."

**199 DEFINITIONS**

- 199.1 In addition to the terms defined in D.C. Official Code § 2-351.04, the following terms shall have the indicated definitions for purposes of Chapters 1, 2, 3, and 4 of these rules:

**Aggrieved person** means an actual or prospective bidder or offeror (i) whose direct economic interest would be affected by the award of a contract or by the failure to award a contract, or (ii) who is aggrieved in connection with the solicitation of a contract.

**Appeal** means a submission to the Board seeking administrative review of a claim by the District or a contractor arising under or related to a contract including those arising under the Public-Private Partnership Act of 2014, a claim for interest penalties pursuant to the District of Columbia Quick Payment Act, or a debarment or suspension action. Appellant means the party filing an appeal with the Board. For purposes of these rules, a "protest" is not an appeal.

**Business day** means any day other than a Saturday, Sunday, or legal holiday.

**Case** means an appeal, protest, debarment, or suspension.

**Contracting agency** means a department, agency, or instrumentality of the District government which employs the contracting officer who has the authority to enter into a contract which is the subject of the solicitation, contract, or agency action at issue before the Board.

**Days** refer to calendar days, unless otherwise provided. Subsections 122.1 - 122.4 govern computation of time.

**Director** means the Director of the Office of Contracting and Procurement who is the Chief Procurement Officer.

**Dispositive motion** means a motion which, if granted, would terminate part or all of a case on the merits or on procedural grounds.

**An *ex parte* communication** means any oral or written communication with the Board, which excludes one or more parties to the case, concerning the

merits of the case pending before the Board, made by any persons directly or indirectly involved in the outcome of the case.

**In camera review** refers to the private review of documents or exhibits by an administrative judge without the presence of parties or attorneys.

**Interested party** has the same meaning as aggrieved person.

**Intervenor** means an awardee if the contract has been awarded, or, if no award has been made, all bidders or offerors who appear to have a substantial prospect of receiving an award if the protest is denied.

**Protected information** means information subject to a protective order, such as proprietary, confidential, or source-selection-sensitive material, as well as other information the release of which could result in a competitive advantage to one or more firms.

**Protest** means a written objection by an aggrieved party to a solicitation for bids or proposals or a written objection to a proposed or actual contract award. **Protester** means an aggrieved party who files a protest with the Board.

**Respondent** means the contracting agency whose decision, action, or inaction is the subject of an appeal or protest.

**Chapter 2, APPEAL PROCEDURES OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

**200 APPEALS BY CONTRACTORS**

200.1 An appeal by a contractor of a final decision by the contracting officer relating to a contract dispute, a claim for interest penalties, or a decision of the Director relating to a debarment or suspension action, shall commence by the contractor filing a complaint with the Board.

200.2 The complaint shall be filed:

- (a) In a contract dispute, no later than ninety (90) days after the contractor received the decision of the contracting officer; or, where the time period for the contracting officer to issue a decision has expired, the contractor shall file a complaint within a reasonable time;
- (b) In a dispute concerning suspension or debarment, no later than sixty (60) days after the contractor receives the decision of the Director to suspend or debar.

200.3 The appellant shall serve a copy of the complaint on the agencies specified in Subsections 202.3(a) and (b), and shall furnish the Board with proof of service.

## **201 COMPLAINT**

201.1 A complaint shall indicate that an appeal is being taken and shall identify the contract in dispute, or the suspension/debarment proceedings; the department or agency involved in the dispute; the decision from which the appeal is taken; the amount in dispute, if any; and shall state that the complaint is timely filed.

201.2 The complaint shall be signed by the contractor personally or by an authorized representative or attorney.

201.3 The complaint referred to herein does not require a particular form, but it shall fulfill the requirements of a complaint.

201.4 The appellant shall file a complaint setting forth simple, concise, and direct statements of each of its claims with the Board. If filed on paper, the appellant shall file an original and two (2) copies of the complaint with attachments.

201.5 The appellant shall set forth the basis, with appropriate reference to contract provisions and applicable law, of each claim to the extent known; the dollar amount claimed, to the extent known; and the relief sought from the Board.

201.6 If an appeal has been lawfully initiated by the filing of a complaint, the Board may thereafter order the District to file a complaint where an appellant has appealed an affirmative claim by the District asserted in a final decision by a contracting officer. In such cases, the Board may also order the appellant to file an answer as described in Section 205.

## **202 DOCKETING OF APPEALS**

202.1 When a complaint has been received by the Board, it shall be docketed promptly.

202.2 The Board shall provide the appellant a written acknowledgment that the complaint has been docketed, the case docket number, and the citation of the publication containing the current rules of the Board. In addition, the Board shall advise the appellant of the identity of the persons furnished the acknowledgment as prescribed in Subsection 202.3.

202.3 The Board promptly shall send a copy of the acknowledgment to:

- (a) The Director in the case of an appeal of a debarment or suspension;
- (b) The contracting officer in the case of any other appeal; and



- (c) The Office of the Attorney General or the counsel for the contracting agency.

202.4 The Board shall notify the contracting agency to file the appeal file as prescribed in Section 203.

### **203 THE APPEAL FILE**

203.1 Within thirty (30) days after receipt of the acknowledgement that a complaint has been docketed, the contracting agency shall assemble and transmit to the Board an appeal file consisting of all documents pertinent to the appeal, including:

- (a) The decision from which the appeal is taken;
- (b) The contract, including specifications and pertinent amendments, plans, and drawings;
- (c) All correspondence between the parties relevant to the appeal, including the letter or letters of claim in response to which the decision was issued;
- (d) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the complaint with the Board; and
- (e) Any additional information considered relevant to the appeal.

203.2 Within the same thirty (30) day time period, the contracting agency shall furnish the appellant a copy of each document submitted to the Board, except those in Subsection 203.1 (b) above. As to the latter, a list furnished appellant indicating contractual documents submitted to the Board will suffice.

203.3 Within thirty (30) days after receipt of a copy of the appeal file assembled by the contracting agency, the appellant shall transmit to the Board any documents or other tangible things not contained therein which are considered relevant to the appeal, and shall furnish a copy of each document to the attorney representing the contracting agency.

203.4 The Board may, at any time during the pendency of the appeal, require either party to supplement the appeal file or record by filing other documents and tangible things.

203.5 All exhibits in the appeal file shall be considered, without further action by the parties, a part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular document reasonably in advance of a hearing, or, if there is no hearing, of closing the record. If an objection is made, the Board shall remove the document from the

appeal file and permit the party offering the document to move its admission as evidence.

203.6 Documents in the appeal file may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

203.7 Original copies of documents may be withdrawn from the appeal file, with the Board's consent, if an acceptable copy is substituted.

## **204 JUDICIAL NOTICE**

204.1 The record in each case may also include such matters as the Board may expressly take notice of.

## **205 ANSWER**

205.1 Within thirty (30) days from receipt of the complaint, the contracting agency shall file an answer with the Board. If filed on paper, the contracting agency shall file an original and two (2) copies of the answer and attachments.

205.2 The contracting agency shall serve a copy of the answer on the appellant, or its attorney and, unless served electronically, provide proof of service to the Board.

205.3 The answer shall set forth simple, concise and direct statements of the contracting agency's defenses to each claim asserted by the appellant, and shall include any affirmative defenses or counterclaims available.

205.4 In lieu of answering, the contracting agency may file a dispositive motion. If the motion is filed and denied by the Board, in whole or in part, the answer shall be filed no later than thirty (30) days after the contracting agency receives the Board's ruling on the motion.

205.5 If no answer or motion is received from the contracting agency within thirty (30) days from receipt of the complaint, the Board may, in its discretion, enter a general denial to the appeal, and the appellant shall be so notified, or the Board may consider the failure to answer as an admission of the claims of the appellant.

## **206 SUPPLEMENTAL PLEADINGS**

206.1 The Board, upon its own initiative, or upon application by a party, may order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

**207 AMENDMENT OF PLEADINGS**

207.1 The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend its pleading upon conditions fair to both parties.

207.2 When issues within the proper scope of the appeal have not been raised by the pleadings but are tried by express or implied consent of the parties or by permission of the Board, they shall be treated in all respects as if they had been raised in the pleadings. In these instances, motions to amend the pleadings to conform to the proof may be made but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable it to meet the evidence.

**208 ELECTION OF PROCEDURE**

208.1 After the complaint, answer, appeal file and any supplemental pleadings have been filed, each party shall inform the Board whether it desires a hearing, as prescribed by Section 211, or whether it desires to submit its case on the record without a hearing, as prescribed by Section 209.

**209 SUBMISSION ON THE RECORD**

209.1 Both parties may elect to waive a fact-finding hearing and to submit the case on the record.

209.2 Submission of the case without a hearing shall not relieve the parties from providing the facts supporting their allegations and defenses.

209.3 Either party may apply to the Board to supplement the record by filing affidavits, depositions, admissions, answers to interrogatories, and stipulations.

209.4 The Board may permit the record to be supplemented by oral argument and briefs.

**210 PREHEARING PROCEDURES**

210.1 The Board may, upon its own initiative, or upon application of either party, arrange for a telephone conference or direct the parties to appear before the Board at a specified time and place, prior to or during the course of a hearing, to consider the following:

- (a) Settlement of part or all of the dispute;
- (b) The simplification of issues;

- (c) The necessity or desirability of amending the pleadings;
- (d) The possibility of obtaining admission of fact and stipulations concerning the use of documents to avoid unnecessary proof;
- (e) The limitation of the number of witnesses;
- (f) The possibility of prior mutual exchange of prepared testimony and exhibits between the parties;
- (g) A schedule for the completion of discovery, if discovery is deemed necessary, and has not been completed; and
- (h) Any other matters that may aid in shortening the hearing on the merits and in the disposition of the appeal.

210.2 The Board shall make an order or memorandum which shall recite the action taken at the conference. This order or memorandum, when filed, shall be a part of the record in the appeal and shall control the subsequent course of the appeal unless modified by the Board.

210.3 The Board may, on its initiative or upon application of either party, order the parties to file prehearing briefs explaining and analyzing the legal issues in any case.

210.4 Pleadings, discovery, and other prehearing activity shall be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or, if no hearing is scheduled, to close the record in a reasonable time. The Board, at its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules.

## **211 HEARINGS**

211.1 The Board shall provide the parties at least seven (7) business days' notice of the time and place of a hearing, but the notice may be waived by the parties.

211.2 All hearings on the merits shall be open to the public. The Board may limit access to testimony covered by a protective order entered in the case pursuant to Section 104.

211.3 Questions concerning the admissibility of evidence and other matters that may arise in the course of the hearing shall be ruled upon by the presiding administrative judge, or, if necessary, by a majority vote of the designated panel. A decision upon the merits, or a final disposition of any appeal or part thereof, shall be by majority vote of the designated panel, except as provided in Subsection 215.5.

- 211.4 Witnesses at hearings shall be examined orally under oath or affirmation, which shall be administered by the presiding administrative judge or any member of the assigned panel. Any member of the panel may question any witness at any time during or after examination or cross-examination by the parties.
- 211.5 An official reporter selected by the District shall make an official transcript of the proceedings at hearings on the merits. After the close of a hearing this transcript, together with any exhibits, briefs, or other documents filed in the proceeding, shall be filed with the Board and become a part of the record. No other recordings of the proceedings will be made.
- 211.6 The official reporter shall transmit copies of the transcript to the Board and the contracting agency. Copies of the official transcript shall be supplied to other parties by the official reporter at rates determined between the official reporter and the parties.
- 211.7 Motions to correct an official transcript shall be filed with the Board within fifteen (15) days after the receipt of the last portion of the transcript, and shall certify the date when the last portion of the transcript was received by the maker of the motion.
- 211.8 Witnesses are to be excluded from the hearing room so they cannot hear the testimony of other witnesses, except a party who is an individual, the designated representative of a party which is an entity, someone authorized by statute to be present, or a person whose presence is essential to the presentation of the party's case.

## **212 POST HEARING BRIEFS**

- 212.1 Unless filed electronically in accordance with Chapter 4, an original and two (2) copies of post hearing briefs shall be submitted as directed by the Board at the conclusion of the hearing.
- 212.2 Briefs and any memoranda of law shall be filed electronically in accordance with Chapter 4, or be typewritten on white bond 8½ x 11 inch paper and shall be double spaced except for quotations.
- 212.3 Briefs shall contain, in the following order, a short procedural history of the case, a table of contents, a table of authorities cited, a concise summary of argument, proposed findings of fact with citations to those places in the record where supporting evidence can be found, proposed conclusions of law with citations to supporting legal authorities, and the relief desired by the party.

**213 RECORD**

213.1 The record of the appeal shall include the complaint, answer, appeal file, all motions and other submissions filed by the parties with the Board pursuant to these rules; all correspondence exchanged between the Board and the parties or their attorney; transcripts made of hearings before the Board; all exhibits and other evidence admitted to the record; all findings, decisions, opinions, and orders of the Board; and such other matters as the Board may expressly take notice of.

**214 DECISIONS**

214.1 All decisions shall be in writing and based solely on the record as prescribed in Subsection 213.1.

214.2 With each decision finally disposing of an appeal or any part thereof, the Board shall file separate findings of fact and conclusions of law unless the findings of fact and conclusions of law appear therein.

214.3 A copy of the decision shall be transmitted by the Board to each party or his or her attorney.

214.4 Judicial Review of Board Decisions on Appeals.

(a) A contractor may appeal the Board decision to the District of Columbia Court of Appeals within one hundred twenty (120) days after the date of receipt of the Board's decision.

(b) If the District determines that an appeal should be taken, the Director, with the prior approval of the Office of the Attorney General, may appeal the Board's decision to the District of Columbia Court of Appeals within one hundred twenty (120) days after the date of the receipt of the Board's decision.

(c) When a Board decision is appealed, the appealing party must also provide a copy of the notice of appeal to the Board.

**215 OPTIONAL SMALL CLAIMS (EXPEDITED) PROCEDURES**

215.1 In an appeal where the amount in dispute is ten thousand dollars (\$10,000) or less, the appellant may elect to have the appeal adjudicated under the small claims procedure set forth in this rule, or the accelerated procedure in Section 216.

215.2 Whenever possible, decisions under the small claims procedure will be rendered within ninety (90) days from the date on which the contractor files an appeal. The election shall be stated in the complaint, except that the Board for good cause may permit the election to be made after the complaint is filed. Once the election is

made, it may not be withdrawn except with the permission of the Board for good cause shown.

215.3 The following time periods shall apply for cases proceeding as a small claims appeal unless otherwise ordered by the Board:

- (a) Within ten (10) business days of receipt of notice of the appellant's election, the respondent shall submit to the Board a copy of the contract, the contracting agency's final decision, and the appellant's claim letter or letters; other documents from the appeal file prescribed in Section 203 shall be submitted as the Board directs.
- (b) Within fifteen (15) days after the Board has received the appellant's election, the designated administrative judge shall take the following action in an informal meeting or a telephone conference with the parties:
  - (1) Formulate and simplify the issues;
  - (2) Establish a simplified procedure appropriate to the appeal;
  - (3) Determine whether either party wants a hearing, and, if so, fix a time and place;
  - (4) Require the respondent to furnish any additional documents relevant to the appeal; and
  - (5) Establish an expedited schedule for resolution of the appeal.

215.4 Pleadings, discovery, and other prehearing activity shall be allowed only as consistent with the requirement to conduct the hearing on the date scheduled, or, if no hearing is scheduled, to close the record on a date that will allow decisions within the ninety (90)-day limit. The Board, at its discretion, may impose shortened time periods for any actions prescribed or allowed under these rules as necessary to enable the Board to decide the appeal within the time limit.

215.5 Written decisions by the Board in cases adjudicated under the small claims (expedited) procedure shall be short and may contain abbreviated findings of fact and conclusions of law. The decisions may be rendered for the Board by a single administrative judge. A decision under the small claims procedure shall have no precedential value in future cases before the Board.

215.6 In a case where a small claims procedure has been elected and in which there has been a hearing, the administrative judge presiding at the hearing may, in the judge's discretion, at the conclusion of the hearing and after entertaining any oral arguments as deemed appropriate, render on the record oral findings of fact, conclusions of law, and a decision of the appeal.

215.7 Whenever an oral decision is rendered pursuant to Subsection 215.6, the Board shall subsequently furnish the parties with a written copy of the oral decision for record and payment purposes, and to establish the starting date for the period for filing a motion for reconsideration or a judicial appeal.

## **216 OPTIONAL ACCELERATED PROCEDURES**

216.1 In appeals where the amount in dispute is fifty thousand dollars (\$50,000) or less, the appellant may elect to have the appeal adjudicated under the accelerated procedure set forth in this rule. The appellant's election must be made within thirty (30) days after the answer is filed.

216.2 Decisions under the accelerated procedure shall be rendered within one hundred and eighty (180) days from the date the Board receives notice that the appellant has elected to utilize the accelerated procedure.

216.3 The appellant's election herein, once exercised, may not be withdrawn, except with the permission of the Board for good cause shown.

216.4 In a case proceeding as an accelerated appeal, the Board shall encourage the parties to waive or limit pleadings, discovery, and briefs to the maximum possible extent consistent with the adequate presentation of their factual and legal positions.

216.5 Within thirty (30) days of receiving appellant's election of the accelerated procedure, the respondent shall file the appeal file as prescribed by Section 203.

216.6 Within forty-five (45) days of receiving appellant's election of the accelerated procedure, the Board shall convene an informal meeting, or a telephone conference, with the parties and shall proceed with the case.

216.7 The Board shall permit discovery by the parties consistent with its requirement to decide their case under the time limit imposed by Subsection 216.2.

## **217 ALTERNATIVE DISPUTE RESOLUTION**

217.1 Availability of ADR procedures. The Board will make its services available for ADR proceedings in contract appeals and protest matters involving District agencies.

- (a) ADR subsequent to docketing of case at the Board. Parties are encouraged to consider the feasibility of using ADR as soon as their case is docketed. If, however, at any time during the course of a Board proceeding, the parties agree that their dispute may be resolved through the use of an ADR technique, the presiding judge may suspend proceedings for a reasonable



period of time while the parties and the Board attempt to resolve the dispute in this manner. The use of an ADR technique will not toll any relevant statutory time limit for deciding the case.

- (b) Other ADR. Upon request, the Board will make a Board Neutral available for an ADR proceeding involving a District agency in any contract, protest, or procurement matter at any stage of a procurement, even if no contracting officer decision has been issued or is contemplated. To initiate an ADR proceeding, the parties shall jointly request the ADR in writing and direct such request to the Chief Administrative Judge. The Board will provide ADR services on a reimbursable basis.

#### 217.2 Conduct of ADR.

- (a) Selection of Board Neutral. If ADR is agreed to by the parties and the Board, the parties may request the appointment of one or more Board judges to act as a Board Neutral or Neutrals. The parties shall request that the Chief Administrative Judge appoint a particular judge or judges as the Board Neutral, or appoint any judge or judges as the Neutral. If, when ADR has been requested for a case that has already been docketed with the Board, as provided in Subsection 217.1(a), the parties may request that the presiding judge serve as the Board Neutral. In such situation, when the ADR is unsuccessful, (i) if the ADR has involved mediation, the presiding judge shall not retain the case, and (ii) if the ADR has not involved mediation, the presiding judge, after considering the parties' views, shall decide whether to retain the case.
- (b) Retention and confidentiality of materials. The Board will review materials submitted by a party for an ADR proceeding, but will not retain such materials after the proceeding is concluded or otherwise terminated. Material created by a party for the purpose of an ADR proceeding is to be used solely for that proceeding unless the parties agree otherwise. Parties may request a protective order in an ADR proceeding in the manner provided in Section 104.

#### 217.3 Types of ADR. ADR is not defined by any single procedure or set of procedures. The Board will consider the use of any technique proposed by the parties which is deemed to be fair, reasonable, and in the best interest of the parties, the Board, and the resolution of disputes. The following are examples of available techniques:

- (a) Mediation. The Board Neutral, as mediator, aids the parties in settling their case. The mediator engages in ex parte discussions with the parties and facilitates the transmission of settlement offers. Although not authorized to render a decision in the dispute, the mediator may discuss with the parties, on a confidential basis, the strengths and weaknesses of

their positions. No judge who has participated in discussions about the mediation will participate in a Board decision of the case if the ADR is unsuccessful.

- (b) Neutral case evaluation. The parties agree to present to the Board Neutral information on which the Board Neutral bases a non-binding, oral, advisory opinion. The manner in which the information is presented will vary from case to case depending upon the agreement of the parties. Presentations generally fall between two extremes, ranging from an informal proffer of evidence together with limited argument from the parties to a more formal presentation of oral and documentary evidence and argument from counsel, such as through a mini-trial.
- (c) Binding decision. One or more Board judges render a decision which, by prior agreement of the parties, is to be binding and non-appealable. As in the non-binding evaluation of a case by a Board Neutral, the manner in which information is presented for a binding decision may vary depending on the circumstances of the particular case.
- (d) Other procedures. In addition to other ADR techniques, including modifications to those listed above, as agreed to by the Board and parties, the parties may use ADR techniques that do not require direct Board involvement.
- (e) Selective use of standard procedures. Parties considering the use of ADR are encouraged to adapt for their purposes any provisions in the Board's rules which they believe will be useful. This includes but is not limited to provisions concerning record submittal, prehearing discovery procedures, and hearings.

**Chapter 3, PROTEST PROCEDURE OF THE CONTRACT APPEALS BOARD, is amended to read as follows:**

**300 PARTIES ENTITLED TO PROTEST**

300.1 An aggrieved person, as defined in Subsection 199.1, may protest to the Board a solicitation issued by or for a District contracting agency for the procurement of property or services, or a proposed award, or the award of such a contract.

**301 FORM AND CONTENT OF PROTEST**

301.1 All protests shall be in writing, addressed to the Board, and shall include the following:

- (a) The name, address, and telephone number of the protester;

- (b) The identity of the contracting agency, the number and date of the solicitation, and if a contract has been awarded, the number and date of the contract and to whom the contract was awarded, if known;
- (c) A clear and concise statement of the legal and factual grounds of the protest, including copies of relevant documents, and citations to statutes, regulations, or solicitation provisions claimed to be violated;
- (d) Information establishing the timeliness of the protest (see Section 302);
- (e) Information establishing that the protester is an aggrieved person for the purpose of filing the protest (see Subsection 199.1); and
- (f) The relief sought by the protester.

In addition, a protest may request a protective order, request specific documents relevant to the protest grounds, and request a hearing.

- 301.2 Protests shall be signed by the protester or by an authorized representative or attorney.
- 301.3 Protests are not required to be formal or technical but shall be logically arranged and legally sufficient.
- 301.4 A protest may be dismissed for failure to comply with any of the requirements of this Rule.

## **302 FILING THE PROTEST WITH THE BOARD; TIME LIMITATIONS**

- 302.1 Unless filed electronically in accordance with Chapter 4, the protester shall file an original and two (2) paper copies of its protest, including all attachments, with the Board by hand delivery, mail, or commercial carrier within the time limitations established by law and set forth below in Subsection 302.2. The protester shall also serve a copy of the protest, including all attachments, on the contracting agency and shall furnish the Board with proof of service.
- 302.2 Time Limitations. Filing occurs when the protest is received on paper by the Board or electronically by the Board's designated electronic filing system in accordance with Chapter 4. The following paragraphs specify the time limitations associated with the filing of a protest.
  - (a) A protest based upon alleged improprieties in a solicitation which are apparent prior to bid opening or the time set for receipt of initial proposals shall be filed with the Board prior to bid opening or the time set for receipt of initial proposals. In procurements where proposals are requested, alleged improprieties which do not exist in the initial solicitation, but

which are subsequently incorporated into the solicitation, must be protested not later than the next closing time for receipt of proposals following the incorporation.

- (b) Protests other than those covered in paragraph (a) shall be filed with the Board not later than ten (10) business days after the basis of the protest is known or should have been known, whichever is earlier.

302.3 A protest concerning a procurement conducted by an agency exempt from the Procurement Practices Reform Act, which has entered into an agreement with the Board under Subsection 101.8 to resolve protests, shall be filed with the Board within the time prescribed by the agency's regulations. If the agency has no regulations placing limits on the time for filing protests, these rules shall govern.

### **303 BOARD DOCKETING OF PROTESTS**

303.1 Docketing of Protests. When a protest has been accepted for filing by the Board, it shall be docketed immediately.

- (a) The Board shall prepare an acknowledgment that the protest has been docketed, indicating the name of the protester, the solicitation at issue, the Board's protest docket number, and the *District of Columbia Register* citation to the current rules of the Board. In addition, the Board shall advise the protester of the identity of the persons furnished with the acknowledgment.
- (b) Within one (1) business day of receipt of the protest filing, the Board shall send a copy of the acknowledgment to:
  - (1) The contracting officer;
  - (2) The Office of the Attorney General or the counsel for an independent agency; and
  - (3) The protester.
- (c) The parties will also be notified that the acknowledgment is available at the Board for pickup.

303.2 The acknowledgment shall notify the contracting officer to file the Agency Report as prescribed in Section 305.

303.3 The contracting agency shall immediately give notice of the protest to:

- (a) In the case of a protest alleging solicitation improprieties, prospective bidders or offerors who can reasonably be ascertained;

- (b) In protests other than those covered in paragraph (a), (i) if a contract has not been awarded, to all bidders or offerors who appear to have a reasonable prospect of receiving an award; (ii) if a contract has been awarded, to the contract awardee and all other bidders or offerors who appear to have a reasonable prospect of receiving an award if the protest is sustained.

The contracting agency shall furnish copies of the protest submissions to those parties, except where disclosure of the information is prohibited by law, with instructions to communicate further directly with the Board. All parties shall furnish copies of all protest communications to the contracting agency and to other participating parties.

- 303.4 All protest communications shall be sent by means reasonably calculated to effect timely delivery.

**304 AUTOMATIC STAY; DIRECTOR DETERMINATION TO PROCEED**

- 304.1 Automatic Stay Procedures. Except as provided by law, no contract may be awarded in any procurement after the contracting officer has received the notice of protest pursuant to Subsection 303.1 (b) and while the protest is pending.

- 304.2 If an award has already been made but the contracting officer receives the notice of protest within eleven (11) business days after the date of award, the contracting officer shall immediately direct the awardee to cease performance under the contract and to suspend any related activities that may result in additional obligations being incurred by the District under that contract. Except as provided by law, performance and related activities suspended pursuant to law may not be resumed while the protest is pending.

- 304.3 Director Determination to Proceed with Performance. Performance under a protested procurement may proceed, or award may be made, while a protest is pending only if the Director makes a written determination, supported by substantial evidence, that urgent and compelling circumstances that significantly affect interests of the District will not permit waiting for the decision of the Board concerning the protest. A copy of the determination shall be provided within one business day of issuance to both the Board and the protester.

- 304.4 Protester Challenge. If the protester wishes to challenge a determination made by the Director pursuant to Subsection 304.3, the protester may do so by filing a written motion with the Board (with same day service on the District) within five (5) business days of receipt of a copy of the Director's determination. The District shall file a written response with the Board (with same day service on the protester) within two (2) business days of receipt of the protester's motion. The

protester may file a reply within one (1) business day of receipt of the District's response.

304.5 Board Decision on Protester Challenge. The Board shall issue a decision on the protester's motion within ten (10) business days after the date the written motion is filed by the protester.

### **305 AGENCY REPORT**

305.1 As expeditiously as possible but no later than twenty (20) days after receipt of the Board acknowledgment specified in Subsection 303.1 (a), the contracting agency shall file an Agency Report with the Board which shall include, where relevant:

- (a) The procurement solicitation;
- (b) The bid or proposal submitted by the protester;
- (c) The bid or proposal which is being considered for award, or which has resulted in an award, if any;
- (d) Bid tabulation sheets or proposal selection reports and evaluation reports, work papers, and scoring sheets;
- (e) The contracting agency position and defense for each ground of the protest, including the facts, legal principles, and precedents supporting its position; and
- (f) Any other documents and exhibits that are relevant to the protest.

305.2 The contracting agency shall simultaneously provide a copy of the Agency Report to the protester and all interested parties.

305.3 Copies of the Agency Report provided under Subsection 305.2 shall include all relevant documents including documents containing protected information. Copies of the Agency Report served on the protester or an intervenor shall be redacted to exclude protected information unless such parties have been admitted under a protective order.

305.4 The Board may require parties to supplement the Agency Report by filing other documents and tangible things. Any motion by a party to compel the District to supplement the Agency Report must be filed within five (5) days after receipt of the Agency Report.

305.5 All exhibits in the Agency Report shall be considered, without further action by the parties, a part of the record upon which the Board will render its decision. However, a party may object, for reasons stated, to consideration of a particular

document reasonably in advance of closing the record. If an objection is made, the Board shall remove the documents from the Agency Report and permit the party offering the document to move its admission as evidence.

- 305.6 Documents in the Agency Report may be originals or legible facsimiles or authenticated copies, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.
- 305.7 Original copies of documents may be withdrawn from the Agency Report, with the Board's consent, if an acceptable copy is substituted.
- 305.8 The contracting agency may request, by motion, an extension of the deadline for filing the Agency Report and shall explain why an extension is needed. Extensions are to be considered exceptional and will be granted only for good cause.
- 305.9 When a contracting agency fails to submit an Agency Report, the Board may treat the factual allegations contained in the protest as conceded. When a contracting agency fails to challenge or rebut a factual allegation in the protest, the Board may treat the factual allegation as conceded.

### **306 DISPOSITIVE MOTION IN LIEU OF REPORT**

- 306.1 In lieu of filing the Agency Report, the contracting agency may file a dispositive motion with the Board and serve it on all parties. If the motion is filed and denied by the Board in whole or in part, the Agency Report shall be filed no later than ten (10) days after receipt of the Board's ruling or within a lesser period as the Board may order.

### **307 COMMENTS ON AGENCY REPORT OR MOTION**

- 307.1 Within seven (7) business days after receipt of the Agency Report, or the dispositive motion prescribed in Subsection 306.1, the protester and interested parties may file a reply or response to either which shall state the party's factual and legal agreement or opposition to the Agency Report or motion.
- 307.2 All parties shall be served with a copy of the comments and proof of service provided to the Board.
- 307.3 Failure of the protester to file comments, or to file a statement requesting that the case be decided on the existing record, or to request an extension of time for filing, shall result in closing the record of the case and may result in dismissal of the protest.

307.4 When a protester fails to file comments on an Agency Report, factual allegations in the Agency Report's statement of facts not otherwise contradicted by the protest, or the documents in the record, may be treated by the Board as conceded.

### **308 SUMMARY DISPOSITION OF PROTESTS**

308.1 When a protest is, on its face, invalid or untimely filed, or otherwise not for consideration, the Board shall summarily dismiss the protest without requiring submission of an Agency Report.

308.2 Frivolous Protests. The Board may dismiss, at any stage of the proceedings, any protest, or portion of a protest, it deems frivolous. In addition, the Board may require the protester to pay the agency attorney fees, at the rate of one hundred dollars (\$100) per hour, for time counsel spent representing the agency in defending the frivolous protest or its frivolous part. If the entire protest is dismissed on frivolous grounds, the Board may also assess the protester damages for each day the contract was suspended equal to the amount of liquidated damages specified in the contract for late completion of the contract. The Board shall not determine damages, if liquidated damages are not specified in the contract. In addition, counsel for the protester may be suspended or barred from practicing before the Board.

308.3 A motion for assessment of agency attorney fees and/or damages on account of defending against a frivolous protest shall be submitted by the contracting agency during protest proceedings or within twenty (20) days of receipt of a Board decision determining that a protest in whole or in part was frivolous.

308.4 The motion shall be accompanied by sufficient documentation supporting the requested costs and/or damages.

308.5 The protester may, within fifteen (15) days after its receipt of the contracting agency's motion, file a written response to the motion.

### **309 DISCOVERY**

309.1 Discovery in protest cases shall be permitted only with approval by the Board and is available only to the protester, the contracting agency, and an intervenor.

309.2 The Board may permit a protester or intervenor to engage in discovery if no Agency Report is filed in order to provide a sufficient factual basis for the fair and just resolution of the protest.

309.3 The cost of discovery pursuant to Subsection 309.2 may be borne by the contracting agency as equitably determined by the Board.



**310 CONFERENCE**

- 310.1 A conference may be held at the discretion of the Board upon its own motion or upon the request of the protester, the contracting agency, or another proper party who filed comments on the Agency Report in accordance with Section 307.
- 310.2 A request for a conference shall be made promptly in order to receive favorable consideration.
- 310.3 The protester, all proper parties who filed comments, and the contracting agency may attend the conference and the Board may request the attendance of other persons as it deems appropriate.
- 310.4 The conference shall be an informal meeting between the Board and the parties to discuss matters relevant to the protest without strict regard to formal rules of evidence or procedure. These matters may include:
- (a) Simplifying or clarifying the issues including the elimination of frivolous allegations or defenses;
  - (b) Stipulations, admissions, or agreements which will avoid unnecessary proof;
  - (c) Clarification of matters already in the record; and
  - (d) Any other matter which might aid in a just and expeditious disposition of the protest.
- 310.5 No direct or cross-examination shall be permitted at the conference.
- 310.6 The conference may be electronically recorded by the Board at its discretion. If the preparation of a transcript is ordered by the Board, any party desiring a copy of the transcript shall be responsible for obtaining one at the party's expense.
- 310.7 The Board may require or permit the submission of briefs, legal memoranda, or proposed findings of fact and conclusions of law after the conference has been completed. A party failing to attend the conference shall not be permitted to file a post-conference submission.

**311 EVIDENTIARY HEARINGS**

- 311.1 If the Board determines that there is a genuine issue of material fact which cannot be resolved on the written record, the Board may order an evidentiary hearing. Ordinarily, hearings will be conducted at the Board, however, the Board may at its discretion order hearings by other electronic means, including by telephone.

311.2 At the hearing, the Board shall receive from the parties probative evidence or relevant testimony under oath or affirmation. Direct and cross-examination of witnesses shall be allowed at the hearing.

311.3 The hearing shall be stenographically transcribed or electronically recorded. Stenographic transcriptions shall be arranged in accordance with Subsection 211.5. Any party desiring a copy of the transcript shall be responsible for obtaining one at the party's expense.

311.4 At the conclusion of the hearing, the Board may order or permit the submission of proposed findings of fact and conclusions of law.

### **312 DECISION**

312.1 All decisions shall be in writing, based solely on the record, issued sixty (60) business days from the protest filing date, and transmitted to each party who has participated in the protest before the Board.

312.2 Judicial Review of Board decisions on Protests.

(a) A protester may seek judicial review of the Board's decision by filing a petition for review of agency action in the Superior Court of the District of Columbia.

(b) If the District determines that it should seek judicial review, the Director, with the prior approval of the Office of the Attorney General, may seek judicial review of the Board's decision in the Superior Court of the District of Columbia.

[See *District of Columbia v. Group Ins. Admin.*, 633 A.2d 2, 14 (D.C. 1993); *Francis v. Recycling Solutions, Inc.*, 695 A.2d 63, 70 (D.C. 1997).]

### **313 RECONSIDERATION**

313.1 The protester, the contracting agency, or an interested party who filed comments on the Agency Report may by motion request the Board to reconsider a decision.

313.2 Motions for reconsideration shall be conducted in accordance with Section 117 of these rules, except that the time periods contained in Subsection 117.2 and Subsection 117.4 shall be shortened to fifteen (15) days and seven (7) days respectively.

### **314 REMEDIES**

314.1 If the Board determines, in sustaining a protest, that the solicitation, proposed award, or award does not comply with the applicable law, regulations, or terms

and conditions of the solicitation, the Board may order the contracting agency to do one or more of the following:

- (a) Terminate the contract for the convenience of the District government;
- (b) Refrain from exercising any options under the contract;
- (c) Reopen the contract;
- (d) Issue a new solicitation;
- (e) Award a contract consistent with the law and regulations; or
- (f) Take such other action, except enjoining a contract award, as the Board may direct.

If the Board determines that a contract is void pursuant to D.C. Official Code § 2-359.02, the Board shall direct that the contract be canceled consistent with the requirements of D.C. Official Code § 2-359.02(c).

314.2 In determining the appropriate remedy, the Board shall consider the circumstances surrounding the procurement, including, but not limited to, the following factors:

- (a) Best interest of the District government;
- (b) Seriousness of the procurement deficiency or violation;
- (c) Existence of prejudice to other bidders or offerors;
- (d) Maintaining the integrity of the procurement system; and
- (e) Good faith of District government officials and other parties.

314.3 In determining whether to terminate a contract, the Board shall consider the following additional factors:

- (a) Extent of contract performance;
- (b) Impact of termination on the contracting agency's activities and mission;
- (c) Costs to the government from termination; and
- (d) Urgent need for the procurement.

- 314.4 If the Board finds that the District government actions were arbitrary and capricious, the Board may, when requested, award the protester's reasonable bid or proposal preparation costs and costs of pursuing the protest, but not legal fees.
- 314.5 A motion for bid or proposal preparation costs and costs of pursuing the protest shall be submitted by the protester within twenty (20) days of receipt of the Board's decision.
- 314.6 The motion shall be accompanied by sufficient documentation supporting the requested costs and an appropriate proposed order for the Board.
- 314.7 The contracting agency may, within fifteen (15) days after its receipt of the protester's motion, file a written response to the motion.
- 314.8 At the request of the protester or the District government or on its own initiative, the Board may conduct a hearing on the motion before issuing a ruling.

**Chapter 4, ELECTRONIC FILING, is amended to read as follows:**

**400 ELECTRONIC FILING OF PLEADINGS AND OTHER DOCUMENTS**

- 400.1 All pleadings, motions, memoranda of law, orders, or other documents may be filed electronically through the Board's designated vendor, File & ServeXpress ("Vendor") which can be contacted online at: [www.fileandservexpress.com](http://www.fileandservexpress.com). Documents may be filed as either E Documents or E Images as defined under this Rule. The Board may at its discretion designate alternative and/or additional electronic filing systems.

**401 ASSIGNMENT BY THE VENDOR OF PERSONAL IDENTIFICATION NUMBERS**

- 401.1 Upon receipt by the Vendor of a properly executed subscriber agreement at their website, the Vendor shall assign a confidential password to the attorney or other designated representative of a party before the Board which must be used to file, serve, receive, review, and retrieve electronically filed pleadings, orders, and other documents. An attorney or other authorized user shall be responsible for any use of his or her password.

**402 MAINTENANCE OF ORIGINAL DOCUMENT**

- 402.1 Unless otherwise ordered by the Board, an original of all documents filed electronically, including original signatures, shall be maintained by the party filing the document and shall be made available, upon reasonable notice, for inspection by other counsel or the Board. From time to time, it may be necessary to provide the Board with a hard copy of an electronically filed document.

**403 TIME FOR FILING AND EFFECT OF USE OF E FILING**

403.1 Any pleading filed electronically shall be considered as filed with the Board when the transmission is completed ("authorized date and time"). Any document filed electronically with the Board before midnight local time at the Board's offices is deemed filed with the Board on that date; however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business shall be deemed to have been filed on the day and at the time of the next opening of the Board for business. In the event of service via facsimile, the Vendor's system will record the date and time the fax transmission was completed as proof of service. The Vendor is hereby appointed the agent of the Board as to the electronic filing, receipt, service, and/or retrieval of any pleading or document maintained electronically. Upon filing and receipt of a document, the Vendor shall issue a confirmation that the document has been received. The confirmation shall serve as proof that the document has been filed. A filer will receive email notification of documents subsequently rejected by the Board, and may be required to refile the instruments to meet necessary filing requirements.

**404 SYSTEM OR USER FILING ERRORS**

404.1 If the electronic filing is not filed with the Board because of (1) an error in the transmission of the document to the Vendor which was unknown to the sending party, (2) a failure to process the electronic filing when received by the Vendor, or (3) other technical problems experienced by the filer, the Board may upon satisfactory proof enter an order permitting the document to be filed nunc pro tunc to the date it was first attempted to be sent electronically.

**405 FORM OF DOCUMENTS ELECTRONICALLY FILED**

405.1 Format of Electronically Filed Documents. All electronically filed pleadings shall, to the extent practicable, be formatted in accordance with the applicable rules governing formatting of paper pleadings, and in such other and further format as the Board may require from time to time.

405.2 Representations by Using a Typographical Signature. Every pleading, document, and instrument electronically filed shall be deemed to have been signed by the attorney or declarant and shall bear a facsimile or typographical signature of such person, along with the typed name, address, telephone number, and Bar number of a signing attorney. Typographical signatures shall be styled "/s/ name" and shall be treated as personal signatures for all purposes under these Rules.

405.3 Electronic Title of Pleadings and Other Documents. The electronic title of each electronically filed pleading or other document ("paper"), shall include:

Party or parties filing the paper;

Nature of the paper;  
Party or parties against whom relief, if any, is sought; and  
Nature of the relief sought (*e.g.*, “Appellant’s Motion to Compel Discovery and for Sanctions against Appellee”).

**406 MULTIPLE CASE FILING**

406.1 Where counsel is filing a pleading in consolidated cases, a single filing in the lead case is deemed to be filed in all cases consolidated with it.

**407 ELECTRONIC SERVICE OF PLEADINGS AND OTHER DOCUMENTS**

407.1 Electronic and Facsimile Service. All parties or their representatives may make service upon other parties electronically through the E File Service. Parties who subscribe to the E File Service consent to receive electronic service of documents via the E Filing Service. Parties, or their designated counsel, shall receive all documents E Filed and E Served upon them via access to the Vendor's system over the Internet or, if a party or party’s designee has not subscribed to the Services, via facsimile transmission. For the purposes of this Rule, service of documents via facsimile is hereby authorized in addition to those methods of service permitted in Subsection 108.3.

407.2 Effect of Electronic Service of Filings. The electronic service of a pleading or other document shall be considered as valid and effective service on all parties and shall have the same legal effect as an original paper document. Proof of service required by Section 109 shall not be necessary for electronically filed documents.

407.3 Service on Parties; Time to Respond or Act. E Service shall be deemed complete at the time a document has been received by the Vendor's system as reflected by the authorized date and time appearing on the confirmation provided, however, for the purpose of computing time for any other party to respond, any document filed on a day or at a time when the Board is not open for business shall be deemed to have been filed at the time of next opening of the Board for business. If electronic service on a party does not occur because of (1) inaccessibility to the Vendor's system; (2) an error in the Vendor’s transmission of notice to the party being served, (3) the Vendor’s failure to process the electronic filing for service, or (4) the party was erroneously excluded from the service list, the party to be served shall, absent extraordinary circumstances, be entitled to an order extending the date for any response or the period within which any right, duty or other act must be performed.

In the event of service via facsimile, the Vendor’s system will record the date and time the fax transmission was completed as proof of service.

**408 ELECTRONIC FILING AND SERVICE OF ORDERS AND OTHER PAPERS**

408.1 The Board may issue, file, and serve notices, orders, and other documents electronically, subject to the provisions of these Rules.

**409 SEALED DOCUMENTS**

409.1 A motion for protective order may be filed and served electronically. Redacted copies of documents filed under seal may be filed and served electronically.

**499 DEFINITIONS**

499.1 Definitions

**E Filing.** Electronic transmission of an original document (pleading) to the Board via the Vendor's system. An E File consists of a document, an image, or both.

**E Service.** Electronic transmission of an original document (pleading) to all other designated recipients via the Vendor's system. Upon the completion of any transmission to the Vendor's system, a certified receipt is issued to the sender acknowledging receipt by the Vendor system.

**E Document.** An electronic file of a word processing document that contains almost exclusively text.

**E Image.** An electronic file of a document that has been scanned or converted to a graphical or image format.

## DEPARTMENT OF ENERGY AND ENVIRONMENT

NOTICE OF FINALRULEMAKING

## Underground Storage Tank Regulations

The Director of the Department of Energy and Environment (Department), pursuant to the authority set forth in Section 107 of the District Department of the Environment Establishment Act of 2005, effective February 15, 2006 (D.C. Law 16-51; D.C. Official Code § 8-151.07 (2013 Repl. & 2019 Supp.)); the District of Columbia Underground Storage Tank Management Act of 1990, effective March 8, 1991 (D.C. Law 8-242; D.C. Official Code §§ 8-113.01 *et seq.* (2013 Repl.)); Sections 11 and 21 of the Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.10 & 8-103.20 (2013 Repl.)); and Mayor's Order 2006-61, dated June 14, 2006, hereby amends Chapters 55-67 and 70 of Title 20 (Environment) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking incorporates new requirements of the 2015 amendments to the federal underground storage tank regulations at 40 CFR Part 280 so that the District can maintain state program approval under 40 CFR Part 281. The new requirements include regulation of previously deferred field-constructed underground storage tanks and airport hydrant systems, testing of spill prevention and leak detection equipment, containment sump testing, and periodic walkthrough inspections. The rulemaking also updates the requirements for corrective action after releases from underground storage tanks, consolidates and updates fee requirements, and makes clarifying amendments and corrections to the regulations.

The Department published a Notice of Proposed Rulemaking in the *D.C. Register* on December 28, 2018, at 65 DCR 13962. The comment period closed on March 5, 2019, and the Department considered all the comments received. A summary of the comments and responses is available online at <http://doee.dc.gov>.

Based on comments filed in response to the Notice of Proposed Rulemaking, the Department has revised § 5602.5 to clarify that required records may be stored in a location (such as cloud storage) outside the District as long as they can be reviewed by a person located in the District. The Department has also revised § 5605.3(d) to clarify that the annual fee for participation in the voluntary remediation action program (VRAP) will cease upon issuance of a case closure or no further action letter and that VRAP fees will not apply to applications approved before the effective date of the regulations.

In response to a comment noting that the Tier 1 residential standard for total petroleum hydrocarbon gasoline range organics (TPH-GRO) is lower than the Tier 0 standard, the Department clarified in §§ 6101.13 and 6101.14 that the Tier 1 standard for TPH-GRO should be used at sites with current or future residential use.

The Department made clarifying amendments to ensure consistency with other District laws and regulations. The Department deleted reporting of a release resulting in a sheen on surface water from § 6201.4 and added § 6201.7 to clarify that a release resulting in a sheen should be reported



immediately as required by D.C. Official Code § 8-103.08. The Department also added cross-references to the District’s well construction regulations in § 6010.5, to the water quality and pollution regulations in § 6203.11, and to the definition of “surface water” from the District’s water quality regulations in § 6207.8(d).

The Department also made several clarifications in response to comments on Chapter 62 of the proposed rulemaking. The Department clarified in § 6203.12 that monitoring wells may be for groundwater or soil vapor monitoring. In § 6205.3(b)(1), the Department added language to clarify that, for purposes of the comprehensive site assessment, surrounding land use includes current and reasonably foreseeable future uses. In § 6206.4(c), the Department removed a reference to zoning in relation to tolerable health risk levels. This is consistent with the regulations in effect prior to this rulemaking and still allows for different target cleanup levels depending on the property use because the level of exposure varies among different uses. The Department further clarified in § 6207.4(c) that reasonably foreseeable future uses may be based on zoning or other factors described in the Risk-Based Corrective Action technical guidance. The Department added a Subsection 6209.2 to clarify that indoor air sampling is used in conjunction with other evidence to evaluate vapor intrusion risk. The Department revised § 6210.1 to clarify that the estimated amount of product released is the quantity by volume or mass. Finally, the Department extended the length of time that a VRAP participant may delay or halt remediation before the Department may revoke the VRAP approval from one to two years, provided there is not an imminent threat to human health or the environment.

The final rules are being adopted in substantially the same form as proposed with clarifications taking into account suggestions received in public comments. These changes do not substantially alter or change the intent, meaning, or application of the proposed rules or exceed the scope of the rules as published with the Notice of Proposed Rulemaking.

These rules were adopted as final on January 24, 2020 and will be effective upon publication of this notice in the *D.C. Register*.

**Title 20 DCMR, ENVIRONMENT, is amended by repealing and replacing Chapters 55 to 67 and 70 to read as follows:**

**CHAPTER 55 UNDERGROUND STORAGE TANKS - GENERAL PROVISIONS**

- 5500 COMPLIANCE WITH DISTRICT LAWS
- 5501 APPLICABILITY OF UST REGULATIONS
- 5502 PARTIAL APPLICABILITY OF UST REGULATIONS TO PARTICULAR UST SYSTEMS
- 5503 PARTIAL APPLICABILITY OF UST REGULATIONS TO HEATING OIL TANKS
- 5504 PARTIAL APPLICABILITY OF UST REGULATIONS TO UST SYSTEMS OF 110 GALLONS OR LESS, HYDRAULIC LIFT TANKS, AND ELECTRICAL EQUIPMENT TANKS
- 5505 APPLICABILITY TO EMERGENCY GENERATOR UST SYSTEMS
- 5506 INDUSTRY CODES AND STANDARDS

5507 FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS

**CHAPTER 56 UNDERGROUND STORAGE TANKS - NOTIFICATION, REGISTRATION, RECORDKEEPING, AND PUBLIC INFORMATION**

5600 NOTICE OF THE EXISTENCE, USE, PURCHASE, SALE, OR CHANGE-IN-SERVICE OF AN UST SYSTEM  
5601 REGISTRATION  
5602 RECORDKEEPING AND REPORTS  
5603 NOTICE OF INSTALLATION, REMOVAL, CLOSURE-IN-PLACE, REPAIR, UPGRADE, AND TESTING  
5604 NOTICE OF SALE OF REAL PROPERTY  
5605 FEES  
5606 THIRD-PARTY CERTIFICATION  
5607 PUBLIC RECORD INFORMATION

**CHAPTER 57 UNDERGROUND STORAGE TANKS - NEW TANK PERFORMANCE STANDARDS**

5700 EXISTING AND NEW UST SYSTEMS - GENERAL PROVISIONS  
5701 NEW PETROLEUM UST SYSTEMS  
5702 NEW HAZARDOUS SUBSTANCE UST SYSTEMS  
5703 NEW HEATING OIL UST SYSTEMS  
5704 NEW PIPING FOR UST SYSTEMS  
5705 SPILL AND OVERFILL PREVENTION EQUIPMENT FOR NEW AND UPGRADED UST SYSTEMS  
5706 INSTALLATION OF NEW UST SYSTEMS

**CHAPTER 58 UNDERGROUND STORAGE TANKS - UPGRADES OF EXISTING USTS**

5800 EXISTING UST SYSTEM UPGRADES  
5801 TANK UPGRADES  
5802 EXISTING UST SYSTEM PIPING UPGRADES  
5803 SPILL AND OVERFILL PREVENTION EQUIPMENT UPGRADES  
5804 TANK TIGHTNESS TESTING UPON UPGRADE

**CHAPTER 59 UNDERGROUND STORAGE TANKS - OPERATION AND MAINTENANCE OF USTS**

5900 SPILL AND OVERFILL CONTROL  
5901 TANK CORROSION PROTECTION  
5902 REPAIR OR REPLACEMENT OF UST SYSTEMS  
5903 COMPATIBILITY  
5904 WALKTHROUGH INSPECTIONS

**CHAPTER 60 UNDERGROUND STORAGE TANKS - RELEASE DETECTION**

6000	RELEASE DETECTION – GENERAL PROVISIONS
6001	RELEASE DETECTION RECORDKEEPING
6002	RELEASE DETECTION FOR HAZARDOUS SUBSTANCE UST SYSTEMS
6003	RELEASE DETECTION FOR PETROLEUM UST SYSTEM TANKS
6004	RELEASE DETECTION FOR PETROLEUM UST SYSTEM PIPING
6005	INVENTORY CONTROL AND STATISTICAL INVENTORY RECONCILIATION
6006	MANUAL TANK GAUGING
6007	TANK TIGHTNESS TESTING
6008	AUTOMATIC TANK GAUGING
6009	VAPOR MONITORING
6010	GROUNDWATER MONITORING
6011	INTERSTITIAL MONITORING
6012	STATISTICAL INVENTORY RECONCILIATION
6013	OTHER METHODS OF RELEASE DETECTION

**CHAPTER 61 UNDERGROUND STORAGE TANKS – CLOSURE**

6100	TEMPORARY CLOSURE
6101	PERMANENT CLOSURE AND CHANGE-IN-SERVICE
6102	PREVIOUSLY CLOSED UST SYSTEMS
6103	CLOSURE RECORDS

**CHAPTER 62 UNDERGROUND STORAGE TANKS – REPORTING OF RELEASES, INVESTIGATION, CONFIRMATION, ASSESSMENT, AND CORRECTIVE ACTION**

6200	OBLIGATIONS OF RESPONSIBLE PARTIES - RELEASES, SPILLS, AND OVERFILLS
6201	REPORTING AND CLEANUP OF SPILLS AND OVERFILLS
6202	REPORTING OF RELEASES OF REGULATED SUBSTANCES
6203	SITE INVESTIGATION, CONFIRMATION OF RELEASE, INITIAL ABATEMENT, AND INITIAL SITE ASSESSMENT
6204	REMOVAL OF FREE PRODUCT
6205	COMPREHENSIVE SITE ASSESSMENT
6206	RISK-BASED CORRECTIVE ACTION (RBCA) PROCESS
6207	CORRECTIVE ACTION PLAN AND ITS IMPLEMENTATION
6208	TIER 0 STANDARDS
6209	TIERS 1 AND 2 STANDARDS
6210	NO FURTHER ACTION AND CASE CLOSURE REQUIREMENTS
6211	PUBLIC PARTICIPATION IN CORRECTIVE ACTION
6212	VOLUNTARY REMEDIATION ACTION PROGRAM (VRAP)

**CHAPTER 63 UNDERGROUND STORAGE TANKS - RIGHT OF ENTRY FOR INSPECTIONS, MONITORING, TESTING, AND CORRECTIVE ACTION**

- 6300 RIGHT OF ENTRY
- 6301 ENTRIES FOR INSPECTIONS AND MONITORING
- 6302 ENTRY FOR CORRECTIVE ACTION

**CHAPTER 64 UNDERGROUND STORAGE TANKS – CORRECTIVE ACTION BY THE DISTRICT AND COST RECOVERY**

- 6400 CORRECTIVE ACTION BY THE DISTRICT
- 6401 COST RECOVERY

**CHAPTER 65 UNDERGROUND STORAGE TANKS – LICENSING, CERTIFICATION, OPERATOR REQUIREMENTS, AND OPERATOR TRAINING**

- 6500 LICENSING AND CERTIFICATION OF UST SYSTEM INSTALLERS, REMOVERS, TESTERS, AND TECHNICIANS
- 6501 CERTIFICATION PROCEDURES
- 6502 OPERATOR DESIGNATION
- 6503 OPERATOR TRAINING AND TRAINING PROGRAM APPROVAL

**CHAPTER 66 UNDERGROUND STORAGE TANKS – ENFORCEMENT**

- 6600 ENFORCEMENT AUTHORITY
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**CHAPTER 55            UNDERGROUND STORAGE TANKS –  
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**5500            COMPLIANCE WITH DISTRICT LAWS**

5500.1            In addition to these regulations, each owner and operator of an underground storage tank (UST) shall comply with the following:

- (a)            The District of Columbia Underground Storage Tank Management Act of 1990, effective March 8, 1991 (D.C. Law 8-242; D.C. Official Code §§ 8-113.01 *et seq.*);
- (b)            The Water Pollution Control Act of 1984, effective March 16, 1985 (D.C. Law 5-188; D.C. Official Code §§ 8-103.01 *et seq.*);
- (c)            The provisions of the District of Columbia Fire Code, Title 12, Subtitle H (Fire Code Supplement) of the District of Columbia Municipal Regulations, pertaining to USTs;
- (d)            The provisions of the District Construction Codes and Construction Code Supplements, available at <https://dcra.dc.gov/page/district-columbia-construction-codes>, that pertain to permits for construction activities (such as excavation, installation, repair, closure-in-place, or removal) related to USTs; and
- (e)            All other applicable federal and District laws and regulations.

5500.2            The owner or operator of each UST shall obtain all appropriate District permits for construction activities required for the repair or upgrade of a leaking UST (LUST) or remediation of a site contaminated by a LUST.

- 5500.3 Each owner and operator of an UST on a federal facility shall comply with the requirements of the UST Regulations.
- 5500.4 All notices, reports, and documents required in this regulation may be submitted by mail or delivery to the UST Branch, Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, by e-mail to [ust.doe@dc.gov](mailto:ust.doe@dc.gov), or by file transfer protocol (ftp) after requesting access to the Department's ftp site via e-mail. A telephone report shall be made to the UST Branch at (202) 535-2600.
- 5500.5 When the UST Regulations allow for the use of an alternative material or method upon approval by the Department, or other approval of the Department needs to be obtained, the person seeking to use the alternative material or method, or to otherwise obtain Departmental approval shall:
- (a) Submit the request in writing to the Department by mail or delivery to the UST Branch, Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, or by e-mail to [ust.doe@dc.gov](mailto:ust.doe@dc.gov);
  - (b) If seeking to use an alternative material or method, explain how the use of the alternative material or method provides for an equivalent or higher level of safety or effectiveness as the material or method required by regulation;
  - (c) Provide any additional information requested by the Department; and
  - (d) Use the alternative material or method only after receiving approval in writing from the Department.
- 5500.6 When the UST regulations require a report or notification to the District Fire Chief, the report shall be made by mail or delivery to the District of Columbia Fire Marshal, Technical Inspections Plans and Permits Branch, Hazardous Materials Section, 1100 4th Street S.W., Washington, D.C. 20024, or by phone at (202) 727-1614.

## **5501 APPLICABILITY OF UST REGULATIONS**

- 5501.1 The UST Regulations apply to all USTs and UST systems located in the District of Columbia, except as otherwise provided in this chapter, and to each owner, operator, regulated substance delivery person or company, authorized representative of an owner or operator, and other responsible or remediating party as set forth in the UST Regulations.
- 5501.2 When the UST Regulations require an owner or operator to take an action, the owner or the operator or both may be held liable for a violation. Responsible

parties may be held jointly and severally liable for violations of the provisions governing LUSTs, for any penalties assessed for those violations, and for the costs of corrective actions.

5501.3 The following USTs are exempt from the requirements of the UST Regulations:

- (a) Any UST holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, as amended, 42 USC §§ 6921 *et seq.*, or a mixture of any of those hazardous wastes and other regulated substances;
- (b) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under §§ 307(b) or 402 of the Clean Water Act, 33 USC §§ 1317(b) or 1342;
- (c) Any UST system that contains a de minimis concentration of regulated substances as determined by the Department;
- (d) Any emergency spill or overflow containment UST system that is expeditiously emptied after use;
- (e) A septic tank;
- (f) A pipeline facility (including gathering lines) that:
  - (1) Is regulated under 49 USC Chapter 601; or
  - (2) Is an intrastate pipeline facility regulated under state laws as provided 49 USC Chapter 601, and which is determined by the Secretary of Transportation to be connected to a pipeline, or to be operated or intended to be capable of operating at pipeline pressure or as an integral part of a pipeline;
- (g) A surface impoundment, pit, pond, or lagoon;
- (h) A stormwater or wastewater collection system;
- (i) A flow-through process tank;
- (j) A liquid trap and associated gathering lines directly related to oil or gas production and gathering operations;
- (k) A storage tank situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel) if the storage tank is situated on or above the surface of the floor and is not covered by any earthen materials along its sides and bottom; and



- (l) A farm or residential tank with a capacity of one thousand one hundred (1,100) gallons or less used for storing motor fuel for noncommercial purposes.

**5502 PARTIAL APPLICABILITY OF UST REGULATIONS TO PARTICULAR UST SYSTEMS**

5502.1 In addition to any requirements referenced below, the following USTs are required to comply only with the provisions of this section and with Chapters 62 and 67:

- (a) Wastewater treatment tank systems not regulated under §§ 307(b) or 402 of the Clean Water Act, 33 USC §§ 1317(b) or 1342;
- (b) UST systems containing any radioactive material that is regulated under the Atomic Energy Act of 1954, 42 USC §§ 2011 *et seq.*;
- (c) UST systems that are part of any emergency generator system at nuclear power generation facilities licensed by the Nuclear Regulatory Commission and subject to Nuclear Regulatory Commission requirements regarding design and quality criteria, including but not limited to 10 CFR part 50; and
- (d) Above ground storage tanks associated with:
  - (1) Airport hydrant fuel distribution systems regulated under § 5507; and
  - (2) UST systems with field-constructed tanks that are regulated under § 5507.

5502.2 A person may install an UST system identified in §§ 5502.1(a), (b), or (c) for the purpose of storing any regulated substance only if that UST system:

- (a) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;
- (b) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a non-corrodible material, or designed to prevent the release or threatened release of any stored regulated substance; and
- (c) Is constructed or lined with material that is compatible with the stored regulated substance.

5502.3 Notwithstanding the requirements of this section, a person may install an UST system without corrosion protection at a facility that is determined by a corrosion

expert to not be corrosive enough to cause the UST system to have a release due to corrosion during its operating life. The owner or operator shall maintain records that demonstrate compliance with the requirements of this subsection for the remaining life of the tank.

5502.4 In the event of a suspected or confirmed release from an UST system listed in § 5502.1, the owner or operator shall comply with §§ 5600, 5602, and 5603, except § 5600.6(d).

5502.5 The following codes of practice may be used to comply with the requirements for partially excluded UST systems in §§ 5502.2 and 5502.3:

- (a) NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection”;
- (b) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;
- (c) American Petroleum Institute Recommended Practice RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”;  
or
- (d) Steel Tank Institute Recommended Practice R892, “Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems.”

**5503 PARTIAL APPLICABILITY OF UST REGULATIONS TO HEATING OIL TANKS**

5503.1 The owner or operator of a heating oil tank having a capacity less than one thousand one hundred (1,100) gallons is exempt from the requirements of the UST Regulations with the following exceptions:

- (a) In the event of a suspected or confirmed release from the UST, Chapter 56, except §§ 5600.6(d) and 5601;
- (b) Chapter 61, except that the Department may waive or modify any requirements that are inappropriate or unduly burdensome; and
- (c) Chapter 62, except that, after considering the nature of the release and the degree of contamination, the Department may waive or modify any requirements that are inappropriate or unduly burdensome.

5503.2 The owner or operator of each heating oil tank having a capacity of one thousand one hundred (1,100) gallons or more shall comply with the following:

- (a) Chapter 56;
- (b) Section 5700;
- (c) For heating oil tanks installed after November 12, 1993, §§ 5703 through 5706;
- (d) Chapter 59;
- (e) The provisions of Chapter 60 pertaining to release detection for heating oil tanks;
- (f) The provisions of Chapter 61 pertaining to closure of heating oil tanks; and
- (g) Chapter 62, except that, after considering the nature of the release and the degree of contamination, the Department may waive or modify any requirements that are inappropriate or unduly burdensome.

5503.3 The owner or operator of each UST used to store heating oil for a purpose other than consumptive use on the premises where the UST is located shall comply with all requirements of the UST Regulations.

**5504 PARTIAL APPLICABILITY OF UST REGULATIONS TO UST SYSTEMS OF 110 GALLONS OR LESS, HYDRAULIC LIFT TANKS, AND ELECTRICAL EQUIPMENT TANKS**

5504.1 The following USTs are required to comply only with the provisions of this section:

- (a) Any UST associated with equipment or machinery that contains regulated substances for operational purposes (such as hydraulic lift tanks and electrical equipment tanks); and
- (b) Any UST system with a capacity of one hundred ten (110) gallons or less.

5504.2 When there is a suspected or confirmed release during operation, closure, or removal of the UST system, a responsible or remediating party shall comply with §§ 5600, 5602, and 5603, and Chapters 61 and 62, except compliance with § 5600.6(d) is not required, and the Department may waive or modify any requirements that are inappropriate or unduly burdensome.

**5505 APPLICABILITY TO EMERGENCY GENERATOR UST SYSTEMS**

5505.1 Any UST system that stores fuel for use by an emergency power generator shall comply with all requirements of the UST Regulations.

**5506 INDUSTRY CODES AND STANDARDS**

- 5506.1 An owner or operator of an UST system may use an industry standard or code of practice developed by a nationally recognized association or independent testing laboratory to comply with a requirement of the UST Regulations if authorized by the UST Regulations or if the industry standard or code of practice is approved by the Department in accordance with § 5506.4.
- 5506.2 An owner or operator may request approval of an alternative industry standard or code of practice by submitting a written request to the Department by e-mail to [ust.doe@dc.gov](mailto:ust.doe@dc.gov) or by mail or delivery to the UST Branch, Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002.
- 5506.3 An owner or operator requesting approval of an alternative industry standard or code of practice shall provide a copy of the industry standard or code of practice to the Department, if requested by the Department.
- 5506.4 The Department may approve an alternative industry standard or code of practice only if the owner or operator demonstrates to the Department that the alternative industry standard or code of practice is at least as safe and as protective of health and the environment as the authorized or approved code or standard.
- 5506.5 When used in an industry standard or code of practice listed in the UST Regulations or approved under this section, the word “should” shall be construed to mean “shall” for the purpose of compliance with the UST Regulations.
- 5506.6 Unless otherwise specified in these regulations, an owner or operator shall use the most current version of the authorized or approved industry standard or code of practice.

**5507 FIELD-CONSTRUCTED TANKS AND AIRPORT HYDRANT FUEL DISTRIBUTION SYSTEMS**

- 5507.1 Except as specifically provided otherwise in this section, each owner and operator of an UST system with field-constructed tanks or airport hydrant system shall comply with the UST Regulations.
- 5507.2 For each UST system with field-constructed tanks or airport hydrant system installed on or before February 21, 2020, the requirements are effective according to the following schedule:
- (a) Requirements regarding UST system upgrades, general operating requirements, operator training, and release detection shall be effective October 13, 2021; and

- (b) Requirements regarding release reporting, response, investigation, closure, financial responsibility and notification, except the one-time notification requirement under § 5507.4, shall be effective on February 21, 2020.
- 5507.3 For each UST system with field-constructed tanks or airport hydrant system installed after February 21, 2020, the requirements apply at installation.
- 5507.4 Not later than October 13, 2021, each owner of an UST system with field-constructed tanks or airport hydrant system shall notify the Department of the system using an UST facility notification form described in § 5600 and shall demonstrate compliance with Chapter 67.
- 5507.5 In addition to the codes of practice listed in § 5701.10, each owner or operator may use military construction criteria, such as Unified Facilities Criteria (UFC) 3-460-01, *Petroleum Fuel Facilities*, when designing, constructing, and installing UST systems with field-constructed tanks and airport hydrant systems.
- 5507.6 An owner or operator may use single-walled piping when installing or replacing piping associated with an airport hydrant system, or UST system with a field-constructed tank that has a capacity greater than fifty thousand (50,000) gallons. Piping associated with an UST system with a field-constructed tank with a capacity less than or equal to fifty thousand (50,000) gallons that is not part of an airport hydrant system shall meet the secondary containment requirements in Chapter 57 when installed or replaced.
- 5507.7 Not later than October 13, 2021, each owner or operator of an UST system with field-constructed tanks or airport hydrant system, installed on or before February 21, 2020, shall upgrade the UST system as follows, or permanently close the UST system pursuant to Chapter 61:
- (a) UST system components in contact with the ground that routinely contain regulated substances shall:
- (1) Comply with the UST performance standards for new tanks and piping in Chapter 57; or
  - (2) Be constructed of metal and cathodically protected according to a code of practice developed by a nationally recognized association or independent testing laboratory as specified in § 5507.8, and meet the following requirements:
    - (A) Cathodic protection shall meet the applicable requirements of Chapters 57 and 59; and
    - (B) Tanks greater than ten (10) years old without cathodic protection shall be assessed to ensure the tank is

structurally sound and free of corrosion holes prior to adding cathodic protection. The assessment shall be by internal inspection or another method approved by the Department, in accordance with § 5500.5, to adequately assess the tank for structural soundness and corrosion holes; and

- (b) Each UST system shall comply with the spill and overflow prevention equipment requirements of Chapter 59.

5507.8 The following codes of practice may be used to comply with requirements of § 5507.7:

- (a) NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”;
- (b) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”;
- (c) National Leak Prevention Association Standard 631, Chapter C, “Internal Inspection of Steel Tanks for Retrofit of Cathodic Protection”; or
- (d) American Society for Testing and Materials Standard G158, “Standard Guide for Three Methods of Assessing Buried Steel Tanks.”

5507.9 In addition to the walkthrough inspection requirements in § 5904, each owner or operator of an airport hydrant system shall:

- (a) Except as provided in paragraph (b) of this subsection, inspect the following areas at least once every thirty (30) days:
  - (1) Hydrant pits (visually check for any damage; remove any liquid or debris; and check for any leaks); and
  - (2) Hydrant piping vaults (check for any hydrant piping leaks);
- (b) If confined space entry is required under Occupational Safety and Health Administration (OSHA) requirements in 29 CFR part 1910, inspect the areas in paragraph (a) at least annually; and
- (c) Maintain documentation of the inspections required by this subsection in accordance with the requirements of § 5904.

5507.10 Not later than October 13, 2021, each owner or operator of an UST system with a field-constructed tank with a capacity less than or equal to fifty thousand (50,000) gallons shall meet the release detection requirements in Chapter 60.

- 5507.11 Not later than October 13, 2021, each owner or operator of an UST system with a field-constructed tank with a capacity greater than fifty thousand (50,000) gallons shall meet the requirements in Chapter 60 (except that groundwater or vapor monitoring release detection methods shall be used in combination with inventory control release detection methods) or use one or a combination of the following methods of release detection:
- (a) Conduct an annual tank tightness test that can detect a one half gallon per hour (0.5 gal/hr) leak rate;
  - (b) Use an automatic tank gauging system to perform release detection that can detect a leak rate less than or equal to one gallon per hour (1 gal/hr) at least once every thirty (30) days, and perform a tank tightness test that can detect a leak rate of two tenths of a gallon per hour (0.2 gal/hr) at least once every three (3) years;
  - (c) Use an automatic tank gauging system to perform release detection that can detect a leak rate less than or equal to two gallons per hour (2 gal/hr) at least once every thirty (30) days, and perform a tank tightness test that can detect a leak rate of two tenths of a gallon per hour (0.2 gal/hr) at least once every two (2) years;
  - (d) Perform vapor monitoring (conducted in accordance with § 6009 for a tracer compound placed in the tank system) capable of detecting a one tenth of a gallon per hour (0.1 gal/hr) leak rate at least every two (2) years;
  - (e) Perform inventory control (conducted in accordance with Department of Defense Instruction 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or procedures approved by the Department as equivalent) at least every thirty (30) days that can detect a leak equal to or less than one half percent (0.5%) of flow-through; and
    - (1) Perform a tank tightness test that can detect a one half gallon per hour (0.5 gal/hr) leak rate at least every two (2) years; or
    - (2) Perform vapor monitoring or groundwater monitoring (conducted in accordance with Chapter 60) for the stored regulated substance at least every thirty (30) days; or
  - (f) Another method approved by the Department, if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs (a) through (c) of this subsection. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

5507.12 Not later than October 13, 2021, each owner or operator of underground piping associated with an airport hydrant system or a field-constructed tank with a capacity greater than 50,000 gallons shall meet the requirements in Chapter 60 (except that groundwater or vapor monitoring release detection methods shall be used in combination with inventory control release detection methods) or use one or a combination of the following methods of release detection:

- (a) Perform semiannual or annual line tightness test at or above piping operating pressure in accordance with the following:
  - (1) If the test section volume is less than fifty thousand (50,000) gallons, the leak detection rate for a semiannual test shall not exceed one gallon per hour (1 gal/hr) and the leak detection rate for an annual test shall not exceed one half of a gallon per hour (0.5 gal/hr);
  - (2) If the test section volume is equal to or greater than fifty thousand (50,000) gallons and less than seventy-five thousand (75,000) gallons, the leak detection rate for a semiannual test shall not exceed one and one half gallons per hour (1.5 gal/hr) and the leak detection rate for an annual test shall not exceed seventy-five hundredths of a gallon per hour (0.75 gal/hr);
  - (3) If the test section volume is equal to or greater than seventy-five thousand (75,000) gallons and less than one hundred thousand (100,000) gallons, the leak detection rate for a semiannual test shall not exceed two gallons per hour (2 gal/hr) and the leak detection rate for an annual test shall not exceed one gallon per hour (1 gal/hr);
  - (4) If the test section volume is equal to or greater than one hundred thousand (100,000) gallons, the leak detection rate for a semiannual test shall not exceed three gallons per hour (3 gal/hr) and the leak detection rate for an annual test shall not exceed one and one half gallons per hour (1.5 gal/hr); and
  - (5) Piping segment volumes that are equal to or greater than one hundred thousand (100,000) gallons and not capable of meeting the maximum three gallon per hour (3 gal/hr) leak rate for the semiannual test may be tested at a leak rate up to six gallons per hour (6 gal/hr) according to the following schedule:
    - (A) The first test shall be performed not later than October 13, 2021 and may use up to a six gallons per hour (6 gal/hr) leak rate;



- (B) The second test shall be performed between October 13, 2021 and October 13, 2024 and may use up to a six gallons per hour (6 gal/hr) leak rate;
  - (C) The third test shall be performed between October 13, 2024 and October 13, 2025 and shall use a three gallons per hour (3 gal/hr) leak rate; and
  - (D) Subsequent tests shall be performed annually or semi-annually in accordance with subparagraph (a)(4);
- (b) Perform vapor monitoring (conducted in accordance with § 6009 for a tracer compound placed in the tank system) capable of detecting a one tenth of a gallon per hour (0.1 gal/hr) leak rate at least every two (2) years;
  - (c) Perform inventory control (conducted in accordance with Department of Defense Instruction 4140.25, ATA Airport Fuel Facility Operations and Maintenance Guidance Manual, or procedures approved by the Department as equivalent) at least every thirty (30) days that can detect a leak equal to or less than one half percent (0.5%) of flow-through; and
    - (1) Perform a line tightness test (conducted in accordance with paragraph (a) of this subsection using the leak rates for the semiannual test) at least every two (2) years; or
    - (2) Perform vapor monitoring or groundwater monitoring (conducted in accordance with Chapter 60) for the stored regulated substance at least every thirty (30) days; or
  - (d) An alternative method approved by the Department, if the owner and operator can demonstrate that the alternative method can detect a release as effectively as one of the methods allowed in paragraphs (a) through (c) of this subsection. In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability of detection.

5507.13 When directed by the Department, the owner or operator of an UST system with field-constructed tanks, or an airport hydrant system, that has been permanently closed before February 21, 2020, shall assess the excavation zone and close the UST in accordance with Chapter 61 if releases from the UST system may, in the judgment of the Department, pose a current or potential threat to human health and the environment.

**CHAPTER 56            UNDERGROUND STORAGE TANKS - NOTIFICATION,  
REGISTRATION, RECORDKEEPING, AND PUBLIC  
INFORMATION**

- 5600            NOTICE OF THE EXISTENCE, USE, PURCHASE, SALE, OR CHANGE-  
IN-SERVICE OF AN UST SYSTEM**
- 5601            REGISTRATION**
- 5602            RECORDKEEPING AND REPORTS**
- 5603            NOTICE OF INSTALLATION, REMOVAL, CLOSURE-IN-PLACE,  
REPAIR, UPGRADE, AND TESTING**
- 5604            NOTICE OF SALE OF REAL PROPERTY**
- 5605            FEES**
- 5606            THIRD-PARTY CERTIFICATION**
- 5607            PUBLIC RECORD INFORMATION**

- 5600            NOTICE OF THE EXISTENCE, USE, PURCHASE, SALE, OR CHANGE-  
IN-SERVICE OF AN UST SYSTEM**

5600.1            An owner of an UST system shall notify the Department by submitting an UST facility notification form, which is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>, to the Department within thirty (30) days after the owner or operator:

- (a) Begins using an UST system;
- (b) Begins using a heating oil tank with a capacity of one thousand one hundred (1,100) or more gallons;
- (c) Sells an UST system;
- (d) Purchases or acquires an UST system that has not been permanently closed or any tank that is intended to be used as an UST;
- (e) Changes the product stored in an UST system, even if the new product is unregulated; or
- (f) Changes any required information on a previously submitted UST facility notification form.

5600.2            A responsible party who permanently closes an UST system shall file an UST facility notification form with the Department within thirty (30) days of permanent closure by removal or closure in-place.

- 5600.3 The responsible party shall complete the UST facility notification form in accordance with Department instructions and shall provide all required information.
- 5600.4 A responsible party who is required to submit an UST facility notification form may provide notice for several tanks using a single form if the tanks are located at the same facility and are being brought into use or closed at the same time.
- 5600.5 A responsible party who is required to submit an UST facility notification form for tanks located at more than one (1) facility shall file a separate UST facility notification form for each separate facility.
- 5600.6 Unless each tank is permanently closed, the owner shall sign the UST facility notification form and shall certify compliance with the following requirements:
- (a) Subsection 5700.1;
  - (b) Subsections 5701.2, 5701.3, 5702.2, 5702.3, 5703.2, 5703.3, 5704.3, and 5704.4;
  - (c) Subsections 5706.2 and 5706.4 through 5706.6;
  - (d) Chapter 60; and
  - (e) Chapter 67.
- 5600.7 No person other than a responsible party is authorized to sign the UST facility notification form, except an UST System Technician may sign the certification of installation, upgrade, or repair resulting in a change in the information on the UST facility notification form.
- 5600.8 Any owner of real property who determines that there is an UST system (active or inactive) on the owner's property for which notification has not been provided to the Department shall file an UST facility notification form (or give notice to the Department if information is limited) within seven (7) days of the determination.
- 5600.9 Any person who deposits regulated substances into an UST, or who sells or leases a tank or piping intended for use as an UST or UST system, shall inform the owner, buyer, or lessee of the tanks of the notification requirements of this section.
- 5600.10 Each owner or operator of any UST system that has been upgraded or modified in any way shall ensure that the installer certifies, on the UST facility notification form required under this section, that the methods used to upgrade or modify the UST system comply with the requirements of § 5801.

**5601 REGISTRATION**

- 5601.1 Each owner of an UST containing a regulated substance, except for a heating oil tank with a capacity of less than one thousand one hundred (1,100) gallons, shall register and annually renew registration of the UST in accordance with this section.
- 5601.2 A new owner of an existing UST or an owner of a new UST shall initiate the registration process within thirty (30) days of the change in ownership or the installation of a new UST by filing an UST facility notification form for each UST facility pursuant to the requirements of § 5600. Upon receipt of a complete UST facility notification form, the Department will send a registration fee invoice to the registrant, and the registrant shall pay the required fee within the time period specified on the invoice.
- 5601.3 The Department may issue a registration certificate to the owner only after:
- (a) The registration fee has been received;
  - (b) The owner has filed a properly completed UST facility notification form pursuant to the notification requirements of § 5600; and
  - (c) Either of the following has occurred as applicable:
    - (1) For a new UST, the owner has complied with the installation requirements of § 5706; or
    - (2) For an existing UST, the owner has complied with all the applicable requirements of the UST Regulations.
- 5601.4 The registration term is from January 1 to December 31 of each calendar year. The term for a registration certificate issued after January 1 is from the date of issuance until December 31 of the calendar year when the registration certificate is issued. Registration shall not be transferable from owner to owner.
- 5601.5 An owner shall renew the registration for each tank on or before November 30 of each calendar year unless:
- (a) The UST has been permanently closed pursuant to § 6101;
  - (b) There has been a change-in-service to storage of a non-regulated substance pursuant to § 6101; or
  - (c) The owner has sold the UST and has informed the Department in writing of the date of sale and the identity of the purchaser.

- 5601.6 A copy of the current registration certificate shall be posted at the facility where the UST is located and it shall be visible to product delivery company personnel and government inspectors at all times.
- 5601.7 No person shall deposit a regulated substance into an UST without first confirming that the UST is currently registered and that the facility where the UST is located has not been found to be in violation of these regulations by ensuring that:
- (a) A current certificate of registration is present at the facility; and
  - (b) The facility where the UST is located is not on the list of facilities prohibited by the Department from receiving regulated substances. The delivery prohibition list is posted on the Department's website at <https://doee.dc.gov/publication/delivery-prohibition-guidance-usts>.
- 5601.8 No owner or operator shall dispense, or permit the dispensing of, a regulated substance from an UST unless the owner has satisfied the registration requirements of this section.
- 5601.9 No owner or operator shall deposit or dispense, or permit the deposit or dispensing of, a regulated substance into an UST for which registration has been denied, unless deposit of a regulated substance is authorized for the purpose of testing the tank.
- 5601.10 Any person who sells an UST or a facility where an UST is located shall notify the new owner in writing that the new owner has notification and registration obligations under § 5600 and this section, and shall complete a seller's disclosure form prescribed by the Department, which is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>.

## **5602 RECORDKEEPING AND REPORTS**

- 5602.1 Each owner or operator shall submit the following information to the Department:
- (a) UST facility notification forms for all USTs (§ 5600), including certification of installation and compliance with the manufacturer's checklist for new or upgraded USTs (§ 5706 or § 5801);
  - (b) Notices of installation, repair, removal, closure-in-place, upgrades, or testing (§ 5603);
  - (c) Reports of all spills and overfills (§ 6201);
  - (d) Reports of all releases, including suspected releases (§ 6202) and confirmed releases (§§ 6203.8(c) and (d));

- (e) Corrective actions planned or taken, including initial abatement measures (§§ 6203.12(c) and (d)), free product removal (§ 6204), comprehensive site assessments (§ 6205), and corrective action plans (§ 6207);
- (f) Notifications prior to permanent closure or change-in-service (§ 6101); and
- (g) An UST facility notification form for any change in ownership, facility information, or tank data (§ 5600).

5602.2 Each owner or operator shall also provide the information required in §§ 5602.1(b), (c), (d), and (f) and the information specified in §§ 6204.7 and 6205.3 to the District Fire Chief.

5602.3 Except as provided in §§ 5602.4 through 5602.6, each owner or operator of an UST system shall maintain the following records and information at the facility where the UST system is located:

- (a) Documentation of the operation of corrosion protection equipment (§ 5901.2);
- (b) Documentation of the impressed cathodic protection system inspections (§ 5901.6);
- (c) Documentation of UST system repairs (§ 5902);
- (d) Documentation of compliance with release detection requirements (§ 6001);
- (e) Results of the closure assessment conducted at permanent closure (§ 6101);
- (f) Documentation of UST system compatibility (§ 5903);
- (g) Documentation of operator training (§ 6503);
- (h) Documentation of periodic walkthrough inspections (§ 5904)
- (i) Documentation of compliance for spill and overfill prevention equipment and for containment sumps used for interstitial monitoring of piping (§§ 5900.12 through 5900.15); and
- (j) A corrosion expert's analysis of corrosion potential if corrosion protection is not used (§ 5701.1(d)).

- 5602.4 Each owner or operator shall maintain the records required under §§ 5602.3(a), (c) and (f) for a period of ten (10) years, or the life of the UST system, whichever is longer. The records for the current and the previous registration year shall be kept at the facility where the UST is located and shall be immediately available for inspection when requested by the Department. For the remainder of the required retention period, the records may be kept at another location in the District, but shall be readily available for inspection when requested by the Department.
- 5602.5 Each owner or operator shall keep the records required under § 5602.3(d) either at the facility where the UST is located or at another location where the records can be viewed by a person in the District. The records shall be immediately available for inspection by the Department at the facility where the UST is located, or if at another location, readily available for inspection by the Department.
- 5602.6 If an UST is permanently closed and the records cannot be kept at the facility where the UST was located or at an alternative location under §§ 5602.4 and 5602.5, the owner or operator shall deliver the permanent closure records required under § 6101 to the Department.
- 5602.7 Any records required to be maintained by an owner or operator shall be kept for the operating life of the UST unless another time period is specified by regulation.
- 5602.8 Each owner shall maintain documentation required in § 6502.11 at the facility where the UST is located.
- 5603 NOTICE OF INSTALLATION, REMOVAL, CLOSURE-IN-PLACE, REPAIR, UPGRADE, AND TESTING**
- 5603.1 The owner, operator, or authorized representative of an owner or operator shall notify the Department at least five (5) business days before each installation, repair, or upgrade of an UST system and its related components, such as overfill equipment and secondary containment areas, except as provided in § 5603.3. The notice shall be provided on an UST/LUST activity notification form, which is available on the Department's website at <https://doee.dc.gov/publication/ust-activity-notification-form>. Each owner, operator, or authorized representative shall provide notice of a removal or closure-in-place in accordance with Chapter 61.
- 5603.2 In addition to the notice required under § 5603.1, the owner, operator, or authorized representative shall notify the Department orally or in writing of the exact date and time of the installation, repair, upgrade, removal, or closure-in-place of the UST system at least twenty-four (24) hours in advance to schedule an appointment for facility inspections, except as provided in § 5603.3.

- 5603.3 In the case of an emergency removal or repair, the owner or operator shall provide notice to the Department and the District Fire Chief within twenty-four (24) hours of learning of the emergency condition.
- 5603.4 Before installing or upgrading an UST, the owner or operator shall submit to the Department plans, engineering designs, and specifications prepared by a business licensed to perform UST installations in the District in accordance with § 6500.
- 5603.5 Each owner or operator of an UST, including an UST on a federal facility, shall obtain approval of the plans and specifications from the Department before applying for a construction permit from the District Department of Consumer and Regulatory Affairs.
- 5603.6 Each owner or operator shall inform the Department orally or on an UST/LUST activity notification form at least twenty-four (24) hours in advance of the exact date and time of any tank tightness test to be conducted on an UST. In the case of emergency testing, notice shall be provided to the Department within twenty-four (24) hours after emergency testing is conducted.
- 5603.7 In addition to the notice required by § 5603.6, if a tightness test is performed as a result of a suspected release, the owner or operator shall also inform the District Fire Chief orally or in writing at least forty-eight (48) hours in advance.

#### **5604 NOTICE OF SALE OF REAL PROPERTY**

- 5604.1 Before a seller may enter into a contract for the sale of real property in the District, the seller shall inform each prospective buyer of the existence or removal of any UST system at the property, that the seller has knowledge of, on a disclosure form approved by the Department or in a letter incorporating all of the information required in the form, except as provided in §§ 5604.3 and 5604.4. The disclosure form is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>.
- 5604.2 The seller of real property is not required to perform a site assessment or other geological investigation to determine if there are USTs on the property, but shall:
- (a) Inform prospective purchasers of any UST or any UST-related contamination of which the seller has actual knowledge; and
  - (b) For the sale of commercial property, inform prospective buyers of any prior use of the property of which seller has actual knowledge that may suggest the existence of USTs on the property.
- 5604.3 Notice pursuant to § 5604.1 is not required for the sale of an individual condominium or cooperative unit.



5604.4 A seller of a single family home shall use the disclosure form approved by the Department, which is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>, or make the disclosure required by § 5604.1 in the sales contract if the purchaser signs an acknowledgement that the purchaser has read the disclosure prior to signing the contract.

**5605 FEES**

5605.1 The annual registration fee shall be eight hundred dollars (\$800) for each tank with a capacity of over ten thousand (10,000) gallons; four hundred fifty dollars (\$450) for each tank with a capacity of ten thousand (10,000) gallons or less; except the fee for a heating oil tank with a capacity of ten thousand (10,000) gallons or less shall be two hundred dollars (\$200). The owner or operator of a heating oil tank with a capacity of more than ten thousand (10,000) gallons shall pay eight hundred dollars (\$800).

5605.2 The annual registration fee shall be paid in full by January 1 of each year. Any annual registration fee not received by January 1 of each year shall be subject to a late fee of two hundred dollars (\$200).

5605.3 The following fees will be charged for the listed Departmental activities:

- (a) The fee for review of plans and specifications and performing facility inspections for UST installations is two hundred fifty dollars (\$250) per tank;
- (b) The fee for performing facility inspections and for review of reports related to UST closure-in-place is two hundred fifty dollars (\$250) per tank, except that the fee for these activities for heating oil tanks with a capacity of less than one thousand one hundred (1,100) gallons is one hundred fifty dollars (\$150) per tank;
- (c) The fee for performing facility inspections and review of reports related to UST removal is two hundred fifty dollars (\$250) per tank, except the fee for these activities for heating oil tanks with a capacity of less than one thousand one hundred (1,100) gallons is one hundred fifty dollars (\$150) per tank; and
- (d) The initial fee for participation in the Voluntary Remediation Action Program is five thousand dollars (\$5000), except that the Department may waive the fee if the applicant is a neighboring property owner who is unable to obtain relief from the responsible party. The initial fee shall be reduced by twenty-five percent (25%) if the applicant demonstrates, to the satisfaction of the Department, that the corrective action plan will use green remediation. In addition, an annual fee of five hundred dollars

(\$500) to continue in the program will be charged and is payable on the one year anniversary date of Conditional Authorization Letter issued pursuant to § 6212.3 until a no further action or case closure letter is issued. This paragraph shall not apply to a Voluntary Remediation Action Program application approved on or before February 21, 2020.

5605.4 The following application fees will be charged for the licensing of any business and the certification of any individual who installs, upgrades, repairs, permanently closes, or tests UST systems under Chapter 65:

- (a) The initial application fee to license a business is four hundred dollars (\$400), and the annual renewal application fee is two hundred dollars (\$200), except that the initial application fee for businesses certified by a neighboring state under § 6501 is three hundred dollars (\$300); and
- (b) The initial application fee to certify an individual is two hundred fifty dollars (\$250), and the annual renewal application fee is one hundred fifty dollars (\$150).

5605.5 The fees in this section may be increased for each calendar year by the percentage, if any, by which the Consumer Price Index as published by the Department of Labor increased between the last two calendar years. For example, the fees for 2019 would be based on the increase, if any, from 2017 to 2018.

## **5606 THIRD-PARTY CERTIFICATION**

5606.1 In lieu of inspection by the Department, an owner or operator may request the Department to approve compliance inspections of UST system installations, upgrades, repairs, closures, release detection system(s), and manufacturer-required annual maintenance inspections performed by an independent third-party inspector who is a Department-certified UST System Technician.

5606.2 If the Department approves use of an independent third-party inspector, the Department will accept the third-party inspector's report and findings if the report contains all the compliance inspection information required by the Department.

5606.3 An independent third-party inspector may not certify an UST system if he or she has a financial interest in the UST system or the facility in which the UST is located.

## **5607 PUBLIC RECORD INFORMATION**

5607.1 No later than December 31 of each year, information will be made available to the public regarding:

- (a) Current numbers of USTs and facilities in the District, and Significant Operational Compliance (SOC) inspections conducted; and
- (b) Confirmed releases from USTs within the District for the year, and the sources and causes of releases.

5607.2 The public record will be available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>. A person who does not have electronic access may request a copy of the information by writing to UST Branch, Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002.

**CHAPTER 57 UNDERGROUND STORAGE TANKS - NEW TANK  
PERFORMANCE STANDARDS**

**5700 EXISTING AND NEW UST SYSTEMS - GENERAL PROVISIONS**  
**5701 NEW PETROLEUM UST SYSTEMS**  
**5702 NEW HAZARDOUS SUBSTANCE UST SYSTEMS**  
**5703 NEW HEATING OIL UST SYSTEMS**  
**5704 NEW PIPING FOR UST SYSTEMS**  
**5705 SPILL AND OVERFILL PREVENTION EQUIPMENT FOR NEW AND UPGRADED UST SYSTEMS**  
**5706 INSTALLATION OF NEW UST SYSTEMS**

**5700 EXISTING AND NEW UST SYSTEMS - GENERAL PROVISIONS**

5700.1 The owner or operator of each new or existing petroleum UST system, except for a heating oil tank, shall comply with this section and the following as applicable:

- (a) For an UST system installed on or before December 22, 1988, the upgrade requirements in Chapter 58;
- (b) For an UST system installed after December 22, 1988, and on or before November 12, 1993, the federal standards in 40 CFR § 280.20 (Performance Standards for New USTs); and
- (c) For UST systems installed after November 12, 1993, the performance standards for new petroleum UST systems in §§ 5701, 5704, and 5705.

5700.2 Except as provided in § 5700.3, the owner or operator of each existing or new hazardous substance UST system shall comply with this section and the performance standards for new hazardous substance UST systems in §§ 5702, 5704, and 5705.

5700.3 A hazardous substance UST system that was installed on or before November 12, 1993, and that was upgraded before February 21, 2020 to comply with the

performance standards for new petroleum UST systems in § 5701, is exempt from the requirements of § 5700.2.

- 5700.4 The owner or operator of each heating oil tank with a capacity of one thousand one hundred (1,100) gallons or greater shall comply with the following as applicable:
- (a) For UST systems installed on or before November 12, 1993, the requirements of this section; and
  - (b) For UST systems installed after November 12, 1993, the requirements of §§ 5703 through 5706.
- 5700.5 The owner or operator of an UST system that does not comply with §§ 5700.1 through 5700.4 shall comply with the permanent closure requirements in Chapter 61 and the applicable requirements for corrective action in Chapter 62.
- 5700.6 The owner or operator of each UST system shall ensure that the UST system satisfies the applicable release detection requirements in Chapter 60.
- 5700.7 In addition to meeting the requirements of this chapter, the owner or operator of each UST system located within one hundred feet (100 ft) of a subsurface transit structure, as measured horizontally from the outside wall, shall meet the requirements of the District of Columbia Fire Code, Title 12, Subtitle H (Fire Code Supplement) of the District of Columbia Municipal Regulations and the National Fire Protection Association (NFPA) Standard 130 (Standard for Fixed Guideway Transit and Passenger Rail Systems).
- 5700.8 Each metal tank, and the attached metal piping that is in contact with the ground and used to convey the regulated substance stored in the tank, shall be properly designed, constructed, and installed in a manner that will prevent corrosion in accordance with:
- (a) A code of practice listed in § 5701.10;
  - (b) The District of Columbia Fire Code, Title 12, Subtitle H (Fire Code Supplement) of the District of Columbia Municipal Regulations; and
  - (c) The applicable requirements of this chapter.
- 5700.9 The Department may approve alternative tank construction and corrosion protection measures if the Department determines that the alternative tank construction and corrosion protection measures will prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements of this chapter.

5700.10 Each owner or operator of an UST that is more than thirty (30) years old shall remove the tank from the ground in accordance with Chapter 61 within five (5) years of February 21, 2020.

5700.11 Each owner or operator of an UST that is more than thirty (30) years old shall perform a tightness test within one (1) year of February 21, 2020, and if the UST fails, remove the UST within one (1) year of the date of the test failure.

## **5701 NEW PETROLEUM UST SYSTEMS**

5701.1 Each new petroleum UST, except for a heating oil tank, shall be constructed of:

- (a) Fiberglass-reinforced plastic with double-walled construction or other secondary containment system as set forth in §§ 5701.4 through 5701.6;
- (b) Steel that is clad or jacketed with a non-corrodible material (such as fiberglass-reinforced plastic composite) with double-walled construction or other secondary containment system as set forth in §§ 5701.4 through 5701.6;
- (c) Steel that is cathodically protected in accordance with §§ 5701.2 and 5701.3 with double-walled construction or other secondary containment system as set forth in §§ 5701.4 through 5701.6;
- (d) Metal without additional corrosion protection measures; provided that:
  - (1) The tank is installed at a facility that is determined by a corrosion expert not to be corrosive enough to cause the tank to have a release due to corrosion during its operating life; and
  - (2) The owners and operators maintain records that demonstrate compliance with requirements of § 5701.1(d)(1) for the remaining life of the tank; or
- (e) Other materials, if the tank's construction and corrosion protection are, as determined by the Department, in accordance with § 5500.5, designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the other provisions of this section.

5701.2 Each steel tank that is cathodically protected shall be coated with a suitable dielectric material, and:

- (a) The field-installed cathodic protection systems shall be designed by a corrosion expert; and

- (b) The impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by § 5901.5.
- 5701.3 Each cathodic protection system shall be operated and maintained in accordance with § 5901.
- 5701.4 Secondary containment systems shall be designed, constructed, and installed to do the following:
  - (a) Contain regulated substances released from the tank system until they are detected and removed;
  - (b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST; and
  - (c) Check for evidence of a release at least every thirty (30) days.
- 5701.5 If continuous monitoring methods are not used, each secondary containment system shall be tested every three (3) years to ensure that the interstitial area is liquid-tight.
- 5701.6 Double-walled tanks shall be designed, constructed, and installed in a manner that will:
  - (a) Contain a release from any portion of the inner tank within the outer wall; and
  - (b) Provide for the detection of the failure of the inner wall.
- 5701.7 External liner systems, including vaults, shall be designed, constructed, and installed in a manner that will:
  - (a) Contain one hundred ten percent (110%) of the capacity of the largest tank within its boundary;
  - (b) Prevent precipitation or groundwater intrusion from interfering with the ability to contain or detect a release of regulated substances; and
  - (c) Surround the tank completely and be capable of preventing both lateral and vertical migration of regulated substances.
- 5701.8 All new motor fuel dispenser systems shall be equipped with an under-dispenser containment system that is designed, constructed, and installed in a manner that will prevent leaks from the dispenser from reaching soil or groundwater, and shall:

- (a) Be liquid-tight on its sides, bottom, and at any penetrations;
- (b) Be compatible with the substance conveyed by the piping; and
- (c) Allow for visual inspection and access to the components in the containment system, or be monitored to detect a failure of the under-dispenser containment and any leaks from the dispenser.

5701.9 A dispenser system is considered new when both the dispenser and the equipment needed to connect the dispenser to the UST system are installed. The equipment necessary to connect the dispenser to the UST system includes check valves, shear valves, unburied risers, flexible connectors, and other transitional components that are below the dispenser and connect the dispenser to the underground piping.

5701.10 The following codes of practice may be used to comply with § 5701.1:

- (a) If the tank is constructed of fiberglass reinforced plastic:
  - (1) Underwriters Laboratories Standard 1316, “Glass- Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products Alcohols, and Alcohol-Gasoline Mixtures”; or
  - (2) Underwriter’s Laboratories of Canada Standard CAN/ULC S615, “Standard for Reinforced Plastic Underground Tanks for Flammable and Combustible Liquids”.
- (b) If the tank is constructed of steel and cathodically protected:
  - (1) Steel Tank Institute STI-P3, “Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks”;
  - (2) Underwriters Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”;
  - (3) Underwriters Laboratories of Canada Standard CAN/ULC S603, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids,” Standard CAN/ULC S603.1 “Standard for External Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids,” and Standard CAN/ULC S631, “Standard for Isolating Bushings for Steel Underground Tanks Protected with External Corrosion Protection Systems”;

- (4) Steel Tank Institute Standard F841, “Standard for Dual Wall Underground Steel Storage Tanks”; or
  - (5) NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection,” and Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”
- (c) If the tank is steel, and clad or jacketed with a non-corrodible material:
- (1) Underwriters Laboratories Standard 1746, “External Corrosion Protection Systems for Steel Underground Storage Tanks”;
  - (2) Steel Tank Institute ACT-100® Specification F894, “Specification for External Corrosion Protection of FRP Composite Steel Underground Storage Tanks”;
  - (3) Steel Tank Institute ACT-100-U® Specification F961-15, “Specification for External Corrosion Protection of Composite Steel Underground Storage Tanks”; or
  - (4) Steel Tank Institute Specification F922, “Steel Tank Institute Specification for Permatank®.”

## **5702 NEW HAZARDOUS SUBSTANCE UST SYSTEMS**

5702.1 Each new hazardous substance UST shall be:

- (a) Constructed of fiberglass-reinforced plastic, steel-fiberglass-reinforced plastic composite, or steel;
- (b) If constructed of steel, cathodically protected in accordance with the requirements of § 5702.2; and
- (c) Of three hundred sixty degree (360°) double-wall construction as set forth in § 5702.4.

5702.2 Each steel tank shall be cathodically protected by being coated with a suitable dielectric material, and:

- (a) The field-installed cathodic protection systems shall be designed by a corrosion expert; and
- (b) The impressed current cathodic protection systems shall be designed to allow determination of current operating status as required by § 5901.5.



- 5702.3 Each cathodic protection system shall be operated and maintained in accordance with § 5901.
- 5702.4 Double-walled tanks shall be designed, constructed, and installed in a manner that will:
- (a) Contain a release from any portion of the inner tank within the outer wall until detected and removed;
  - (b) Detect the failure of the inner or outer wall;
  - (c) Prevent the release of regulated substances to the environment at any time during the operational life of the UST; and
  - (d) Check for evidence of a release at least every thirty (30) days.
- 5702.5 The codes of practice listed in §§ 5701.10(a) and (b) may be used to comply with § 5702.1

**5703 NEW HEATING OIL UST SYSTEMS**

- 5703.1 Each heating oil tank with a capacity of one thousand one hundred (1,100) gallons or more and was installed after November 12, 1993, whether of single or double-walled construction, shall be constructed of the following:
- (a) Fiberglass-reinforced plastic;
  - (b) Steel-fiberglass-reinforced plastic composite; or
  - (c) Steel, which must be cathodically protected in accordance with the requirements of § 5703.2.
- 5703.2 Each steel tank shall be cathodically protected by being coated with a suitable dielectric material, and:
- (a) The field-installed cathodic protection systems shall be designed by a corrosion expert; and
  - (b) The impressed current cathodic protection system shall be designed to allow determination of current operating status as required by § 5901.5.
- 5703.3 Each cathodic protection system shall be operated and maintained in accordance with the requirements of § 5901.

- 5703.4 Each heating oil tank with a capacity of one thousand one hundred (1,100) gallons or more, and installed after November 12, 1993, shall have a secondary containment system that is designed, constructed, and installed in a manner that will:
- (a) Contain regulated substances released from the tank system until they are detected and removed;
  - (b) Prevent the release of regulated substances to the environment at any time during the operational life of the UST; and
  - (c) Check for evidence of a release at least every thirty (30) days.
- 5703.5 If continuous monitoring methods are not used, each secondary containment system shall be tested every three (3) years to ensure that the interstitial area is liquid-tight.
- 5703.6 A tank that is double-walled shall be designed, constructed, and installed in a manner that will:
- (a) Contain a release from any portion of the inner tank within the outer wall; and
  - (b) Allow for the detection of the failure of the inner wall.
- 5703.7 External liner systems, including vaults, shall be designed, constructed, and installed in a manner that will:
- (a) Contain one hundred ten percent (110%) of the capacity of the largest tank within its boundary;
  - (b) Prevent the interference of precipitation or ground water intrusion with the ability to contain or detect a release of regulated substances; and
  - (c) Surround the tank completely and be capable of preventing lateral as well as vertical migration of regulated substances.
- 5703.8 An upgrade of a heating oil tank is considered a new installation and shall conform to all new installation provisions in this chapter.

#### **5704 NEW PIPING FOR UST SYSTEMS**

- 5704.1 Piping that routinely contains regulated substances and is in contact with earthen materials shall be properly designed and constructed, and protected from corrosion, in accordance with the following codes of practice, or an alternative

industry standard or code of practice approved by the Department in accordance with § 5506:

- (a) If the piping is non-corrodible material (such as fiberglass-reinforced plastic):
  - (1) Underwriters Laboratories Standard 971, “Nonmetallic Underground Piping for Flammable Liquids”; or
  - (2) Underwriters Laboratories of Canada Standard CAN/ULC S660, “Standard for Nonmetallic Underground Piping for Flammable and Combustible Liquids”; and
- (b) If the piping is constructed of steel and cathodically protected:
  - (1) American Petroleum Institute Recommended Practice RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”;
  - (2) Underwriters Laboratories Subject 971A, “Outline of Investigation for Metallic Underground Fuel Pipe”;
  - (3) Steel Tank Institute Recommended Practice R892, “Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems”;
  - (4) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems”; or
  - (5) NACE International Standard Practice SP 0285, “External Corrosion Control of Underground Storage Tank Systems by Cathodic Protection.”

5704.2 UST system piping shall be constructed of:

- (a) Non-corrodible material (such as fiberglass-reinforced plastic);
- (b) Steel, which shall be cathodically protected in accordance with the requirements of this section and § 5901;
- (c) Metal without additional corrosion protection measures; provided that:
  - (1) The piping is installed at a facility that is determined by a corrosion expert not to be corrosive enough to cause the piping to have a release due to corrosion during its operating life; and

- (2) The owner or operator maintains records that demonstrate compliance with requirements of § 5704.2(c)(1) for the remaining life of the piping; or
  - (d) Other materials approved by the Department in accordance with § 5704.7.
- 5704.3 Steel UST piping shall be cathodically protected by being coated with a suitable dielectric material, and:
  - (a) The field-installed cathodic protection system shall be designed by a corrosion expert; and
  - (b) The impressed current cathodic protection system shall be designed to allow determination of current operating status as required by § 5901.5.
- 5704.4 Each cathodic protection system shall be operated and maintained in accordance with the requirements of § 5901.
- 5704.5 Except as provided in § 5704.6, underground piping for hazardous substance USTs, and pressurized underground piping and non-safe suction piping for all petroleum USTs, shall be equipped with secondary containment features that are designed and constructed in accordance with the requirements of § 5701.4.
- 5704.6 Secondary containment is not required for vent pipes, Stage II vapor recovery pipes, or vertical fill pipes.
- 5704.7 Other materials and construction techniques may be used for UST piping if the piping construction and corrosion protection are determined by the Department, in accordance with § 5500.5, to be designed in a manner that is no less protective of human health and the environment than the other provisions of this section.
- 5705 SPILL AND OVERFILL PREVENTION EQUIPMENT FOR NEW AND UPGRADED UST SYSTEMS**
- 5705.1 Except as provided in § 5705.3, in order to prevent spilling during the transfer of regulated substances to an UST, each owner or operator shall use spill prevention equipment (such as a spill catchment basin) that will prevent release of regulated substances when the transfer hose is detached from the fill pipe.
- 5705.2 Each owner or operator of a new or upgraded UST system shall prevent spills and overfills by ensuring that the space in the tank is sufficient to receive the volume of regulated substances to be transferred and that the transfer operation is constantly monitored in accordance with § 5900.3.

- 5705.3 Except as provided in §§ 5705.4 through 5705.6, in order to prevent overfilling during the transfer of regulated substances, each owner or operator shall use overfill prevention equipment that does one or more of the following:
- (a) Automatically shuts off flow into the tank when the tank is no more than ninety-five percent (95%) full;
  - (b) Alerts the transfer operator when the tank is no more than ninety percent (90%) full by triggering a high-level audible and visible alarm that is labeled overfill alarm and is in full view of the delivery driver;
  - (c) Restricts flow thirty (30) minutes prior to overfilling;
  - (d) Alerts the transfer operator with a high level alarm one (1) minute before overfilling; or
  - (e) Automatically shuts off flow into the tank so that none of the fittings located on the top of the tank are exposed to product due to overfilling.
- 5705.4 No owner or operator shall use flow restrictors (ball float systems) in vent lines as the only method of overfill prevention when the overfill prevention is installed or replaced after February 21, 2020.
- 5705.5 Tanks that are susceptible to over-pressurization shall only use an automatic shutoff valve to comply with § 5705.3.
- 5705.6 An owner or operator is not required to provide and use the spill and overfill prevention equipment specified in this section if:
- (a) Alternative equipment is used that is determined by the Department, in accordance with § 5500.5, to be no less protective of human health and the environment than the equipment specified in the other provisions of this section; or
  - (b) The UST is filled by transfers of no more than twenty-five (25) gallons at one time.
- 5705.7 The spill prevention equipment on new USTs shall have a minimum capacity of ten (10) gallons.

## **5706 INSTALLATION OF NEW UST SYSTEMS**

- 5706.1 Each UST system, including all tanks and piping, shall be installed in accordance with the manufacturer's instructions; the District of Columbia Fire Code, Title 12, Subtitle H (Fire Code Supplement) of the District of Columbia Municipal

Regulations; and one of the following codes of practice or an alternative code approved by the Department in accordance with § 5506:

- (a) American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”;
- (b) Petroleum Equipment Institute Recommended Practice RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”; or
- (c) National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code” and Standard 30A, “Code for Motor Fuel Dispensing Facilities and Repair Garages.”

5706.2 Each owner or operator shall ensure that each UST is installed by, or each installation is supervised by, a District-certified UST System Technician as required in Chapter 65.

5706.3 The owner or operator shall ensure that all work listed in the manufacturer's installation checklist is completed for each UST installation.

5706.4 The owner or operator shall sample the soil below the excavation and submit the soil sampling report to the Department before installation. The owner or operator may not place backfill in the excavation until the Department has inspected and approved the installation.

5706.5 After installing an UST, the owner or operator shall perform a tank tightness test before using the UST.

5706.6 The owner or operator shall ensure that the UST System Technician certifies compliance with §§ 5706.2 through 5706.4 on an UST facility notification form, available on the Department’s website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>, and shall submit the form to the Department.

**CHAPTER 58 UNDERGROUND STORAGE TANKS - UPGRADES OF EXISTING USTS**

- 5800 EXISTING UST SYSTEM UPGRADES**
- 5801 TANK UPGRADES**
- 5802 EXISTING UST SYSTEM PIPING UPGRADES**
- 5803 SPILL AND OVERFILL PREVENTION EQUIPMENT UPGRADES**
- 5804 TANK TIGHTNESS TESTING UPON UPGRADE**

**5800 EXISTING UST SYSTEM UPGRADES**

- 5800.1 The owner or operator of each existing petroleum UST, except a heating oil tank, shall ensure that the UST complies with the following as applicable, or permanently close the UST in accordance with Chapter 61 and applicable requirements for corrective action set forth in Chapter 62:
- (a) For an UST system installed before December 22, 1988, the upgrade requirements set forth in this chapter;
  - (b) For an UST system installed after December 22, 1988, and prior to November 12, 1993, the federal standards set forth in 40 CFR § 280.20 (Performance Standards for New USTs); or
  - (c) The performance standards for new petroleum UST systems in Chapter 57.
- 5800.2 All components connected to an existing petroleum UST system, except a heating oil tank, shall be operating. Components of an UST system that are no longer functional or in use shall be removed.
- 5800.3 No person may deposit a regulated substance into an existing UST system, except a heating oil tank, unless the UST system complies with the new UST system performance standards in Chapter 57 or has been upgraded under this section.
- 5800.4 The owner or operator of each existing hazardous substance UST system shall ensure that the UST system complies with the new UST system performance standards in Chapter 57 for hazardous substance UST systems, or permanently close the UST system in accordance with Chapter 61 and applicable requirements for corrective action in Chapter 62.

**5801 TANK UPGRADES**

- 5801.1 Each owner or operator of an existing steel UST shall upgrade the tank in accordance with the manufacturer's specifications, one of the following codes of practice, or an alternative industry standard or code of practice approved by the Department in accordance with § 5506:
- (a) American Petroleum Institute Recommended Practice RP 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks";
  - (b) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection";

- (c) National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”; or
- (d) American Petroleum Institute Recommended Practice RP 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.”

5801.2 An owner or operator that seeks to upgrade an existing tank to stage I vapor recovery shall submit plans to the Department by mail or delivery to UST Branch, Department of Energy and Environment, 1200 First Street, N.E., 5th Floor, Washington, D.C. 20002, or electronically in accordance with § 5500.4, and obtain the Department’s approval before implementing the upgrades.

5801.3 The internal lining of an existing UST may be upgraded only if the following requirements are met:

- (a) The interior of the tank was inspected and assessed to ensure that the tank is structurally sound prior to installing the internal lining in accordance with American Petroleum Institute Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”; and
- (b) The lining was installed in accordance with the requirements of § 5902.

5801.4 Within ten (10) years after the lining of the tank is upgraded, and every five (5) years thereafter, the interior of the lined tank shall be inspected to ensure that:

- (a) It is structurally sound;
- (b) It is free of corrosion holes; and
- (c) The lining is performing in accordance with the original design specifications.

5801.5 If internal lining is the sole method of corrosion protection for an UST, the owner or operator shall inspect the lining at least once each year for the conditions listed in § 5801.4(a) through (c).

5801.6 The following requirements apply to tank linings that have failed inspections:

- (a) The tank lining shall be replaced, unless it can be repaired and restored to a level of performance equivalent to original design specifications using a code of practice specified in § 5801.1; and
- (b) If an UST internal lining is the sole method of corrosion protection for an UST and the lining cannot be repaired in accordance with paragraph (a),



the owner or operator shall permanently close the tank in accordance with the requirements of Chapter 61.

5801.7 An existing tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of §§ 5701.2 and 5701.3, and the integrity of the tank is ensured using one of the following methods:

- (a) The interior of the tank is inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system;
- (b) If the tank had been installed for less than ten (10) years at the time of the upgrade, the tank is monitored monthly for releases in accordance with §§ 6008 through 6013;
- (c) If the tank had been installed for less than ten (10) years at the time of the upgrade, the tank is assessed for corrosion holes by conducting two (2) tank tightness tests that meet the requirements of § 6007; the first tank tightness test shall be conducted before installing the cathodic protection system, and the second tank tightness test shall be conducted between three (3) and six (6) months after beginning operation of the cathodic protection system; or
- (d) The tank is assessed for corrosion holes by a method that is determined by the Department, in accordance with § 5506, to prevent releases in a manner that is no less protective of human health and the environment than a system that complies with paragraphs (a) through (c) of this subsection.

5801.8 An existing tank may be upgraded by both internal lining and cathodic protection if the following requirements are met:

- (a) The lining is installed in accordance with the requirements of § 5902; and
- (b) The cathodic protection system meets the requirements of §§ 5701.2 and 5701.3.

5801.9 The following codes of practice may be used to comply with the periodic lining inspection requirements in §§ 5801.4 and 5801.5:

- (a) American Petroleum Institute Recommended Practice RP 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;
- (b) National Leak Prevention Association Standard 631, Chapter B “Future Internal Inspection Requirements for Lined Tanks”; or

- (c) Ken Wilcox Associates Recommended Practice, “Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera.”

**5802 EXISTING UST SYSTEM PIPING UPGRADES**

- 5802.1 Metal piping that routinely contains regulated substances and is in contact with earthen materials shall be cathodically protected in accordance with a code of practice that is either listed in § 5704.1(b) or approved by the Department in accordance with § 5506.
- 5802.2 Metal piping that routinely contains regulated substances and is in contact with earthen materials shall meet the requirements of §§ 5704.3 and 5704.4.
- 5802.3 Metal piping that routinely contains regulated substances and is in contact with earthen materials but does not meet the requirements of §§ 5802.1 and 5802.2 shall be replaced with new piping and satisfy the requirements of § 5704.

**5803 SPILL AND OVERFILL PREVENTION EQUIPMENT UPGRADES**

- 5803.1 To prevent spilling and overfilling associated with product transfer to the UST, all existing UST systems shall comply with new UST spill and overfill prevention equipment requirements specified in § 5705.

**5804 TANK TIGHTNESS TESTING UPON UPGRADE**

- 5804.1 Before beginning to operate an upgraded UST system, the owner or operator shall have a tightness test performed in accordance with the requirements of § 6007, unless the tank is upgraded by cathodic protection and the owner or operator complies with § 5801.7(c).

**CHAPTER 59 UNDERGROUND STORAGE TANKS - OPERATION AND MAINTENANCE OF USTS**

- 5900 SPILL AND OVERFILL CONTROL**
- 5901 TANK CORROSION PROTECTION**
- 5902 REPAIR OR REPLACEMENT OF UST SYSTEMS**
- 5903 COMPATIBILITY**
- 5904 WALKTHROUGH INSPECTIONS**

**5900 SPILL AND OVERFILL CONTROL**

- 5900.1 Each owner, operator, or agent in charge shall ensure that releases due to spilling or overfilling do not occur. In complying with the requirements of this section, the owner, operator, or agent in charge shall follow one of the following codes of practice or an alternative industry standard or code of practice approved by the Department in accordance with § 5506:

- (a) National Fire Protection Association Standard 385, “Standard for Tank Vehicles for Flammable and Combustible Liquids;” or
  - (b) American Petroleum Institute Recommended Practice RP 1007, “Loading and Unloading of MC 306/DOT 406 Cargo Tank Motor Vehicles.”
- 5900.2 Before each transfer is made, the owner, operator, or agent in charge shall check that the volume available in the tank is greater than the volume of product to be transferred into the tank.
- 5900.3 The owner, operator, or agent in charge shall ensure that an individual, who may be the owner, operator, agent in charge, or a person designated by the owner in accordance with § 6502, constantly monitors each transfer operation to prevent overfilling and spilling, and that the transfer operation is performed in accordance with the UST manufacturer's specifications.
- 5900.4 When product is transferred by means of pressurized delivery, delivery nozzles shall be opened manually and observed by the individual transferring the product until closed.
- 5900.5 When product is transferred by means of pressurized delivery, a vent alarm device shall be installed and be visible and audible to the individual transferring the product.
- 5900.6 If the vent alarm indicates an obstruction to the vent, delivery shall be discontinued until the vent is cleared.
- 5900.7 The owner, operator, or agent in charge shall ensure that the spill prevention equipment is kept clean and dry.
- 5900.8 The owner or operator shall ensure that all fill lines for the UST are clearly marked to indicate the size of the tank and the type of regulated substance stored by:
  - (a) Installing a permanent tag or sign immediately adjacent to the fill pipes that indicates the size of the tank and the specific type of substance stored; or
  - (b) Applying a color code that conforms to the following requirements:
    - (1) Color markings that meet the requirements of American Petroleum Institute (API) Recommended Practice RP 1637 (Product Identification) shall be painted or placed around the fill or manhole cover in a manner that will readily identify the regulated substance in the storage tank;

- (2) Regulated substances or products stored in USTs that are not listed in API Recommended Practice RP 1637 may be identified with an industry standard color code approved by the Department in accordance with § 5506; and
    - (3) The color code shall be painted on a sign not less than eight (8) by ten (10) inches with letters not less than five sixteenths (5/16) of an inch high, posted at the facility in a prominent location visible from the fill pipe area.
- 5900.9 Unless the pipes or openings are used for the transfer of a regulated substance stored at the facility, pipes or other openings may not be marked in any way that could be associated with that substance.
- 5900.10 The owner, operator, or other responsible party shall report, investigate, and clean up any spills and overfills in accordance with the requirements of Chapter 62.
- 5900.11 Each owner or operator shall comply with the requirements of §§ 5900.12 through 5900.15 in accordance with the following schedule:
- (a) For UST systems in use on or before February 21, 2020, the initial spill prevention equipment test, containment sump test, and overfill prevention equipment inspection shall be conducted not later than October 13, 2021; and
  - (b) For UST systems brought into use after February 21, 2020, the requirements apply at installation.
- 5900.12 Except as provided in § 5900.13, all spill prevention equipment and containment sumps used for interstitial monitoring of piping shall be tested at least once every three (3) years for liquid tightness in accordance with § 5900.14. All water generated in the liquid tightness testing shall be disposed of at approved facilities.
- 5900.13 Spill prevention equipment and containment sumps that are double-walled with continuous interstitial monitoring are exempt from the testing requirement specified in § 5900.12, if the integrity of both walls is periodically monitored at least as frequently as the walkthrough inspection required in § 5904.
- 5900.14 Liquid tightness testing shall be conducted by using vacuum, pressure, or liquid testing in accordance with one of the following criteria:
- (a) Requirements developed by the manufacturer;
  - (b) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill,

Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities”; or

- (c) An alternative industry standard or code of practice approved by the Department in accordance with § 5506.

5900.15 Overfill prevention equipment shall be inspected at least once every three (3) years. At a minimum, the inspection shall ensure that overfill prevention equipment is set to activate at the level specified in § 5705.3 and will activate when the regulated substance reaches that level.

## **5901 TANK CORROSION PROTECTION**

5901.1 Each owner or operator of a steel tank UST, or of a steel-fiberglass-reinforced plastic composite UST with corrosion protection, shall comply with the requirements of this section for as long as the UST is used to store regulated substances.

5901.2 Each owner or operator shall operate and maintain the corrosion protection system to continuously provide corrosion protection to the metal components of those portions of the tank and piping system of active and temporarily closed USTs that routinely contain regulated substances and are in contact with the ground.

5901.3 Within six (6) months of installation, and at least once every three (3) years thereafter, each UST equipped with a cathodic protection system shall be inspected by a cathodic protection tester to ensure the system is operating properly.

5901.4 Cathodic protection testing shall be done in accordance with one of the following codes of practice, or an alternative industry standard or code of practice approved by the Department in accordance with § 5506:

- (a) NACE International Test Method TM0101, “Measurement Techniques Related to Criteria for Cathodic Protection of Underground Storage Tank Systems”;
- (b) NACE International Test Method TM0497, “Measurement Techniques Related to Criteria for Cathodic Protection on Underground or Submerged Metallic Piping Systems”;
- (c) Steel Tank Institute Recommended Practice R051, “Cathodic Protection Testing Procedures for STI-P3® USTs”;
- (d) NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”; or

- (e) NACE International Standard Practice SP 0169, “Control of External Corrosion on Underground or Submerged Metallic Piping Systems.”

5901.5 Each UST with an impressed current cathodic protection system shall be inspected every sixty (60) days to ensure the system is operating properly.

5901.6 For each UST using cathodic protection, the owner or operator shall maintain records of the operation of the cathodic protection system in accordance with § 5602, including:

- (a) The results of the last two (2) inspections required in § 5901.3;
- (b) The results of the last three (3) inspections required in § 5901.5; and
- (c) The name and qualifications of the cathodic protection tester who performed the inspections.

5901.7 Each owner or operator of an UST that uses internal lining as the sole method of corrosion protection shall conduct annual inspections in accordance with § 5801.5.

5901.8 USTs that fail the annual inspection required by § 5901.7 and cannot be repaired in accordance with § 5801.6 shall be permanently closed in accordance with § 6101.

5901.9 For purposes of this section, the term “cathodic protection tester” means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, a cathodic protection tester has education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

## **5902 REPAIR OR REPLACEMENT OF UST SYSTEMS**

5902.1 Each owner or operator of an UST shall ensure that repairs are made using the proper materials and techniques, and that repairs will prevent releases due to structural failure or corrosion as long as the UST is used to store regulated substances.

5902.2 Except as stated in §§ 5902.3 and 5902.4, in complying with the requirements of this section, each owner or operator shall follow one of the following codes of practice, or an alternative industry standard or code of practice approved by the Department in accordance with § 5506:

- (a) National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”;

- (b) American Petroleum Institute Recommended Practice RP 2200, “Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines”;
- (c) American Petroleum Institute Recommended Practice RP 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks”;
- (d) National Fire Protection Association Standard 326, “Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair”;
- (e) National Leak Prevention Association Standard 631, Chapter A “Entry, Cleaning, Interior Inspection, Repair, and Lining of Underground Storage Tanks”;
- (f) Steel Tank Institute Recommended Practice R972, “Recommended Practice for the Addition of Supplemental Anodes to STI-P3® Tanks”;
- (g) NACE International Standard Practice SP 0285, “External Control of Underground Storage Tank Systems by Cathodic Protection”; or
- (h) Fiberglass Tank and Pipe Institute Recommended Practice T-95-02, “Remanufacturing of Fiberglass Reinforced Plastic (FRP) Underground Storage Tanks.”

5902.3 Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with § 5902.2.

5902.4 Repairs to or replacement of internal tank linings may be made by the manufacturer's authorized representatives or in accordance with § 5902.2.

5902.5 Metal pipe sections and fittings from which a release of a regulated substance has occurred as a result of corrosion or other damage, or that have incurred corrosion or other damage sufficient to constitute a threat of release, shall be replaced in accordance with § 5704.

5902.6 Non-corrodible or fiberglass pipes and fittings, or flexible pipes, from which a release of a regulated substance has occurred as a result of damage, or that have incurred damage sufficient to constitute a threat of a release, shall be replaced in accordance with § 5704 and the manufacturer’s specifications.

5902.7 Within thirty (30) days of completing a repair to secondary containment areas of the tanks and piping used for interstitial monitoring, or a repair to containment sumps used for interstitial monitoring of piping, and before using the tank to store regulated substances, the owner or operator shall have the secondary containment tested for liquid-tightness according to the manufacturer’s instructions, one of the

following codes of practice, or an alternative industry standard or code of practice approved by the Department in accordance with § 5506:

- (a) Steel Tank Institute Recommended Practice R012, “Recommended Practice for Interstitial Tightness Testing of Existing Underground Double Wall Steel Tanks”;
- (b) Fiberglass Tank and Pipe Institute Protocol, “Field Test Protocol for Testing the Annular Space of Installed Underground Fiberglass Double and Triple-Wall Tanks with Dry Annular Space”; or
- (c) Petroleum Equipment Institute Recommended Practice RP1200, “Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities.”

5902.8 Within thirty (30) days of completing a repair to a tank or piping, other than a repair specified in § 5902.7, and before using the tank to store regulated substances, the owner or operator shall have the tank or piping tested for liquid-tightness in accordance with § 6007, unless one or more of the following actions have been taken:

- (a) The repaired tank has been internally inspected in accordance with American Petroleum Institute Recommended Practice 1631, “Interior Lining and Periodic Inspection of Underground Storage Tanks,” or an alternative industry standard or code of practice approved by the Department in accordance with § 5506;
- (b) The repaired portion of the UST system is monitored every thirty (30) days for releases in accordance with a method specified in §§ 6008 through 6013; or
- (c) Another test method is used that is determined by the Department to be no less protective of human health and the environment than the other provisions of this subsection.

5902.9 Within six (6) months following the repair of any cathodically protected UST system, the cathodic protection system shall be tested in accordance with the applicable provisions of §§ 5901.3 through 5901.5 to ensure that it is operating properly.

5902.10 Each owner or operator shall maintain records of each repair for 10 years, or until the UST system is permanently closed, whichever is longer, in accordance with § 5602.4.



- 5902.11 Each owner or operator shall ensure that each UST system is repaired by, or that repairs are supervised by, an UST System Technician certified by the Department in accordance with Chapter 65.
- 5902.12 After the completion of any replacement or repair that results in a change in the information on the UST facility notification form, the owner or operator shall ensure that the certified UST System Technician completes the certification of compliance provided on the UST facility notification form required by § 5600.
- 5902.13 A repair that involves removing and replacing fifty percent (50%) or more of the piping, excluding connectors, connected to a single underground tank is considered to be a replacement and shall meet the new piping installation requirements in § 5704.
- 5902.14 Within thirty (30) days of any repair to spill or overfill prevention equipment, the repaired equipment shall be tested or inspected, as appropriate, in accordance with § 5900 to ensure it is operating properly.

### **5903 COMPATIBILITY**

- 5903.1 Each owner and operator shall use an UST system that is made of, or lined with, materials that are compatible with the substance stored in the UST system.
- 5903.2 Each owner or operator shall notify the Department at least thirty (30) days prior to changing the product stored in an UST to a regulated substance containing greater than ten percent (10%) ethanol or greater than twenty percent (20%) biodiesel.
- 5903.3 Each owner or operator of an UST system storing a regulated substance identified in § 5903.2 shall demonstrate compatibility of the UST system (including the tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment) with the regulated substance by:
- (a) Certification or listing of the UST system equipment or components for use with the regulated substance in American Petroleum Institute Recommended Practice RP 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Filling Stations," or an alternative industry standard or code of practice approved by the Department in accordance with § 5506;
  - (b) Equipment or component manufacturer approval in writing, affirmatively stating the equipment or component is compatible with the regulated substance stored and specifying the range of biofuel blends with which the equipment or component is compatible; or

- (c) Another option determined by the Department to be no less protective of human health and the environment than the options listed in paragraphs (a) and (b) of this subsection.

5903.4 Each owner or operator shall maintain records documenting compliance with §§ 5903.2 and 5903.3 for as long as the UST system is used to store the regulated substance.

#### **5904 WALKTHROUGH INSPECTIONS**

5904.1 Each owner or operator shall conduct inspections and perform repairs as necessary in accordance with this section. The first inspection shall be performed no later than October 13, 2021 and subsequent inspections shall be performed in accordance with the schedule provided in this section.

5904.2 Every thirty (30) days, each owner or operator shall conduct a walkthrough inspection that, at a minimum, checks the following equipment as specified below, except that spill prevention equipment associated with UST systems receiving deliveries at intervals greater than every thirty (30) days may be checked prior to each delivery:

- (a) For spill prevention equipment (such as a catchment basin, spill bucket, or other spill containment device): open and visually check for any damage, remove any liquid or debris, check for and remove obstructions in the fill pipe, check each fill cap to make sure it is securely on the fill pipe, and check for a leak in the interstitial area;
- (b) For monitoring pipes or observation wells: check covers to make sure they are secured; and
- (c) For release detection equipment: check to make sure the release detection equipment is operating with no alarms or other unusual operating conditions present, and ensure records of release detection testing are reviewed and are current, as specified in § 6000.

5904.3 Once a year, each owner or operator shall conduct a walkthrough inspection that, at a minimum, checks equipment as specified below:

- (a) For containment sumps and under dispenser containment or dispenser cabinets: open and visually check for any damage, leaks to the containment area, or releases to the environment; remove any liquid (in contained areas) or debris; and check for a leak in the interstitial area; and
- (b) For hand held release detection equipment: check devices such as tank gauge sticks or groundwater bailers for operability and serviceability.

- 5904.4 Petroleum Equipment Institute Recommended Practice RP 900, “Recommended Practices for the Inspection and Maintenance of UST Systems” may be used to comply with the requirements of §§ 5904.2 and 5904.3.
- 5904.5 Owners and operators of heating oil tanks with a capacity of less than one thousand one hundred (1,100) gallons are exempt from the requirement to perform monthly walkthrough inspections.
- 5904.6 The owner and operator shall prepare a record following each inspection that includes a description of each area inspected, whether the area inspected was acceptable or needed to have some action taken, a description of any actions taken, and delivery records if spill prevention equipment is not checked at least every thirty (30) days.
- 5904.7 Owners and operators shall maintain records of inspections required by this section for a period of ten (10) years.

#### **CHAPTER 60 UNDERGROUND STORAGE TANKS - RELEASE DETECTION**

- 6000 RELEASE DETECTION – GENERAL PROVISIONS**
- 6001 RELEASE DETECTION RECORDKEEPING**
- 6002 RELEASE DETECTION FOR HAZARDOUS SUBSTANCE UST SYSTEMS**
- 6003 RELEASE DETECTION FOR PETROLEUM UST SYSTEM TANKS**
- 6004 RELEASE DETECTION FOR PETROLEUM UST SYSTEM PIPING**
- 6005 INVENTORY CONTROL AND STATISTICAL INVENTORY RECONCILIATION**
- 6006 MANUAL TANK GAUGING**
- 6007 TANK TIGHTNESS TESTING**
- 6008 AUTOMATIC TANK GAUGING**
- 6009 VAPOR MONITORING**
- 6010 GROUNDWATER MONITORING**
- 6011 INTERSTITIAL MONITORING**
- 6012 STATISTICAL INVENTORY RECONCILIATION**
- 6013 OTHER METHODS OF RELEASE DETECTION**
- 6000 RELEASE DETECTION – GENERAL PROVISIONS**
- 6000.1 The owner or operator of each new or existing UST system shall utilize a method, or combination of methods, of release detection that meets the requirements of this section.
- 6000.2 The release detection method(s) utilized shall be suitable for the UST system according to the manufacturer's certification of performance.

- 6000.3 The owner or operator of each UST system shall comply with the release detection requirements for piping set forth in § 6004.
- 6000.4 If the owner or operator of any UST system cannot utilize a method of release detection that complies with the requirements of this chapter, the owner or operator shall close the UST in accordance with Chapter 61.
- 6000.5 Each release detection system shall be capable of detecting a release from any portion of the tank and also from the connected underground piping that contains or conveys a regulated substance.
- 6000.6 Each release detection system, including electronic and mechanical components, shall be installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition.
- 6000.7 Each release detection system shall meet the applicable performance requirements for the particular system in §§ 6004 through 6013.
- 6000.8 An owner or operator shall not install a release detection system unless the equipment manufacturer or installer provides written performance claims, including a description of the manner in which the claims were derived or tested.
- 6000.9 Each release detection method or system shall be capable of detecting the leak rate or quantity specified for the method in this chapter, with a probability of detection of at least ninety-five percent (95%) and a probability of false alarm of no more than five percent (5%).
- 6000.10 The Department will not approve a leak detection method or system that does not meet the requirements of this section, presents a safety hazard, or lacks performance data proving the reliability of the method under normal installation and operating conditions.
- 6000.11 When a release detection system does not perform in accordance with the manufacturer's performance requirements or the requirements of this chapter, the owner or operator shall repair or replace the release detection system within forty-five (45) days of the date of improper performance in accordance with the provisions of this chapter, unless an alternate release detection system that complies with the requirements of this chapter is in use.
- 6000.12 The owner or operator shall notify the Department within twenty-four (24) hours of the expiration of the forty-five (45) day period set forth in § 6000.11 if the release detection system is not repaired or replaced, and shall comply with the temporary closure requirements set forth in § 6100, unless an alternate release detection system that complies with the requirements of this chapter is in use.

- 6000.13 When a release detection method operated in accordance with the performance standards of §§ 6004 through 6013 indicates that a release may have occurred, the owner or operator shall notify the Department in accordance with the provisions of Chapter 62.
- 6000.14 The owner or operator of an UST system shall operate and maintain the release detection system, and test electronic and mechanical components, in accordance with one of the following:
- (a) The manufacturer's instructions;
  - (b) Petroleum Equipment Institute Recommended Practice RP1200, "Recommended Practices for the Testing and Verification of Spill, Overfill, Leak Detection and Secondary Containment Equipment at UST Facilities"; or
  - (c) An alternative industry standard or code of practice approved by the Department in accordance with § 5506.
- 6000.15 The owner or operator shall have a certified UST System Technician or UST System Tester test the proper operation of the release detection system at least annually, including, as applicable to the facility:
- (a) For automatic tank gauge and other controllers: test alarm, verify system configuration, and test battery backup;
  - (b) For probes and sensors: inspect for residual buildup, ensure floats move freely, ensure shaft is not damaged, ensure cables are free of kinks and breaks, test alarm operability and communication with controller;
  - (c) For automatic line leak detectors: test whether they meet the criteria in §§ 6004.3 and 6004.4 by simulating a leak;
  - (d) For vacuum pumps and pressure gauges: ensure proper communication with sensors and controller; and
  - (e) For hand-held electronic sampling equipment associated with groundwater and vapor monitoring: ensure proper operation.

**6001 RELEASE DETECTION RECORDKEEPING**

- 6001.1 The owner or operator of each UST shall maintain records demonstrating compliance with this chapter in accordance with this section and § 5602.
- 6001.2 All written performance claims pertaining to any release detection system that is in use, including a description of the manner in which those claims have been

justified or tested by the equipment manufacturer or installer, shall be maintained for at least ten (10) years after the date of installation.

- 6001.3 The results of any sampling, testing, or monitoring conducted under this chapter shall be maintained for at least ten (10) years, except as provided in § 6001.4.
- 6001.4 The results of tank tightness testing conducted in accordance with § 6007 shall be retained until the next tightness test is conducted.
- 6001.5 Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located at the UST facility shall be maintained for at least three (3) years after the servicing work is completed.
- 6001.6 All schedules of required calibration and maintenance provided by the release detection equipment manufacturer shall be retained for at least ten (10) years from the date of installation of the release detection system.
- 6001.7 No later than October 13, 2021, an owner or operator using groundwater or vapor monitoring for release detection shall maintain a record of the site assessment conducted pursuant to §§ 6009.7 or 6010.7 for as long as the method is used. Records of site assessments developed after February 21, 2020 must be signed by a professional engineer or professional geologist, or equivalent licensed professional with experience in environmental engineering, hydrogeology, or other relevant technical discipline acceptable to the Department.

**6002 RELEASE DETECTION FOR HAZARDOUS SUBSTANCE UST SYSTEMS**

- 6002.1 The owner or operator of each hazardous substance UST system shall provide release detection that meets the requirements of this section.
- 6002.2 Each hazardous substance UST system shall use secondary containment with interstitial monitoring in accordance with § 6011.
- 6002.3 The owner or operator shall check the secondary containment system for evidence of a release at least every thirty (30) days.
- 6002.4 The owner or operator shall test the secondary containment system every three (3) years to ensure that the interstitial area is liquid-tight or use continuous monitoring methods.
- 6002.5 For hazardous substance UST systems installed on or before February 8, 2007, the Department may approve an alternative method of release detection for a hazardous substance UST system if the owner or operator submits a request in accordance with § 5500.5 and:

- (a) Demonstrates to the satisfaction of the Department that the proposed alternative method can detect a release of the stored substance as effectively as any of the methods allowed in §§ 6006 through 6012; and
- (b) Provides information satisfactory to the Department on effective corrective action technologies, known and potential health risks, and the chemical and physical properties of the stored substance, and the physical characteristics of the UST system and facility.

**6003 RELEASE DETECTION FOR PETROLEUM UST SYSTEM TANKS**

- 6003.1 Each owner or operator of a petroleum UST system shall provide release detection for tanks in accordance with the provisions of this section.
- 6003.2 The owner or operator of a petroleum UST system shall conduct release detection in accordance with the requirements for the release detection method set forth in §§ 6005 through 6012 of this chapter.
- 6003.3 At least once every thirty (30) days, each petroleum UST shall be monitored for a release using one of the methods listed in §§ 6008 through 6012, except as provided in § 6003.4.
- 6003.4 An owner or operator of a heating oil tank with a capacity of one thousand one hundred (1,100) gallons or more may use one of the following methods of release detection as the sole method of release detection:
- (a) Inventory control in accordance with § 6005; or
  - (b) Tank tightness testing, once every three (3) years, in accordance with § 6007.
- 6003.5 The owner or operator of a petroleum UST that is not a heating oil tank, with a capacity of five hundred fifty (550) gallons or less, may use manual tank gauging in accordance with § 6006 as the sole method of release detection.
- 6003.6 The owner or operator of a petroleum UST, other than a heating oil tank or petroleum UST with a capacity of five hundred fifty (550) gallons or less, installed or replaced after February 8, 2007, shall check for evidence of a release at least once every thirty (30) days using interstitial monitoring.
- 6003.7 The owner or operator shall test the secondary containment system every three (3) years to ensure that the interstitial area is liquid-tight or use continuous monitoring methods.

**6004 RELEASE DETECTION FOR PETROLEUM UST SYSTEM PIPING**

- 6004.1 The owner or operator of a petroleum UST system shall regularly monitor all underground piping that contains or conveys regulated substances for releases, in accordance with the provisions of this section.
- 6004.2 Each method of release detection for petroleum UST system piping, except piping associated with a heating oil tank installed on or before November 12, 1993, shall meet the requirements of this section.
- 6004.3 Underground piping that conveys pressurized regulated substances shall be equipped with an automatic line leak detector that alerts the operator to the presence of a leak by triggering an audible and visual alarm, or restricting or shutting off the flow of regulated substances through the piping.
- 6004.4 An automatic line leak detector shall detect, within one (1) hour, leaks of three gallons per hour (3 gal/hr) at ten pounds per square inch (10 psi) line pressure.
- 6004.5 The owner or operator of an UST shall annually test for the proper operation of the automatic line leak detector in accordance with the manufacturer's instructions.
- 6004.6 An owner or operator of an UST with underground piping that conveys pressurized regulated substances shall conduct a line tightness test annually in accordance with § 6004.8, or use monthly monitoring methods in accordance with § 6004.10.
- 6004.7 Except as provided in § 6004.9, an owner or operator of an UST with underground piping that conveys regulated substances under suction shall conduct a line tightness test at least once every three (3) years in accordance with § 6004.8, or use monthly monitoring methods in accordance with § 6004.10.
- 6004.8 Periodic line tightness testing of piping shall detect a leak rate of one tenth of a gallon per hour (0.1 gal/hr) at one and one half (1.5) times the operating pressure.
- 6004.9 No release detection is required for safe suction piping if:
- (a) The below grade piping operates at less than atmospheric pressure;
  - (b) The below grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
  - (c) Only one (1) check valve is included in each suction line;
  - (d) The check valve is located directly below and as close as practical to the suction pump; and



- (e) The owner or operator maintains documentation that the piping complies with paragraphs (a) through (d) of this subsection and the documentation is readily available for inspection by the Department.

6004.10 Except as provided in § 6004.11, an owner or operator may conduct monthly monitoring of piping using any of the methods of release detection for tanks in §§ 6009 through 6011 if the method used is designed to detect a release from any portion of the underground piping that contains or conveys regulated substances.

6004.11 The owner or operator of an UST with underground piping installed or replaced after February 8, 2007, shall check for evidence of a release from the underground piping at least once every thirty (30) days using interstitial monitoring in accordance with § 6011.

## **6005 INVENTORY CONTROL AND STATISTICAL INVENTORY RECONCILIATION**

6005.1 A release detection method that uses product inventory control shall meet the requirements of this section.

6005.2 An owner or operator may use product inventory control as the sole method of release detection only for heating oil tanks.

6005.3 Product inventory control shall be conducted monthly to detect a release of at least the combined amount of one percent (1%) of flow-through plus one hundred thirty (130) gallons on a monthly basis in the following manner:

- (a) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank shall be recorded each operating day;
- (b) The measurement equipment used shall be capable of measuring the level of product over the full range of the tank's height to the nearest one eighth (1/8) of an inch;
- (c) The regulated substance inputs shall be reconciled with delivery receipts by measuring the tank inventory volume before and after delivery;
- (d) Each delivery shall be made through a drop tube that extends to within six (6) inches of the tank bottom;
- (e) Product dispensing shall be metered and recorded using devices that are registered with the Department of Consumer and Regulatory Affairs Office of Weights and Measures and in compliance with the Registration and Inspection of Weighing and Measuring Devices Amendment Act of 2004, effective December 7, 2004 (D.C. Law 15-205; D.C. Official Code

§§ 37-201.01 *et seq.*), or within an accuracy of six (6) cubic inches for every five (5) gallons of regulated substance withdrawn; and

- (f) The water level at the bottom of the tank shall be measured at least once each month to the nearest one eighth (1/8) of an inch.

## **6006 MANUAL TANK GAUGING**

- 6006.1 A release detection method that uses manual tank gauging shall meet the requirements of this section.
- 6006.2 An owner or operator may use manual tank gauging as the sole method of release detection only for a petroleum UST that is not a heating oil tank with a capacity of five hundred fifty (550) gallons or less.
- 6006.3 Manual tank gauging shall be conducted weekly.
- 6006.4 An owner or operator using manual tank gauging shall measure the liquid level in the tank at the beginning and end of a period of at least thirty-six (36) hours, during which no liquid is added to or removed from the tank. Each measurement shall be based on an average of two (2) consecutive stick readings. The measurements shall be recorded and maintained in accordance with § 5602.
- 6006.5 The equipment used for manual tank gauging shall be capable of measuring the level of product over the full range of the height of the tank to the nearest one eighth (1/8) of an inch.
- 6006.6 If the difference between the measurements at the beginning and end of a single weekly test exceeds ten (10) gallons, or if the average difference between the measurements at the beginning and end of four (4) consecutive weekly tests exceeds five (5) gallons, the owner or operator shall follow the requirements of Chapter 62 for a suspected release.

## **6007 TANK TIGHTNESS TESTING**

- 6007.1 A release detection method that uses tank tightness testing shall meet the requirements of this section.
- 6007.2 An owner or operator may use tank tightness testing as the sole method of release detection only for heating oil tanks.
- 6007.3 Tank tightness testing shall be capable of detecting a leak rate of one tenth of a gallon per hour (0.1 gal/hr) from any portion of the tank that regularly contains or conveys a regulated substance, and shall account for the effects of the following factors when detecting a leak rate:

- (a) Thermal expansion or contraction of the regulated substance;
- (b) Vapor pockets;
- (c) Tank deformation;
- (d) Evaporation and condensation; and
- (e) The location of the water table at the facility.

6007.4 An owner or operator shall conduct a tightness test in accordance with this section to satisfy the installation, upgrade, and/or repair requirements set forth in Chapters 57 through 59 before operating the newly installed, upgraded, and/or repaired UST system.

6007.5 An owner or operator shall use tightness testing in accordance with this section to confirm a suspected release under § 6203.

#### **6008 AUTOMATIC TANK GAUGING**

6008.1 A release detection method using automatic tank gauging equipment that tests for the loss of product and conducts inventory control shall meet the requirements of this section.

6008.2 The owner or operator shall ensure that the tank gauging probe is installed as close as possible to the middle of the tank and is not located adjacent to the fill pipe or submersible pump.

6008.3 An automatic product level monitor test shall be capable of detecting a leak rate of two tenths of a gallon per hour (0.2 gal/hr) from any portion of the tank that routinely contains a regulated substance.

6008.4 A tank installed after November 12, 1993, shall be installed horizontally without tank tilt if automatic tank gauging is used as a method of release detection.

6008.5 The automatic tank gauging system shall be inspected at least every thirty (30) days to ensure that it is operating correctly.

6008.6 The automatic tank gauging equipment shall meet the inventory control requirements of § 6005.3.

6008.7 The owner or operator shall perform the test for loss of product with the system operating in one of the following modes:

- (a) In-tank static testing conducted at least once every thirty (30) days; or

- (b) Continuous in-tank leak detection operating on an uninterrupted basis or alternatively, operating within a process that allows the system to gather incremental measurements to determine the leak status of the tank at least once every thirty (30) days.

6008.8 An owner or operator of an UST system installed after February 8, 2007, may use automatic tank gauging as a release detection method only if secondary containment and interstitial monitoring methods are also used.

**6009 VAPOR MONITORING**

6009.1 A release detection method that monitors or tests for vapors within the soil gas of the excavation zone shall meet the requirements of this section.

6009.2 The materials used as backfill (such as gravel, sand, crushed rock, or similar materials) shall be sufficiently porous to readily allow diffusion of vapors from releases into the excavation zone.

6009.3 The stored regulated substance, or a tracer compound placed in the tank system, shall be sufficiently volatile to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank.

6009.4 The monitoring device measuring vapors shall not be rendered inoperative or less effective by groundwater, rainfall, soil moisture, or any other known interference to the point that a release could go undetected for more than fifteen (15) days.

6009.5 The level of background contamination in the excavation zone shall not interfere with the vapor monitoring method used to detect releases from the tank.

6009.6 The vapor monitor used shall be designed and operated to detect any significant increase above the background concentration in the excavation zone of:

- (a) The regulated substance stored in the tank system;
- (b) A component or components of the regulated substance; or
- (c) A tracer compound placed in the tank system.

6009.7 Before using vapor monitoring, the owner or operator shall assess the excavation zone to ensure compliance with §§ 6009.2 through 6009.6 and determine the number and positioning of monitoring wells required to detect releases within the excavation zone from any portion of the tank that routinely contains regulated substances. The owner or operator shall install monitoring wells in accordance with the assessment before operating the UST system.

6009.8 Monitoring wells shall be clearly marked and secured to avoid unauthorized access and tampering. Monitoring wells shall not be marked in any way that could be associated with a regulated substance stored at the facility.

6009.9 An owner or operator of an UST system installed after February 8, 2007, may use vapor monitoring as a release detection method only if secondary containment and interstitial monitoring methods are also used.

## **6010 GROUNDWATER MONITORING**

6010.1 A release detection method that tests or monitors for regulated substances in the groundwater or in the tank excavation zone shall meet the requirements of this section.

6010.2 The regulated substance stored shall be immiscible in water and have a specific gravity of less than one (1).

6010.3 The groundwater shall never be more than twenty feet (20 ft) from the ground surface, and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices shall not be less than one hundredth of a centimeter per second (0.01 cm/s). The soil should consist of gravel, coarse to medium sand, coarse silt, or other permeable materials.

6010.4 The slotted portion of the monitoring well casing shall be designed to prevent the migration of natural soils or filter pack into the well, while allowing entry of any regulated substance on the water table into the well, under both high and low groundwater conditions.

6010.5 Monitoring wells shall be sealed from the ground surface to the top of the filter pack in accordance with the requirements of 21 DCMR Chapter 18.

6010.6 Monitoring wells or devices shall intercept the excavation zone or be as close to the excavation zone as is technically feasible.

6010.7 Before using groundwater monitoring methods, the owner or operator shall assess the excavation zone and area immediately below the excavation zone to ensure compliance with §§ 6010.2 through 6010.6, and determine the number and position of monitoring wells or devices that will detect releases within the excavation zone from any portion of the tank that routinely contains a regulated substance. The owner or operator shall install monitoring wells or devices in accordance with the assessment before operating the UST system. A minimum of two (2) monitoring wells shall be required in each excavation zone.

6010.8 The continuous monitoring devices or manual methods used shall be capable of detecting the presence of at least one eighth (1/8) of an inch of free product on top of the groundwater in a monitoring well.

6010.9 Each monitoring well shall be clearly marked and secured to avoid unauthorized access and tampering.

6010.10 An owner or operator of an UST system installed after February 8, 2007, may use groundwater monitoring a release detection method only if secondary containment and interstitial monitoring methods are also used.

## **6011 INTERSTITIAL MONITORING**

6011.1 Interstitial monitoring between an UST system and a secondary barrier immediately around or beneath the UST system shall meet the requirements of this section.

6011.2 The owner or operator of an UST system installed or replaced after February 8, 2007 shall check for evidence of a release at least once every thirty (30) days using interstitial monitoring.

6011.3 An interstitial monitoring system shall be designed, constructed, and installed to detect a leak from any portion of the tank or piping that routinely contains a regulated substance.

6011.4 Where vacuum monitoring is utilized, the vacuum shall be maintained at not less than five (5) inches of mercury, and shall not exceed manufacturer's instructions.

6011.5 If the vacuum falls below five (5) inches of mercury, the owner or operator shall follow the requirements of Chapter 62 for a suspected release.

6011.6 A vacuum shall not be re-instituted more frequently than once every three (3) months without prior approval of the Department.

6011.7 For double-walled USTs, the sampling or testing method shall be capable of detecting a leak through the inner wall in any portion of the tank that routinely contains a regulated substance.

6011.8 For tanks with an internally fitted liner, an automated device shall be used that is capable of detecting a leak between the inner wall of the tank and the liner. The liner shall be compatible with the substance stored.

6011.9 For UST systems with a secondary barrier within the excavation zone, the secondary barrier shall meet the following requirements:

- (a) The secondary barrier around or beneath the UST shall consist of synthetic constructed material that is sufficiently thick and impermeable to direct a leak to the monitoring point and permit its detection, and the permeability

shall be not greater than one millionth of a centimeter per second ( $10^{-6}$  cm/s) for the regulated substance stored;

- (b) The barrier shall be compatible with the regulated substance stored so that a leak from the UST will not cause a deterioration of the barrier sufficient to allow a release to pass through undetected; and
- (c) If the tank is cathodically protected, the barrier shall be installed so that it does not interfere with the proper operation of the cathodic protection system.

6011.10 An UST with a secondary barrier within the excavation zone shall use a sampling or testing method that is capable of detecting a release between the UST and the secondary barrier.

6011.11 The testing or sampling method used shall not be rendered inoperative or less effective by groundwater, rainfall, soil moisture, or any other known interference to the point that a release could go undetected for more than thirty (30) days.

6011.12 The owner or operator of an UST system with a secondary barrier within the excavation zone shall assess the facility to ensure that the secondary barrier is always above the groundwater and not located in a twenty-five (25) year floodplain, unless the barrier and monitoring designs are designed for use under those conditions.

6011.13 The monitoring wells for each UST with a secondary barrier within the excavation zone shall be clearly marked and secured to avoid unauthorized access and tampering.

6011.14 Interstitial monitoring alarms are an unusual operating condition that shall be reported as specified under § 6202.5.

6011.15 If a system test confirms a leak in either the inner or outer tank wall or liner, effectively rendering the tank a single wall tank, the owner or operator shall repair, replace, upgrade, or close the UST as specified in § 6203.

## **6012 STATISTICAL INVENTORY RECONCILIATION**

6012.1 A release detection method based on the application of statistical principles to inventory data similar to those described in § 6005 shall meet the requirements of this section.

6012.2 Statistical inventory reconciliation shall be conducted monthly and shall:

- (a) Report a quantitative result with a calculated leak rate;

- (b) Be capable of detecting a leak rate of two tenths of a gallon per hour (0.2 gal/hr) or a release of one hundred fifty (150) gallons within thirty (30) days; and
- (c) Use a threshold for declaring a leak that does not exceed one half of the minimum detectible leak rate.

6012.3 An owner or operator using statistical inventory reconciliation shall verify the accuracy of the selected statistical inventory reconciliation method using a separate test procedure to confirm that the method can detect leaks at the required level in accordance with § 6012.2 and with the probabilities of detection and false alarm required in § 6000.9.

6012.4 An owner or operator using statistical inventory reconciliation shall ensure that the accuracy of the selected method has been evaluated and verified through independent third party certification and shall maintain these evaluation records for a period of ten (10) years.

### **6013 OTHER METHODS OF RELEASE DETECTION**

6013.1 An owner or operator of an UST system installed on or before February 8, 2007 may apply to the Department for approval of another method of release detection by submitting a written request describing the method to the Department in accordance with § 5500.5.

6013.2 For UST systems installed on or before February 8, 2007, the Department may approve an application for the use of another method of release detection only if the owner or operator demonstrates that the method is capable of detecting a release as effectively as any of the methods allowed in §§ 6007 through 6012 and meets the requirements of this section.

6013.3 The alternative release detection method, or combination of methods, shall be capable of detecting either of the following:

- (a) A leak rate of two tenths of a gallon per hour (0.2 gal/hr); or
- (b) A release of one hundred fifty (150) gallons within a month.

6013.4 The alternative release detection method shall detect a leak rate or quantity in § 6013.3 with a probability of detection of at least ninety-five percent (95%) and a probability of false alarm no more than five percent (5%).

6013.5 In comparing methods, the Department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected.



- 6013.6 If an alternative method is approved, the owner or operator shall comply with any conditions imposed by the Department on its use.
- 6013.7 For any tanks installed or replaced after February 8, 2007, alternatives to interstitial monitoring shall not be approved or used.

## **CHAPTER 61 UNDERGROUND STORAGE TANKS – CLOSURE**

- 6100 TEMPORARY CLOSURE**  
**6101 PERMANENT CLOSURE AND CHANGE-IN-SERVICE**  
**6102 PREVIOUSLY CLOSED UST SYSTEMS**  
**6103 CLOSURE RECORDS**

### **6100 TEMPORARY CLOSURE**

- 6100.1 For purposes of this section, an UST shall be deemed temporarily closed when it is taken out of service for any reason and is not being used to receive or dispense product.
- 6100.2 When an UST is temporarily closed, the owner or operator of the UST shall comply with the requirements of this section.
- 6100.3 An UST in temporary closure is subject to the registration requirements in § 5601 and the corrosion protection requirements in § 5901.
- 6100.4 A heating oil tank shall not be deemed temporarily closed until fifteen (15) months after it is last used to receive or dispense product, unless it cannot be used to dispense product in accordance with the UST Regulations.
- 6100.5 The owner or operator of an UST shall submit a temporary closure notification form, which is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>, to the Department at least thirty (30) days prior to the temporary closure of the UST.
- 6100.6 The UST shall be emptied of product in accordance with § 6100.9 during temporary closure.
- 6100.7 During the period when the UST system is temporarily closed and still contains product, the owner or operator shall comply with release detection requirements in Chapter 60.
- 6100.8 If a release is suspected or confirmed during the period when the UST is temporarily closed, the owner or operator shall immediately comply with § 6100.9 and the applicable requirements of Chapter 62.

- 6100.9 Within ninety (90) days after an UST is temporarily closed, the owner or operator shall do the following:
- (a) Remove all regulated substances from the UST and keep the UST empty for the balance of the temporary closure period. The UST system shall be deemed to be empty when all materials have been removed using commonly employed practices so that either of the following is achieved:
    - (1) No more than two and one half centimeters (2.5 cm) of residue remains in the UST; or
    - (2) No more than three tenths of one percent (0.3%) by weight of the total capacity of the UST system remains in the system;
  - (b) Ensure that all vent lines are open and functioning;
  - (c) Cap and secure all other lines, pumps, manways, and ancillary equipment; and
  - (d) Within seven (7) days after completing the activities required by §§ 6100.9(a) through (c), the owner or operator shall submit to the Department an amended UST facility notification form pursuant to § 5600.1 that is:
    - (i) Signed by the UST System Technician who performed the activities stated in §§ 6100.9(a) through (c); or
    - (ii) Signed by an UST System Technician who has inspected and verified that the owner or operator performed the activities stated in §§ 6100.9(a) through (c).
- 6100.10 Except as provided in §§ 6100.11 through 6100.12, the owner or operator shall permanently close the UST in accordance with the requirements of § 6101 once the UST has been temporarily closed for twelve (12) months.
- 6100.11 The owner or operator may submit a written request for an extension to the Department not less than thirty (30) days before the expiration of the twelve (12) month temporary closure period. The request for extension shall include results of a site assessment, conducted in accordance with §§ 6101.10 through 6101.12, of the soil and groundwater conditions near the UST and information about any corrective action taken to address any contamination discovered by the assessment due to any release from the UST.
- 6100.12 The Department may approve a request for extension of the temporary closure period for two (2) additional twelve (12) month periods. The Department may

approve additional extensions only if the Director determines that the additional extension is justified based on good cause shown.

**6101 PERMANENT CLOSURE AND CHANGE-IN-SERVICE**

- 6101.1 Each responsible party permanently closing an UST or changing the use of the UST to storage of a non-regulated substance (a change-in-service) shall comply with the requirements of this section.
- 6101.2 Not less than two (2) weeks before a permanent closure or a change-in-service of an UST, the responsible party shall notify the Department by submitting an UST activity notification form, which is available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>. Notice is not required if such action is taken pursuant to a corrective action plan approved by the Department.
- 6101.3 The responsible party may use the following codes of practice, or an alternative industry standard or code of practice approved by the Department in accordance with § 5506, to comply with the cleaning and closure requirements of this section:
- (a) American Petroleum Institute Recommended Practice RP 1604, "Closure of Underground Petroleum Storage Tanks";
  - (b) American Petroleum Institute Standard 2015, "Safe Entry and Cleaning of Petroleum Storage Tanks, Planning and Managing Tank Entry From Decommissioning Through Recommissioning";
  - (c) American Petroleum Institute Recommended Practice RP 2016, "Guidelines and Procedures for Entering and Cleaning Petroleum Storage Tanks"; or
  - (d) National Fire Protection Association Standard 326, "Standard for the Safeguarding of Tanks and Containers for Entry, Cleaning, or Repair."
- 6101.4 Before a change-in-service, the responsible party shall empty and clean the tank by removing and properly disposing of all liquid and all accumulated sludge in compliance with applicable laws and regulations.
- 6101.5 Before an UST system is removed from the ground, the responsible party shall empty the UST system, if it is not already emptied during the temporary closure period, and clean it by removing and properly disposing of all liquids and all accumulated sludge in compliance with applicable laws and regulations.
- 6101.6 For each UST system that is to be closed permanently, the responsible party shall remove the tank from the ground, unless a tank removal variance is granted by the Department pursuant to § 6101.7.

- 6101.7 A responsible party may apply for a tank removal variance (for closure-in-place) by submitting the following documents:
- (a) A written request for a tank removal variance;
  - (b) Written certification of the existence of the conditions stated in § 6101.8, with supporting documentation, from a professional engineer licensed in the District; and
  - (c) A tank interior inspection report or the results of analysis of soil borings taken from soil adjacent to the tank if the interior cannot be inspected.
- 6101.8 The Department may grant a tank removal variance if removal of the tank is likely to cause substantial structural damage to buildings or other improvements on the property, or there are other circumstances that make removal of the tank infeasible.
- 6101.9 If the Department grants a variance, the responsible party shall ensure that the tank is emptied, cleaned, and filled with an inert solid material, such as cement, or another material approved by the Department in accordance with § 5500.5.
- 6101.10 Before a change-in-service or permanent closure of an UST, the responsible party shall conduct a closure assessment of the excavation zone to test for the presence of a release in the areas around the UST system where contamination is most likely to be present.
- 6101.11 In selecting sample types, sample locations, and analytical methods for the closure assessment, the responsible party shall consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release. The responsible party shall comply with any directives that may be issued by a Department inspector regarding the number of samples and the location of soil borings or groundwater monitoring wells.
- 6101.12 If contaminated soil, contaminated groundwater, free product, or vapor are discovered during the closure assessment, or by any other manner, the responsible party shall begin corrective action in accordance with the applicable provisions of Chapter 62, except as provided in § 6101.15.
- 6101.13 Soil excavated during removal or corrective action shall be handled as follows:
- (a) Soil that has been tested and that does not exceed Tier 0, or Tier 1 for total petroleum hydrocarbon gasoline range organics (TPH-GRO) on sites with current or future residential use, screening levels may be placed on the site

and shall be covered with plastic as a soil erosion control measure until backfilled or permanently stabilized;

- (b) Soil that exceeds Tier 0, or Tier 1 for TPH-GRO on sites with current or future residential use, standards shall be treated or properly disposed of at an approved disposal location;
- (c) When approved by the Department, excavated soil may be stockpiled at the excavation site for no more than ten (10) business days pending completion of testing and analysis for contaminants; and
- (d) Soil shall not be placed on another property unless specifically approved by the Department in accordance with § 5500.5.

6101.14 Soil that exceeds Tier 0, or Tier 1 for TPH-GRO on sites with current or future residential use, risk-based screening levels shall not be returned to the excavation pit or used on the site without treatment.

6101.15 If a release of a regulated substance has occurred, the responsible party shall evaluate the excavation zone as follows:

- (a) Remove contaminated soils to a depth of at least five feet (5 ft) below the tank bottom and a width of at least five feet (5 ft) from the sides of the tank;
- (b) Assess the excavation zone for evidence of contamination (such as free product or vapors requiring initial response, initial abatement actions, or free product removal pursuant to §§ 6203 or 6204) and sample the remaining soil for chemicals of concern;
- (c) If the levels of chemicals of concern in the remaining soil exceed the Tier 1 screening levels, take at least one (1) groundwater sample to determine whether any chemicals of concern in groundwater exceed the Tier 1 screening levels;
- (d) Remove additional soil from the excavation zone as necessary until the levels of chemicals of concern in the remaining soil are below Tier 1 screening levels, the groundwater does not exceed the Tier 1 screening levels, and there is no other evidence of contamination; and
- (e) If the criteria set forth in paragraph (d) of this subsection cannot be met, begin corrective action in accordance with the applicable provisions of Chapter 62.

6101.16 Within thirty (30) days after completing the permanent closure or change-in-service, the responsible party shall submit to the Department a closure assessment

report in a format provided by the Department and submit an amended UST facility notification form, both of which are available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>. The Department may open a LUST case and require additional site assessment and cleanup according to Chapter 62.

## **6102 PREVIOUSLY CLOSED UST SYSTEMS**

- 6102.1 If the Department determines that any release or suspected release from an UST system that was closed-in-place, removed, or temporarily closed poses a current or potential threat to human health and the environment, the Department may direct a responsible party to assess the excavation zone and take appropriate corrective action, including closure of the UST system in accordance with § 6101 if it is not already permanently closed.
- 6102.2 If the Department determines that an UST system has not been temporarily closed or closed-in-place in accordance with this chapter, the Department may direct a responsible party to permanently close the UST system and assess the excavation zone in accordance with § 6101.

## **6103 CLOSURE RECORDS**

- 6103.1 Each responsible party shall maintain records in accordance with § 5602 that demonstrate compliance with closure requirements of this chapter.
- 6103.2 The responsible party shall retain the results of a closure assessment required under § 6101.10 for at least ten (10) years after permanent closure or change-in-service or deliver the records to the Department in accordance with the provisions of § 5602.6.
- 6103.3 After ten (10) years, the responsible party shall deliver all records demonstrating compliance with this chapter to the Department.

## **CHAPTER 62 UNDERGROUND STORAGE TANKS – REPORTING OF RELEASES, INVESTIGATION, CONFIRMATION, ASSESSMENT, AND CORRECTIVE ACTION**

- 6200 OBLIGATIONS OF RESPONSIBLE PARTIES – RELEASES, SPILLS, AND OVERFILLS**
- 6201 REPORTING AND CLEAN-UP OF SPILLS AND OVERFILLS**
- 6202 REPORTING OF RELEASES OF REGULATED SUBSTANCES**
- 6203 SITE INVESTIGATION, CONFIRMATION OF RELEASE, INITIAL ABATEMENT, AND INITIAL SITE ASSESSMENT**
- 6204 REMOVAL OF FREE PRODUCT**
- 6205 COMPREHENSIVE SITE ASSESSMENT**

**6206 RISK-BASED CORRECTIVE ACTION (RBCA) PROCESS**  
**6207 CORRECTIVE ACTION PLAN AND ITS IMPLEMENTATION**  
**6208 TIER 0 STANDARDS**  
**6209 TIERS 1 AND 2 STANDARDS**  
**6210 NO FURTHER ACTION AND CASE CLOSURE REQUIREMENTS**  
**6211 PUBLIC PARTICIPATION IN CORRECTIVE ACTION**  
**6212 VOLUNTARY REMEDIATION ACTION PROGRAM (VRAP)**

**6200 OBLIGATIONS OF RESPONSIBLE PARTIES - RELEASES, SPILLS, AND OVERFILLS**

- 6200.1 All responsible parties are subject to the requirements of this chapter.
- 6200.2 If the actions required by this chapter are not taken, the Department may undertake the corrective action and any responsible party shall be liable to the District government for the costs of any corrective action taken.
- 6200.3 Nothing in this chapter shall be construed to alter the private rights and liabilities between a neighboring property owner and a responsible party, or to relieve a responsible party of any liability he or she may have under statutory or common law for causing the release of the regulated substance which migrated onto a neighboring property.
- 6200.4 The provisions of 40 CFR §§ 280.200 through 280.230 (Lender Liability) are incorporated by reference and shall apply to all existing and future security interests, including holders of security interests as defined in 40 CFR § 280.200(d).
- 6200.5 For purposes of this chapter, a voicemail message shall not be considered telephone notification.

**6201 REPORTING AND CLEANUP OF SPILLS AND OVERFILLS**

- 6201.1 A responsible party shall take immediate action to contain and clean up any spill or overfill of a regulated substance from an UST system.
- 6201.2 A responsible party shall immediately report any spill or overfill of a regulated substance from an UST system when there is any danger of fire or explosion to the Department by telephone at (202) 535-2600 or by e-mail at [ust.doe@dc.gov](mailto:ust.doe@dc.gov), and to the District Fire Chief at (202) 727-1614.
- 6201.3 A responsible party shall immediately contain and clean up a spill or overfill of petroleum that is less than twenty-five (25) gallons. If the cleanup cannot be completed within twenty-four (24) hours, the responsible party shall immediately notify the Department by telephone or e-mail as stated in § 6201.2.

- 6201.4 If a spill or overflow of petroleum results in a release to the environment of more than twenty-five (25) gallons, a responsible party shall report the release to the Department by telephone or e-mail as stated in § 6201.2 within twenty-four (24) hours of the occurrence. The responsible party shall begin corrective action in accordance with the applicable provisions of this chapter.
- 6201.5 A responsible party shall immediately report any spill or overflow of a hazardous substance to the Department by telephone or e-mail and the District Fire Chief as stated in § 6201.2, and to the District Homeland Security and Emergency Management Agency at (202) 727-6161. The responsible party shall immediately contain and clean up the spill or overflow. If the cleanup cannot be completed within twenty-four (24) hours, the responsible party shall begin corrective action in accordance with the applicable provisions of this chapter.
- 6201.6 In addition to the requirements of § 6201.5, if a spill or overflow of a hazardous substance results in a release to the environment that equals or exceeds the Comprehensive Environmental Response, Compensation, and Liability Act reportable quantity for the substance under 40 CFR Part 302 (Designation, Reportable Quantities, and Notification), a responsible party shall also report the release to the federal government's National Response Center at (800) 424-8802.
- 6201.7 If a spill or overflow of petroleum causes a sheen on surface water (such as a lake, pond, stream, river, or creek), a responsible party shall immediately report the release to the Department by telephone or e-mail as stated in § 6201.2, to the District Homeland Security and Emergency Management Agency at (202) 727-6161, and to the National Response Center at (800) 424-8802.

## **6202 REPORTING OF RELEASES OF REGULATED SUBSTANCES**

- 6202.1 A responsible party who has reason to suspect a release from an UST shall notify the Department by telephone or e-mail as stated in § 6201.2 within twenty-four (24) hours.
- 6202.2 The following persons who know of, or have reason to suspect, a release from an UST system shall notify the owner or operator of the release or suspected release immediately, and notify the Department by telephone or e-mail as stated in § 6201.2 within twenty-four (24) hours of first having knowledge of the release or suspected release:
- (a) Any authorized agent, contractor, or consultant for a responsible party;
  - (b) Any person who tests, installs, or permanently closes tanks;
  - (c) Any person who engages in site investigation, assessment, remediation, or geotechnical exploration; or



- (d) Any public utility company or authorized agent of a public utility company.

6202.3 The notification of a release or suspected release to the Department shall include, if known:

- (a) The name of the UST system's owner and operator, and any other responsible party;
- (b) The location, date, time, volume, source, and cause of the release or suspected release;
- (c) The substance released or suspected to have been released;
- (d) Any immediate or ongoing action taken to mitigate the release;
- (e) Any hazardous conditions caused by the release; and
- (f) Any potential environmental hazard caused by the condition of the UST system.

6202.4 A responsible party shall not knowingly allow any release from an UST system to continue, and shall investigate and repair the problem causing the release as soon as possible.

6202.5 Each owner or operator of an UST system shall report the following conditions to the Department by telephone or e-mail as stated in § 6201.2 within twenty-four (24) hours of learning of the condition and shall follow the procedures in § 6203 whenever there is:

- (a) A discovery of released regulated substances at the UST facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, or nearby surface water);
- (b) Unusual operating conditions in the UST system (such as erratic behavior of product dispensing equipment, sudden loss of product from the UST system, unexplained presence of water in the tank, or liquid in the interstitial space of a secondarily contained system), unless:
  - (1) The system equipment or component is found not to be releasing regulated substances to the environment;
  - (2) Any defective system equipment or component is immediately repaired or replaced; and

- (3) For a secondarily contained system, except as provided for in § 6011.11, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed.
- (c) Monitoring results, including an alarm, from a release detection method required under §§ 6002 through 6013, that indicate a release may have occurred unless:
  - (1) The monitoring device is found to be defective and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result;
  - (2) The leak is contained in the secondary containment and:
    - (A) Except as provided for in § 6011.11, any liquid in the interstitial space not used as part of the interstitial monitoring method (for example, brine filled) is immediately removed; and
    - (B) Any defective system equipment or component is immediately repaired or replaced;
  - (3) When using the inventory control method described in § 6005, a second month of data does not confirm the initial result or an investigation determines that no release has occurred; or
  - (4) The alarm was investigated and the cause is determined to be a non-release event (for example, from a power surge or caused by filling the tank during release detection testing).

6202.6 A responsible party shall immediately investigate a suspected release or condition listed in § 6202.5 using the procedures in § 6203, and shall confirm whether a release has occurred within seven (7) days of the suspected release or discovery of the condition.

6202.7 If the Department has reason to believe a release has occurred, the Department may require the owner or operator of the UST to follow the procedures in § 6203.

**6203 SITE INVESTIGATION, CONFIRMATION OF RELEASE, INITIAL ABATEMENT, AND INITIAL SITE ASSESSMENT**

6203.1 When a release, or leak into the interstitial area of a secondarily contained system, is suspected, a responsible party shall conduct tightness testing in accordance with §§ 5902.7, 6004.8, and 6007 to determine whether:

- (a) A leak exists in the portion of the tank that routinely contains a regulated substance or in the attached delivery piping; or
  - (b) A breach of either wall of the secondary containment has occurred.
- 6203.2 If the tightness test confirms a leak into the interstitial area or a release, the responsible party shall repair, replace, upgrade, or close the UST system, and begin corrective action in accordance with this chapter.
- 6203.3 The responsible party may use the UST system to store regulated substances before completing corrective action only if the source and cause of the leak or release has been identified and remedied.
- 6203.4 A responsible party shall also conduct a site investigation, as set forth in §§ 6203.5 through 6203.7, if:
  - (a) The tightness test results for the system, tank, or delivery piping indicate that a release has occurred; or
  - (b) The environmental contamination detected by visual or analytical data indicates that a release has occurred.
- 6203.5 When conducting a site investigation, the responsible party shall test for the presence of a release where contamination is most likely to be present at the UST site.
- 6203.6 In selecting the sample types, sample locations, and measurement methods for a site investigation, the responsible party shall consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, the presence of a basement sump pump, and other factors appropriate for identifying the presence of a released substance and the source of the release. The responsible party shall comply with any Department directives, available on the Department's website at <https://doee.dc.gov/page/ust-forms-guidance-and-public-documents>, regarding sample types, sample locations, measurement methods, and sampling protocols.
- 6203.7 If the sample results of the site investigation do not confirm that a release has occurred, no further investigation is required.
- 6203.8 Upon discovery of a release or confirmation of a suspected release, a responsible party shall perform the following initial response actions:
  - (a) Immediately identify and mitigate any fire, explosion, and vapor hazards;
  - (b) Take immediate action to prevent any further release of the regulated substance into the environment;

- (c) If the notification under § 6202 was of a suspected release or condition listed in § 6202.5, notify the Department by telephone or e-mail and the District Fire Chief, as stated in § 6201.2, no later than twenty-four (24) hours after confirmation of the release or of a false alarm; and
- (d) Submit a written report containing the information required in § 6202.3 to the Department, in accordance with § 5500.4, within seven (7) days of discovery or confirmation of the release.

6203.9 Section 6203.8 does not apply to any UST system exempt from the UST regulations under § 5501.3, or to any UST system subject to the corrective action requirements under § 3004(u) of the Solid Waste Disposal Act, 42 USC § 6924(u), as amended.

6203.10 Upon discovery of a release or confirmation of a suspected release, a responsible party shall take the following initial abatement actions:

- (a) Remove all regulated substance from the UST, unless the Department approves removal of a lesser amount that is sufficient to prevent further release to the environment;
- (b) Visually inspect any aboveground releases or exposed belowground releases and prevent further migration of the released substance into surrounding soils and groundwater; and
- (c) Continue to monitor and mitigate any fire and safety hazards posed by vapors or free product that have migrated from the excavation zone and entered into subsurface structures (such as sewers or basements).

6203.11 A responsible party shall remedy hazards posed by contaminated soils that are excavated or exposed as a result of site investigation, release confirmation, abatement, or corrective action activities. If the remedy includes treatment or disposal of soil, the responsible party shall comply with all applicable provisions of District laws and regulations, including 21 DCMR Chapters 5, 7, 8, and 20.

6203.12 Upon discovery of a release or confirmation of a suspected release, a responsible party shall conduct an initial site assessment that evaluates conditions within the property boundaries of the property where the UST is located, and prepare an initial site assessment report summarizing the results, which includes the following actions:

- (a) Unless the presence, source, and cause of the release have been confirmed in the site investigation required by § 6203.4 or the closure assessment in § 6101.10, test for the presence of a regulated substance by taking soil

borings and by installing groundwater or soil vapor monitoring wells where contamination is most likely to be present at the UST facility;

- (b) In selecting the sample types, sample locations, and measurement methods to test pursuant to § 6203.12(a), consider the nature of the stored substance, the type of backfill, depth to groundwater, and other factors as appropriate for identifying the presence and source of the release;
- (c) Analyze and summarize the levels of contaminants in the soil borings and groundwater samples;
- (d) Summarize the initial response actions taken pursuant to § 6203.8; and
- (e) Summarize the initial abatement actions taken pursuant to § 6203.10.

6203.13 Upon discovery of a release or confirmation of a suspected release, a responsible party shall determine whether free product is present. If any phase of the site investigation determines that free product is present, the responsible party shall begin free product removal as soon as practicable in accordance with § 6204.

6203.14 Within sixty (60) days after release confirmation, a responsible party shall submit to the Department, in accordance with § 5500.4, an initial site assessment report prepared pursuant to § 6203.12 for review, and if applicable, include the first status report on the removal of free product. If further assessment is needed to determine the nature and extent of contamination from the release, the responsible party shall submit a work plan for comprehensive site assessment, in accordance with § 6205, for the Department's approval. A responsible party may request a meeting with the Department to discuss the work plan.

6203.15 For purposes of this section, the phrase “aboveground release” means a release to the surface of the land or to surface water, including a release from a portion of an UST system above the ground surface or a release associated with a transfer of a regulated substance to or from an UST system.

6203.16 For purposes of this section, the phrase “belowground release” means any release to the subsurface of the land and to groundwater, including a release from the portion of an UST system below the ground surface or a belowground release associated with a transfer of a regulated substance to or from an UST.

## **6204 REMOVAL OF FREE PRODUCT**

6204.1 When an investigation indicates the presence of any free product, the responsible party shall remove measurable free product in accordance with this section until the Department determines that the free product has been removed to the maximum extent practicable.

- 6204.2 The Department may issue a directive with a schedule for removal of free product, or the responsible party may submit a schedule to the Department in writing, in accordance with § 5500.5, for the Department's approval.
- 6204.3 The responsible party shall conduct the removal of free product in a manner that minimizes the spread of contamination by using recovery techniques appropriate to the hydrogeological conditions at the site.
- 6204.4 The responsible party shall conduct the recovery and off-site disposal of free product in a manner that properly treats, discharges, recycles, or disposes of recovery byproducts in compliance with all applicable laws and regulations.
- 6204.5 The free product removal system shall be designed to prevent free product migration.
- 6204.6 The responsible party shall ensure that any flammable substances are handled in a manner that will prevent fire and explosion.
- 6204.7 The responsible party shall prepare and submit to the Department, in accordance with § 5500.4, a status report on the removal of any free product that provides at least the following information:
- (a) The name of the person(s) responsible for implementing the free product removal measures;
  - (b) The estimated quantity, type, and viscosity of free product observed or measured on-site, including in wells, boreholes, and excavations;
  - (c) The type of free product recovery system used;
  - (d) Whether any groundwater treatment and discharge will take place during the recovery operation and where the discharge point will be located;
  - (e) The type of treatment applied to, and the effluent quality expected from, any such discharge;
  - (f) The steps that have been or are being taken to obtain necessary permits for any discharge; and
  - (g) The disposition of the recovered free product.
- 6204.8 Unless otherwise directed by the Department, the status report required in § 6204.7 shall be submitted to the Department, in accordance with § 5500.4, within sixty (60) days of release confirmation and then once each quarter until the Department determines that free product removal is complete.

**6205 COMPREHENSIVE SITE ASSESSMENT**

- 6205.1 Unless otherwise directed by the Department, the responsible party shall perform a comprehensive site assessment in the time and manner set forth in this section.
- 6205.2 Within sixty (60) days after Department approval of a work plan pursuant to § 6203.14, the responsible party shall submit a comprehensive site assessment report to the Department, in accordance with § 5500.4, in a form satisfactory to the Department, which is available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>.
- 6205.3 A comprehensive site assessment report shall include the following elements, as appropriate to the conditions of the site:
- (a) The nature of the release, including: the chemical compound(s) present; its concentration(s); the quantity or quantities released if known; and the physical and chemical characteristic(s) related to potential human health and environmental impacts and cleanup procedures;
  - (b) Information from available sources or site investigations about:
    - (1) Current and reasonably foreseeable future surrounding land use;
    - (2) Surrounding populations;
    - (3) Water quality;
    - (4) Use and approximate location of wells potentially affected by the release;
    - (5) Subsurface soil conditions;
    - (6) Climatological conditions; and
    - (7) Locations of all subsurface utilities that are potential pathways, including sewers, water and gas pipelines, or other conduits;
  - (c) The results of the site investigation and any information gained while performing initial abatement measures pursuant to § 6203;
  - (d) The results of the free product investigations required under § 6203.13;
  - (e) The areal extent of the release, including the horizontal and vertical extent of the release, whether the chemicals of concern are distributed homogeneously or heterogeneously, and any future migration potential;

- (f) The physical characteristics of the site, including characteristics affecting the occurrence, distribution, and movement of the released contaminant(s) and any characteristics affecting access to the site that may influence the feasibility of investigation and remediation procedures;
- (g) A qualitative evaluation of the potential risks posed by the release, including identification of environmentally sensitive receptors, and an estimate of the impacts to human health and the environment that may occur as a result of the release;
- (h) A comparison of contaminant levels to District soil and groundwater quality risk-based screening levels contained in § 6209; and
- (i) Any other information requested by the Department or deemed useful or necessary by the responsible party.

6205.4 Comprehensive site assessment activities shall be conducted in accordance with a site safety and health plan that meets the requirements of 29 CFR § 1910.120. The site safety and health plan shall be available for inspection by the Department.

6205.5 Upon receipt and review of the comprehensive site assessment report, the Department may require the responsible party to conduct additional field studies and collect more data.

6205.6 The responsible party may request an extension of the sixty (60) day deadline set forth in § 6205.2 by submitting a written request for an extension to the Department, in accordance with § 5500.4, no later than forty-five (45) days after submitting the work plan pursuant to § 6203.14. The request shall include the following:

- (a) A summary of all work performed and all information gathered to date pursuant to § 6205.3;
- (b) A summary work plan for the additional assessment activities required; and
- (c) A proposed schedule for completion of the remaining assessment activities and submission of the completed comprehensive site assessment report.

6205.7 The Department may grant or deny the request for extension, or grant the extension with modifications to the work plan or schedule.

## **6206 RISK-BASED CORRECTIVE ACTION (RBCA) PROCESS**

6206.1 Risk-based decision making and development of a risk-based corrective action (RBCA) plan shall be conducted in accordance with this section and the



Department's RBCA technical guidance, which is available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>.

6206.2 Before initiating a risk-based decision making process to develop a RBCA plan for releases, a responsible party shall:

- (a) Prevent further release from the UST by removing all products from the UST, or if approved by the Department, removing a lesser amount and performing any necessary repairs to the UST;
- (b) Remove measurable free product to the maximum extent practicable;
- (c) Remove impacted source material to the maximum extent practicable; and
- (d) Select a qualified risk assessor who has successfully completed a risk-based corrective action training, such as training provided by the Interstate Technology & Regulatory Council, ASTM International, the U.S. Environmental Protection Agency, a state government, or a third party approved by the Department in accordance with § 5500.5.

6206.3 A responsible party using RBCA shall:

- (a) Perform an initial site assessment, including identification of potential exposure pathways, take response action(s) as set forth in § 6203, and submit a work plan;
- (b) Complete site classification as described in the Department's RBCA technical guidance, available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>, including a qualitative evaluation of the site based on known or readily available information to identify the need for interim remedial actions and further information gathering;
- (c) Complete the comprehensive site assessment pursuant to § 6205 and the Tier 1 site assessment as described in the Department's RBCA technical guidance, which is available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>;
- (d) Compare the concentrations of chemicals of concern with Tier 1 risk-based screening levels, which are specified in the Department's RBCA technical guidance, available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>;
- (e) If the concentrations exceed Tier 1 risk-based screening levels, develop and implement a corrective action plan to achieve Tier 1 levels or proceed to perform Tier 2A or 2B site-specific evaluation as described in the

Department’s RBCA technical guidance, which is available on the Department’s website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>;

- (f) If necessary for development of Tier 2 site-specific target levels, collect additional site-specific information and perform fate and transport analysis, including modeling, to determine points of demonstration;
- (g) Develop and implement a corrective action plan to achieve the site-specific target levels or monitor for compliance; and
- (h) When computer models are used in support of a case closure or no further action determination, provide a statement that the responsible party’s staff or third-party contractor has been trained in the use of the District’s RBCA software, which is available by contacting the RAM Group of Gannett Fleming, Inc. by e-mail to [admin@ramgp.com](mailto:admin@ramgp.com), or other software, systems, or computer-based programs approved by the Department in accordance with § 5500.4.

6206.4

For RBCA in the District:

- (a) The chemicals of concern shall include the petroleum products or by-products listed in Table 1 and any others deemed appropriate by the Department:

Table 1 – Chemicals of Concern

Benzene
Toluene
Ethylbenzene
Xylenes (total)
Ethylene dibromide (EDB)
Ethylene dichloride (EDC (1,2-DCA))
Methyl-tert-butyl-ether (MTBE)
Tertiary butyl alcohol (TBA)
Ethanol
Acenaphthene
Anthracene
Benzo(a)anthracene
Benzo(a)pyrene
Benzo(b)fluoranthene
Benzo(g,h,i)perylene
Benzo(k)fluoranthene
Chrysene
Fluoranthene
Fluorene
Naphthalene

Phenanthrene
Pyrene NC
TPH GRO
>C6-C8 Aliphatics
>C8-C10 Aliphatics
>C8-C10 Aromatics
TPH DRO
>C10-C12 Aliphatics
>C12-C16 Aliphatics
>C16-C21 Aliphatics
>C10-C12 Aromatics
>C12-C16 Aromatics
>C16-C21 Aromatics
TPH ORO
>C21-C35 Aliphatics
>C21-C35 Aromatics

- (b) The point(s) of demonstration shall be:
  - (1) For Tier 1 assessment:
    - (A) The point of release or the source area;
    - (B) Groundwater affected by the contaminant plume, including any areas of the plume that are outside of the property boundary in accordance with the Department’s RBCA technical guidance; and
    - (C) Soil throughout the area of the soil contaminated by the release and within the property boundary.
  - (2) For Tier 2 assessments, the point between the source and the potential point of exposure as approved by the Department.
- (c) The maximum tolerable human health risk for carcinogens shall be a one in one million ( $1 \times 10^{-6}$ ) excess cancer risk level (the estimated incremental increase in cancer risk over a lifetime). For non-carcinogenic health effects, the hazard quotient and hazard index shall be no greater than one (1).
- (d) The Tier 0 standards and the Tier 1 standards shall be the standards in §§ 6208 and 6209, respectively.
- (e) The exposure routes shall include ingestion of groundwater or soil, dermal contact with surface water or soil, ground water protection, and inhalation of volatiles.

- (f) For each exposure pathway, the points of exposure shall include groundwater, surface water, and soil and transport media shall include leaching to groundwater and soil vapor migration into buildings.

6206.5 If levels of chemicals of concern exceed the Tier 1 standards set forth in § 6209, the responsible party shall:

- (a) Submit a corrective action plan pursuant to § 6207 to achieve the Tier 1 levels; or
- (b) Conduct a Tier 2 site-specific evaluation following the procedures and protocols for Tier 2 evaluations contained in the Department's RBCA technical guidance, which is available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>.

6206.6 After completion of the RBCA process, the responsible party may apply for a case closure or no further action letter pursuant to the requirements of § 6210.

6206.7 For purposes of this section, the phrase "risk assessor" means an individual who evaluates the qualitative or quantitative risk posed to human health and the environment by the actual or potential presence or release of hazardous substances, pollutants, or contaminants.

## **6207 CORRECTIVE ACTION PLAN AND ITS IMPLEMENTATION**

6207.1 After a release is confirmed, the Department may require the responsible party to develop and submit a corrective action plan (CAP) for remediating chemicals of concern in soil and groundwater.

6207.2 The responsible party shall submit a CAP, in accordance with § 5500.4, that provides for adequate protection of human health in accordance with § 6206.4(c) (maximum tolerable human health risks) and the environment, as determined by the Department, and shall modify the corrective action plan as necessary to meet this standard.

6207.3 A CAP shall propose corrective actions for the site that will:

- (a) Ensure that measurable free product does not exist or is no longer recoverable at the site;
- (b) Provide appropriate measures to protect the environmentally sensitive receptors that were identified in the comprehensive site assessment; and
- (c) Remediate the site to one (1) of the following standards:
  - (1) The Tier 0 standards set forth in § 6208;

- (2) The Tier 1 risk-based screening levels set forth in § 6209; or
- (3) The Tier 2 site-specific target levels identified in the CAP and approved by the Department.

6207.4 If the responsible party elects to perform a Tier 2 evaluation, the CAP shall:

- (a) Remediate levels of chemicals of concern to achieve the Tier 2 site-specific target levels;
- (b) Provide for engineering or institutional controls, or both, that are approved by the Department in accordance with § 5500.5, if such controls are needed to achieve target levels or maintain activity and use limitations used in the risk assessment; and
- (c) Provide for monitoring of the site as long as necessary to ensure that the chemicals of concern on the site will not adversely impact human health, safety, or the environment under present or reasonably foreseeable future uses of the site based on District zoning and other factors as described in the RBCA technical guidance.

6207.5 A CAP shall provide for proper disposal of any contaminated soils removed from the ground, and:

- (a) Shall not permit the placement of contaminated soils that exceed Tier 0 standards back into the ground for the purposes of in situ remediation or storage, unless specifically approved by the Department in accordance with § 5500.5; and
- (b) Shall not permit the placement of any soil excavated from the site on another property, unless specifically approved by the Department in accordance with § 5500.5.

6207.6 The responsible party shall prepare a site-specific quality assurance and quality control plan for the activities to be carried out during implementation of the CAP before starting CAP activities. The quality assurance and quality control plan shall cover all actions proposed in the CAP.

6207.7 A site-specific safety and health plan that meets the requirements of 29 CFR § 1910.120 shall be prepared and submitted to the Department in conjunction with the CAP.

6207.8 The Department may approve a CAP only if the Department determines that implementation of the CAP will adequately protect human health, safety, and the environment based on the following factors, as appropriate:

- (a) The physical and chemical characteristics of the regulated substance released or threatened to be released, including its toxicity, persistence, and potential for migration;
- (b) The hydrogeological characteristics of the site and the surrounding area;
- (c) The proximity and quality of nearby surface water and groundwater, and current and reasonably foreseeable future uses of these waters;
- (d) The potential effects of residual chemicals of concern on nearby surface water as defined in 21 DCMR § 1199 (such as creeks, ponds, lakes, and rivers) and groundwater;
- (e) Potential risk to human health or the environment based upon current and reasonably foreseeable future uses of the site;
- (f) The estimated timetable for completion of the remediation; and
- (g) Any information assembled in compliance with this chapter.

6207.9

If such action will minimize environmental contamination and promote more effective corrective action, the responsible party may begin remediation of soil and groundwater before a CAP is approved, provided that the responsible party:

- (a) Notifies the Department, in accordance with § 5500.4, and the owner of any adjacent property or property affected by the remediation, of its intention to begin remediation;
- (b) Obtains provisional approval from the Department to begin remediation;
- (c) Provides the Department with an opportunity to inspect the site during the remediation;
- (d) Complies with any directives issued by the Department, including halting remediation or mitigating adverse consequences from cleanup activities; and
- (e) Incorporates these self-initiated remediation measures in the final CAP submitted to the Department for approval.

6207.10

A responsible party may submit a written request for waiver of the Department's approval of the CAP, in accordance with § 5500.5, and begin implementation of the CAP, provided that the responsible party:

- (a) Has satisfactorily performed another corrective action under Departmental oversight within the three (3) years immediately preceding the current request for a waiver of CAP approval;
  - (b) Notifies the Department of its intention to begin remediation and provides the Department with an opportunity to inspect the site during the remediation; and
  - (c) Agrees to comply with any directives issued by the Department, including halting remediation or mitigating adverse consequences from cleanup activities.
- 6207.11 Except as provided in §§ 6207.9 and 6207.10, the responsible party shall begin the remediation specified in the CAP, including modifications to the CAP made by the Department, within sixty (60) days after CAP approval, or in accordance with a schedule agreed to by the Department.
- 6207.12 The responsible party shall provide the Department with an opportunity to inspect the site prior to implementing the CAP upon the Department's request.
- 6207.13 The responsible party shall monitor, evaluate, and report the results of CAP implementation at least quarterly, or in accordance with a schedule approved by the Department in accordance with the procedures in § 5500.5.
- 6207.14 The responsible party may apply to the Department for modification of the CAP, in accordance with the procedures in § 5500.5, and may only implement the modification if the modification is approved in writing by the Department.
- 6207.15 If the Department determines that the implemented CAP is not achieving adequate protection of human health and the environment, the Department may require additional corrective action to be taken.
- 6207.16 The responsible party shall evaluate the effectiveness of the CAP and any CAP amendments at the end of each year of implementing the plan or amendment to determine whether additional measures must be implemented to protect human health and the environment and shall submit the evaluation to the Department, in accordance with § 5500.4.
- 6207.17 The Department may approve an alternative procedure for remediation of contaminants from past releases if the responsible party submits a written description of the alternative procedure to the Department in accordance with § 5500.5 and demonstrates to the satisfaction of the Department that:
- (a) Compliance with the procedure in this section is not feasible; and

- (b) The proposed alternative provides equivalent control of the cleanup to that of the procedures in this section.

## **6208 TIER 0 STANDARDS**

6208.1 The Tier 0 standards for soil shall be the following:

- (a) Total petroleum hydrocarbons (TPH), gasoline range organics (GRO), or diesel range organics (DRO) concentrations in soil shall be no greater than one hundred milligrams per kilogram (100 mg/kg); and
- (b) Individual chemicals of concern concentrations in soil shall not exceed:
  - (1) For benzene: five thousandths of a milligram per kilogram (0.005 mg/kg);
  - (2) For toluene: nine and six tenths milligrams per kilogram (9.6 mg/kg);
  - (3) For ethylbenzene: four hundredths of a milligram per kilogram (0.04 mg/kg); and
  - (4) For total xylenes: three and eighty-six hundredths of a milligram per kilogram (3.86 mg/kg).

6208.2 The Tier 0 standards for water shall be the following:

- (a) Levels for ground water quality are the District Water Quality Standards for Ground Water in 21 DCMR § 1155; and
- (b) Levels for surface water quality are the District Water Quality Standards in 21 DCMR § 1104.

## **6209 TIERS 1 AND 2 STANDARDS**

6209.1 The Tier 1 and 2 standards for water, soil, soil vapor, and indoor air shall be the levels specified in the Department's RBCA technical guidance, which is available on the Department's website at <https://doee.dc.gov/page/lust-forms-guidance-and-public-documents>.

6209.2 Indoor air sampling shall be used in conjunction with sub-slab soil gas and ambient air sampling in a multiple lines of evidence approach to evaluating vapor intrusion risk.



**6210 NO FURTHER ACTION AND CASE CLOSURE REQUIREMENTS**

6210.1 A responsible party may request a no further action letter or a case closure letter by submitting a written request to the Department in accordance with § 5500.4. The responsible party or an authorized representative shall sign the request. The request shall include a summary of the site investigation and remediation process, including the following:

- (a) The source and cause of the release if known;
- (b) The estimated quantity by volume or mass and type of product released;
- (c) The estimated amount of product recovered;
- (d) An analysis demonstrating that the site meets the screening or target levels for cleanup established by the Department in §§ 6208 or 6209 as applicable; and
- (e) All documents (such as permits, certificates, or approvals) relating to the transportation and disposal of solid and liquid wastes from the site (such as tanks, soils, product, or water), unless previously submitted to the Department, and if previously submitted, a list containing the names of the documents, dates of submission, and the division of the Department to which the documents were submitted.

6210.2 All records or reports documenting the transport and disposal of any free product, contaminated water or soil, or other waste generated at the site during implementation of the corrective action plan shall be maintained by the responsible party for a period of at least three (3) years from the date of issuance of no further action or case closure letter.

6210.3 The Department may issue a no further action or case closure letter only if it is satisfied that:

- (a) The responsible party has implemented all corrective actions required by the Department;
- (b) All free product has been removed to the maximum extent practicable; and
- (c) The site does not pose a threat to human health or the environment.

6210.4 The Department may issue case closure letter if:

- (a) The requirements for case closure set forth in §§ 6210.1 and 6210.3 have been met; and

(b) The site meets Tier 0 or Tier 1 cleanup standards.

6210.5 The Department may issue a no further action letter if:

(a) All of the corrective actions required by the Department have been implemented; and

(b) The corrective action achieved less than a complete cleanup under Tier 0 or Tier 1 standards or only achieved Tier 2 site-specific target levels.

6210.6 A case closure or no further action letter does not absolve a responsible party from previously incurred or potential future liability.

6210.7 If the Department denies the request for no further action or case closure, the responsible party may conduct further remediation or appeal the denial in accordance with § 6604.

6210.8 The responsible party shall remove all equipment, drums, and waste from the site and ensure that all wells are properly abandoned within six (6) months of receiving a no further action or case closure letter, unless otherwise authorized by the Department. The responsible party shall obtain a well abandonment permit if required under 21 DCMR Chapter 16.

6210.9 A no further action letter may include conditions such as monitoring chemicals of concern in indoor air (vapor intrusion), soil vapor, soil, or water, and reporting the monitoring results to the Department, or maintaining engineering and institutional controls.

6210.10 The Department may require the responsible party to execute and record an environmental covenant in accordance with D.C. Official Code §§ 8-671.01 through 8-671.14 to ensure compliance with the terms and conditions of a no further action letter. The environmental covenant may include activity and use limitations and any other information, restrictions, or requirements authorized under D.C. Official Code § 8-671.03.

6210.11 The Department may rescind any letter that is obtained through fraud or misrepresentation.

## **6211 PUBLIC PARTICIPATION IN CORRECTIVE ACTION**

6211.1 For each release that requires a corrective action plan, the Department will provide a public notice designed to reach those members of the public directly affected by the release and the planned corrective action.

6211.2 Notice of the corrective action plan may be provided by publication in local newspapers, the District of Columbia Register, block advertisements, public

service announcements, letters to individual households, personal contacts by Department staff, e-mails to stakeholders, posting on the Department's website, or notification to the affected Advisory Neighborhood Commissioners and civic associations.

6211.3 Any person directly impacted by a release that has migrated onto his or her property has a right to obtain a copy of any comprehensive site assessment, RBCA site evaluation, or corrective action plan, and if the person requests, shall be given an opportunity to comment on the corrective action plan.

6211.4 If implementation of an approved corrective action plan does not achieve the cleanup levels established in the plan and the Department is considering case closure or no further action, the Department will give public notice in accordance with §§ 6211.1 and 6211.2.

6211.5 The Department will investigate complaints concerning any violation(s) of the UST Regulations and will notify the complainant of the results of the investigation.

## **6212 VOLUNTARY REMEDIATION ACTION PROGRAM (VRAP)**

6212.1 The Department may permit a person, other than a responsible party, to remediate leaking underground storage tank (LUST) sites in accordance with the UST Regulations, provided that the person:

- (a) Intends to develop the LUST facility or site for personal or business reasons;
- (b) Intends to conduct a phased investigation of the conditions at the LUST facility or site prior to acquiring or developing the LUST facility or site; or
- (c) Is a neighboring property owner who is unable to obtain relief from the responsible party.

6212.2 A person who wishes to voluntarily remediate a LUST site shall submit a Voluntary Remedial Action Program (VRAP) application to the Department in accordance with § 5500.4 that contains the following:

- (a) Proof that the applicant satisfies § 6212.1;
- (b) A statement of interest in undertaking corrective action at the site;
- (c) Evidence of financial responsibility to satisfactorily complete the remediation using any mechanism in § 6701;

- (d) A copy of a written access agreement or other document that permits the applicant to access the site;
- (e) An application fee as specified in § 5605;
- (f) Any available documentation demonstrating that the applicant is not a responsible party; and
- (g) Proof that the applicant, if a business entity, is a registered business in the District of Columbia.

6212.3 Upon receiving a VRAP application, the Department may, in its discretion, approve or deny the application. If approved, the Department will issue a conditional authorization letter that authorizes the Voluntary Remediating Party (VRP) to participate in the VRAP, contingent upon the VRP's submission and the Department's approval of a corrective action plan that meets the requirements of §§ 6206 and 6207.

6212.4 The VRP may, in its discretion, enter into an agreement to release the responsible party or parties from liability. A VRP that wishes to assume responsible party status shall submit a responsible party transfer request to the Department in accordance with § 5500.4. Any release granted to a responsible party must state that the release may be voided by the Department under the following circumstances:

- (a) The responsible party or the VRP submitted false or misleading information to the Department in the responsible party transfer request; or
- (b) The VRP failed to complete the corrective action and the Department or the U.S. Environmental Protection Agency expended funds to remediate the site.

6212.5 A VRP shall be liable for all work performed at the site.

6212.6 Unless the VRP has assumed responsible party status, a VRP will only be required to perform the work agreed upon with the Department in the corrective action plan. The VRP shall comply with any directives issued by the Department pertaining to investigation and remediation of the site and the notification requirements in §§ 5600, 5603, and 6202. If the corrective action includes closure of an UST, the VRP shall comply with all requirements of Chapter 61.

6212.7 A VRP, other than a VRP that has released the original responsible party and assumed responsible party status in accordance with § 6212.5, may cease corrective action activities at the site before completing remediation of the site and incur no liability, other than liability pursuant to § 6212.5, provided the VRP:

- (a) Has not aggravated the site conditions or increased the costs of subsequent corrective action;
- (b) Gives written notice in accordance with § 5500.4 to the Department of the VRP’s intention to cease activities at the site; and
- (c) Stabilizes the site by properly backfilling any excavations, properly securing or abandoning any monitoring wells, and any other actions required to secure the site as may be ordered by the Department.

6212.8 After completing all actions under the approved corrective action plan, a VRP may submit a written request for a no further action or a case closure letter as set forth in § 6210.

6212.9 The Department may revoke its approval of a VRAP application if a VRP:

- (a) Refuses to comply with directives issued by the Department; or
- (b) Fails to begin, or actively implement, corrective action within two (2) years of the date of approval of the VRAP Application, or stops corrective action for more than two (2) years, unless otherwise authorized by the Department; provided, however, that nothing in this paragraph shall prohibit the Department taking immediate action as necessary to address an imminent threat to human health or the environment.

**CHAPTER 63 UNDERGROUND STORAGE TANKS - RIGHT OF ENTRY  
FOR INSPECTIONS, MONITORING, TESTING, AND  
CORRECTIVE ACTION**

**6300 RIGHT OF ENTRY  
6301 ENTRIES FOR INSPECTIONS AND MONITORING  
6302 ENTRY FOR CORRECTIVE ACTION**

**6300 RIGHT OF ENTRY**

6300.1 An inspector designated by the Department may, at any reasonable time and upon presentation of appropriate credentials to the owner, operator, or agent in charge, enter without delay any place where an UST is or was located or where a release is suspected, for the purpose of enforcing the Act or the UST Regulations.

6300.2 Appropriate credentials include a photo identification card or badge showing the name of the inspector and his or her employment with the Department.

6300.3 The inspector may enter the facility, with or without prior notice, as follows:

- (a) In emergency situations, at any hour; and

- (b) In non-emergency situations, between the hours of 9:00 a.m. and 5:00 p.m. on weekdays, and any other time that the facility where the UST is located is open for business.

6300.4 Emergency situations include any situation posing an immediate threat to public health or the environment, such as free product floating on surface or ground water, or an ignition source near a leaking UST.

### **6301 ENTRIES FOR INSPECTIONS AND MONITORING**

6301.1 An inspector designated by the Department may:

- (a) Inspect any UST, UST system, or area that may be impacted by a release or suspected release from an UST or UST system;
- (b) Inspect and obtain samples of any regulated substance contained in, or released from, any UST or UST system;
- (c) Inspect and copy any record, report, information, or test result required to be maintained pursuant to the Act or the UST Regulations, or that is otherwise relevant to the operation of any UST system; and
- (d) Conduct monitoring or testing of any UST system, associated equipment, contents, surrounding soils, air, surface water, or groundwater.

6301.2 If the inspector obtains any sample prior to leaving the premises, the inspector will give the owner, operator, or agent in charge a receipt that describes the sample obtained, and if requested, a portion of the sample equal in volume or weight to the portion obtained. If any analysis is made of the sample, a copy of the results of the analysis will be furnished promptly to the owner, operator, or agent in charge.

6301.3 The Department may require the owner, operator, or other responsible party to provide information or records, conduct monitoring or testing, or take any necessary corrective action in accordance with the requirements of § 5602 and Chapters 60 and 62.

6301.4 If the Department makes a written request for submission of records, documents, or other information required to be maintained by the owner, operator, or other responsible party, the records or documents shall be submitted to the Department within twenty (20) days of a request, unless a different time period is specified by the Department.

**6302 ENTRY FOR CORRECTIVE ACTION**

6302.1 The Department may enter upon property to perform, or cause to be performed, release response and corrective actions that are necessary to protect human health or the environment, including in any of the following circumstances:

- (a) No responsible party subject to the requirements of Chapter 62 and capable of implementing the required corrective action can be found within ninety (90) days or a shorter period, as may be necessary to protect human health or the environment;
- (b) A situation exists that requires immediate action by the Department to protect human health or the environment; or
- (c) The responsible party has failed or refused to comply with an order issued by the Department requiring compliance with the UST Regulations and:
  - (1) The responsible party did not appeal the order pursuant to Chapter 66; or
  - (2) The order was upheld after an appeal pursuant to Chapter 66.

6302.2 Except as provided in § 6302.4, the Department will provide prior written notice to the real property owner of its intent to enter the property to take corrective action and will serve the notice in one of the following ways:

- (a) By personal delivery to a person of suitable age and discretion residing or employed at the last known address of the real property owner;
- (b) By registered first-class mail to the last known address of the real property owner; or
- (c) If service cannot be effected as provided in paragraph (a) or (b) of this subsection, then:
  - (1) By publishing the notice once a week for three (3) weeks in a newspaper of general circulation in the District of Columbia; and
  - (2) By conspicuous posting of the notice on the property.

6302.3 If the real property owner is a corporation, any notice served on the president, treasurer, general manager, registered agent, or any principal officer of such corporation in the manner provided in § 6302.2 shall be deemed to have been served on the corporation.

6302.4 If a release of a regulated substance from an UST system creates an imminent threat to human health or the environment requiring summary corrective action, and the emergency nature of the situation makes it impractical to give prior notice as provided in § 6302.2, the Department may provide notice by conspicuous posting on the property at the earliest time feasible before commencing work.

**CHAPTER 64 UNDERGROUND STORAGE TANKS – CORRECTIVE ACTION  
BY THE DISTRICT AND COST RECOVERY**

**6400 CORRECTIVE ACTION BY THE DISTRICT  
6401 COST RECOVERY**

**6400 CORRECTIVE ACTION BY THE DISTRICT**

6400.1 The Department may undertake corrective action to protect human health or the environment when any of the circumstances in §§ 6302.1(a) through (c) exist. The Department may take summary corrective action if a release of a regulated substance from an UST system creates an imminent threat to human health or the environment.

6400.2 Corrective action by the Department may include, but is not limited to, the following:

- (a) Temporary or permanent relocation assistance for residents exposed to contamination from an UST site;
- (b) Provision of alternative household water supplies;
- (c) Exposure or risk assessments;
- (d) Repair, upgrade, or closure of the UST system;
- (e) Site assessment;
- (f) Transportation and disposal of solid and liquid wastes from the site (such as tanks, soils, product, or water); and
- (g) Development and implementation of a corrective action plan in accordance with Chapter 62.

6400.3 The Department may initiate summary corrective action if, in the judgment of the Department, a release of a regulated substance creates an imminent threat to human health or the environment.



**6401 COST RECOVERY**

- 6401.1 The Department may recover the District's corrective action costs pursuant to the District of Columbia Underground Storage Tank Management Act of 1990, D.C. Official Code § 8-113.09(b); the District of Columbia Hazardous Waste Management Act of 1977, D.C. Official Code § 8-1311(a)(2)(B); the Water Pollution Control Act of 1984, D.C. Official Code § 8-103.17(e); the Brownfield Revitalization Amendment Act of 2000, D.C. Official Code § 8-632.01; or any other authority.
- 6401.2 If the District incurs costs under § 9003(h)(7) of the Resource Conservation and Recovery Act, 42 USC § 6991b(h)(7), for undertaking corrective action or enforcement action with respect to the release of petroleum from an UST, the owner or operator shall be liable to the District for the costs.

**CHAPTER 65 UNDERGROUND STORAGE TANKS – LICENSING,  
CERTIFICATION, OPERATOR REQUIREMENTS, AND  
OPERATOR TRAINING**

- 6500 LICENSING AND CERTIFICATION OF UST SYSTEM INSTALLERS,  
REMOVERS, TESTERS, AND TECHNICIANS**
- 6501 CERTIFICATION PROCEDURES**
- 6502 OPERATOR DESIGNATION**
- 6503 OPERATOR TRAINING AND TRAINING PROGRAM APPROVAL**

**6500 LICENSING AND CERTIFICATION OF UST SYSTEM INSTALLERS,  
REMOVERS, TESTERS, AND TECHNICIANS**

- 6500.1 An individual who performs UST system activities in the District, which include installation, upgrade, repair, tightness testing, or permanent closure of any UST or UST system component, shall be certified in accordance with this chapter or be supervised on-site by an individual certified in accordance with this chapter.
- 6500.2 An individual performing or supervising UST system installation, upgrade, retrofit, or repair shall be certified as an UST System Technician.
- 6500.3 An individual performing or supervising UST system closure-in-place or removal shall be certified as an UST System Technician or UST Closure Specialist.
- 6500.4 An individual performing or supervising UST system tightness testing shall be certified as an UST System Tester.
- 6500.5 The owner or operator of each UST system shall ensure that any UST system activity is performed by, or is done under the continuous on-site supervision of, a person certified to perform or supervise the activity under this chapter.

- 6500.6 Each UST System Technician, UST Closure Specialist, and UST System Tester performing or supervising an UST system activity shall carry the certificate issued by the Department while performing or supervising UST system activities. The certificate shall be available for inspection by the owner, operator, and the Department.
- 6500.7 Each business that performs UST system activities in the District shall be licensed by the Department under this chapter. The business shall employ an individual certified to perform each of the UST system activities for which the business is licensed.
- 6500.8 Each business that is licensed to perform UST system activities in the District shall provide the Department with a list of employees who are not certified as UST System Technicians, UST Closure Specialists, or UST System Testers, but perform UST system activities under on-site supervision.
- 6500.9 No business may transfer the license issued to it by the Department.
- 6500.10 Within ten (10) business days after closure or termination of a licensed business, the business shall surrender the license to the Department for cancellation.

## **6501 CERTIFICATION PROCEDURES**

- 6501.1 The Department may certify an individual to perform the UST activities set forth in § 6500 in the District only if the individual:
- (a) Submits a complete application and pays the initial application fee specified in § 5605;
  - (b) Provides evidence of satisfactory completion of a recognized training program in the UST system activities for which the applicant seeks certification; and
  - (c) Has at least five (5) years experience in the United States engaging in the activities for which the applicant seeks certification, or passes a written test of the applicant's knowledge of the technical area for which the applicant seeks certification, the Act, and the UST Regulations.
- 6501.2 The Department may license a business to perform the UST system activities in § 6500 in the District only if the business:
- (a) Submits a complete application and pays the initial application fee specified in § 5605;
  - (b) Demonstrates, to the satisfaction of the Department, that the business is qualified to perform the UST activities for which it seeks a license; and

- (c) Demonstrates, to the satisfaction of the Department, that the business employs at least one individual who has expertise and is certified by the Department to perform or supervise the UST activities the business will offer.

6501.3 The Department may certify an individual or license a business that is certified or licensed to perform UST system activities in Delaware, Maryland, Pennsylvania, Virginia, or West Virginia to perform the UST system activities set forth in § 6500 in the District, if the applicant:

- (a) Submits a complete application and pays the initial application fee specified in § 5605;
- (b) Is currently certified or licensed by one or more of the states listed as an UST System Technician, UST Closure Specialist, UST System Tester, or currently holds a certification or license determined by the Department to be equivalent in accordance with § 5500.5; and
- (c) Is currently in good standing in each of the states in which the applicant is certified or licensed.

6501.4 The Department may require an applicant certified or licensed in one of the states in § 6501.3 to take a test to verify the applicant's knowledge of the Act and the UST Regulations.

6501.5 An applicant for certification or a license under § 6501.3 may only be certified or licensed to perform the same UST system activities that the applicant was certified or licensed to perform in the state in which the applicant is certified or licensed.

6501.6 An individual or business shall apply for a certification or license by submitting an application form provided by the Department, which is available on the Department's website at <https://doee.dc.gov/publication/ust-contractor-certification-applications-business-and-individual>, along with the following documents:

- (a) A copy of the applicant's current Occupational Safety and Health Administration Hazardous Waste Operations and Emergency Response Standard certification;
- (b) Documentation of insurance coverage;
- (c) If the applicant is a business, a copy of a valid, current District of Columbia business license; and

- (d) If the applicant is seeking certification under § 6501.3:
- (1) A letter from a state official of each state listed in § 6501.3 in which the applicant is certified or licensed, stating that the applicant is in good standing; and
  - (2) A list of any additional states in which the applicant is certified or licensed to perform UST system activities.

6501.7 The initial certification or license issued by the Department will be valid for one (1) year from the date the certification or license is issued.

6501.8 An individual or business may renew the certification or license for one (1) or two (2) years by submitting an application form, the renewal fee specified in § 5605, and the documents listed in § 6501.6. The fee for a two (2) year renewal will be twice the annual fee specified in § 5605.

## **6502 OPERATOR DESIGNATION**

6502.1 The owner of a regulated UST system in the District, except an UST system that has been permanently closed in accordance with Chapter 61, shall designate at least one Class A, one Class B, and one Class C operator for each UST facility. One operator may be designated as both the Class A and the Class B operator, except at fuel dispensing operations. Twenty-four (24) hour dispensing facilities, such as gas stations, shall have multiple Class C operators designated.

6502.2 No facility shall dispense or store a regulated substance unless operators have been designated and trained as required in this section and § 6503.

6502.3 A Class A operator shall have primary responsibility for operating and maintaining the UST facility in compliance with the Act and UST Regulations. Class A operators shall:

- (a) Ensure that UST systems are properly installed, inspected, tested, and repaired, and that the required records are retained and made available to the Department;
- (b) Be familiar with training requirements for each class of operators and be able to provide the required training for Class C operators; and
- (c) Prepare facility procedures for Class B and C operators.

6502.4 A Class B operator shall be responsible for the daily operation and maintenance of UST systems at one or more facilities. Class B operators shall:

- (a) Check spill and overfill prevention equipment and corrosion protection equipment to ensure proper function, and that any required system tests are performed at appropriate intervals;
- (b) Ensure release detection equipment is operational, release detection is performed at proper intervals, and release detection records are retained and made available to the Department; and
- (c) Be familiar with all aspects of Class B and Class C operator responsibilities and be able to provide the required training for Class C operators.

6502.5 A Class C operator shall be responsible for responding to alarms or other indications of emergencies caused by a spill or release from an UST system or equipment failures. Class C operators shall:

- (a) Control or monitor the dispensing and sale of regulated substances;
- (b) Follow written instructions or procedures on how to respond to alarms or releases provided by the Class A or Class B operators; and
- (c) Notify Class A or B operators and appropriate emergency responders of releases and other emergencies in accordance with facility procedures and applicable laws and regulations.

6502.6 Trained operators shall be readily available to respond to suspected or confirmed releases, other unusual operating conditions, emergencies, and equipment failures as follows:

- (a) A Class A or Class B operator shall be available for immediate telephone consultation at all times when a facility is in operation;
- (b) A Class A or Class B operator shall be on-site at the UST facility within twenty-four (24) hours of being contacted;
- (c) For staffed facilities, a Class C operator shall be on-site whenever the facility is in operation; and
- (d) For unstaffed facilities, a Class C operator shall be available for immediate telephone consultation and shall be able to be on-site within two (2) hours of being contacted.

6502.7 Emergency contact information (name, position title and telephone numbers) shall be prominently displayed at all facilities, and unstaffed facilities shall also have emergency procedures prominently displayed to users.

- 6502.8 No person shall serve as a designated operator unless he or she has successfully completed all training required in § 6503.
- 6502.9 The owner of an UST system shall maintain a list of designated operators. The list shall identify the current Class A, B, and C operators for the facility and shall include:
- (a) The name and operator class of each operator and the date each operator successfully completed training; and
  - (b) For operators that are not on-site when the facility is in operation, emergency telephone numbers to contact the operators.
- 6502.10 A copy of the following documentation shall be on-site and readily available for inspection at the facility:
- (a) Certificates of training for Class A and B operators, and documentation of the trainer, trainee, and date training occurred for Class C operators;
  - (b) The facility list of Class A, B, and C operators; and
  - (c) Class C operator facility procedures, including emergency notification procedures.
- 6502.11 Class C operator and owner contact information, including name, telephone number, and any emergency contact information, shall be conspicuously posted at unstaffed facilities.

### **6503 OPERATOR TRAINING AND TRAINING PROGRAM APPROVAL**

- 6503.1 The owner of an UST system shall ensure that all operators have received the training required by this section. Class A and B operators shall complete retraining every five (5) years or as required by the Department in accordance with § 6503.2. Class C operators shall receive retraining as provided in § 6503.5.
- 6503.2 If the Department determines that a petroleum UST system is not in compliance with any requirement of the Act or UST Regulations, the designated Class A and B operators shall repeat the required training, or any applicable part of the training as determined by the Department. Operators shall complete the required retraining within thirty (30) days of being notified by the Department.
- 6503.3 A Class A operator shall successfully complete a training course approved by the Department that includes general knowledge of the requirements of the Act and UST Regulations. At the completion of the training course, the operator shall be able to demonstrate knowledge of operation, maintenance, and recordkeeping requirements, including the following:

- (a) Spill and overfill prevention;
- (b) Release detection and related reporting, record keeping, testing, and inspection requirements;
- (c) Corrosion protection;
- (d) Emergency response;
- (e) Product and equipment compatibility;
- (f) Financial responsibility;
- (g) Notification and UST registration requirements;
- (h) Temporary and permanent UST closure requirements;
- (i) Class B and C operator training requirements; and
- (j) Environmental and regulatory consequences of releases.

6503.4

A Class B operator shall successfully complete a training course approved by the Department that includes detailed instruction on operation and maintenance of UST systems and the requirements of the Act and UST Regulations. Training shall provide specific information about the components of UST systems, UST construction materials, methods of release detection, and release prevention, including the following:

- (a) Spill and overfill prevention;
- (b) Release detection and related reporting requirements;
- (c) Corrosion protection;
- (d) Emergency response;
- (e) Product and equipment compatibility;
- (f) Report and recordkeeping requirements;
- (g) Class C operator training requirements; and
- (h) Environmental and regulatory consequences of releases.

6503.5 Class C operators shall complete training provided by a Class A or B operator or successfully complete a training course approved by the Department. The training shall enable the Class C operator to take action in response to emergencies or alarms caused by spills or releases from an UST system. Training shall include written instructions and notification procedures for the Class C operator to follow in the event of an emergency. After the initial training, the Class A or B operator shall retrain the Class C operator on these instructions and emergency procedures at least every twelve (12) months. At the conclusion of the training, the Class A or B operator shall evaluate the ability of the Class C operator to respond to emergencies and provide additional training as necessary to ensure the Class C operator is able to respond.

6503.6 An operator successfully completes training if he or she:

- (a) Attends the entire training course;
- (b) Demonstrates knowledge of the course material by receiving a grade of eighty percent (80%) or higher on an examination containing material presented in the training course or demonstrates to the trainer his or her ability to perform operation and maintenance checks of UST system equipment, including release detection; and
- (c) Receives a training certificate from the training provider.

6503.7 When a Class A or B operator is replaced, the new operator shall be trained within thirty (30) days of assuming duties for that class of operator.

6503.8 Class C operators shall be trained before assuming the duties of a Class C operator.

6503.9 A training provider may request approval of a training course by submitting a request in writing to the Department in accordance with § 5500.5 and providing any information about the course requested by the Department. The Department may, in its discretion, approve or disapprove the training course. Each training provider shall obtain written approval from the Department before offering training courses for Class A, B, or C operators in the District.

6503.10 The owner or operator shall maintain documentation that the designated Class A, B, and C operators have completed the required training and retraining for as long as the Class A, B, and C operators are designated.

**CHAPTER 66 UNDERGROUND STORAGE TANKS – ENFORCEMENT**

- 6600 ENFORCEMENT AUTHORITY**
- 6601 DIRECTIVE**
- 6602 ADMINISTRATIVE ORDER**



**6603           SUSPENSION, REVOCATION, RESTRICTION, OR DENIAL OF A  
LICENSE OR CERTIFICATE****6604           APPEALS TO THE DEPARTMENT****6605           APPEALS TO THE OFFICE OF ADMINISTRATIVE HEARINGS****6600           ENFORCEMENT AUTHORITY**

6600.1       The Department may take one or more of the following administrative actions:

- (a)     Issue an administrative civil fine, penalty, or fee under § 6600.5;
- (b)     Issue a directive under § 6601;
- (c)     Issue an administrative order under § 6602; and
- (d)     Deny, suspend, revoke, or restrict a license or certificate under § 6603.

6600.2       If a person fails to comply with a notice of violation or threatened violation issued under § 6602.1 within the time stated in the notice, the Department may initiate a civil action in the Superior Court of the District of Columbia, pursuant to the approval and supervision of the Attorney General of the District of Columbia, for injunctive relief, damages, civil penalties, or recovery of any corrective action costs necessary to promptly and effectively terminate the violation or threatened violation and protect life, property, or the environment.

6600.3       To correct a situation that immediately threatens health or the environment, or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment, the Department may initiate a civil action in the Superior Court of the District of Columbia and seek a temporary restraining order in lieu of issuing an administrative order, pursuant to the approval and supervision of the Attorney General of the District of Columbia.

6600.4       The District may bring a civil action in the Superior Court of the District of Columbia, or in any other court of competent jurisdiction, for recovery of corrective action costs in accordance with § 6400.

6600.5       As an alternative to a civil judicial action, the Department may impose an administrative civil fine, penalty, or fee pursuant to the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801.01 *et seq.*).

6600.6       Except when otherwise provided by statute, a person violating a provision of this chapter shall be fined according to the schedules in Chapters 32 (Civil Infractions: Schedule of Fines) and 40 (Department of the Environment Infractions) of Title

16 (Consumers, Commercial Practices, and Civil Infractions) of the District of Columbia Municipal Regulations.

6600.7 The imposition of a civil fine or penalty does not preclude the Department from initiating an administrative or judicial civil action seeking injunctive relief, damages, or costs except that a person shall not, for the same violation of this chapter, be assessed both a judicial civil fine and an administrative fine.

**6601 DIRECTIVE**

6601.1 The Department may issue a directive requiring an owner, operator, or responsible party to:

- (a) Provide any information, record, documentation, report, plan, or form with respect to the UST system if necessary to determine compliance with the UST regulations;
- (b) Conduct investigations, monitoring, or testing of the UST system, associated equipment, contents, surrounding soils, air, surface water, or groundwater;
- (c) Conduct a repair, upgrade, replacement, or temporary or permanent closure of the UST system or equipment; or
- (d) Take any necessary corrective action.

6601.2 The directive will be in writing and will identify the actions that the responsible party is required to take and the time period within which the actions must be performed.

6601.3 A directive may be served on a person or the person's authorized agent by one or more of the following methods:

- (a) Personal service;
- (b) Delivery to the last known home or business address and leaving it with a person over the age of eighteen (18) residing or employed there; or
- (c) United States Postal Service mail, first class and postage prepaid, to the last known home or business address. A courtesy copy may be sent via email or fax.

6601.4 If a person objects that a required action in a directive is not necessary or appropriate from a technical, engineering, geophysical, or other scientific perspective, the person shall submit a written statement to the Department, in

accordance with § 5500.4, including the grounds for the objection, within the time period stated in the directive.

- 6601.5 A person named in the directive may file an appeal with the Department in accordance with the procedures in § 6604 within fifteen (15) days after a directive is served, or within twenty (20) days of the date of the directive if served by mail, unless a later date is approved in writing by the Department.

## **6602 ADMINISTRATIVE ORDER**

- 6602.1 If the Department believes or has reason to believe that there is a violation or threatened violation of the Act or the UST Regulations, the Department may issue a written notice of the violation or threatened violation to the owner, operator, or any other responsible party deemed appropriate by the Department and may require the person to take corrective measures that the Department considers reasonable and necessary.

- 6602.2 If a person fails to comply with the notice of violation issued pursuant to § 6602.1 within the time stated in the notice, the Department may issue a proposed administrative order, which may be a compliance order, cease and desist order, or both.

- 6602.3 The proposed order shall be in writing and:

- (a) Include a statement of the nature of the violation or threatened violation;
- (b) Explain that the person has a right to a hearing;
- (c) Allow a reasonable time for compliance with the order, consistent with the likelihood of harm and the need to protect health, safety, life, property, and the environment;
- (d) State any penalties for failure to comply with the order.

- 6602.4 A proposed order may be served on a person or the person's authorized agent by one or more of the methods listed in § 6601.3, or if there is an immediate threat to human health or the environment by:

- (a) Telephone or e-mail, followed by service by another method listed in § 6601.3; or
- (b) If the owner, operator, or responsible party cannot be located, conspicuous posting on the property.

- 6602.5 A proposed order shall become effective and final, unless the person or persons named in the order requests a hearing under § 6604 no later than fifteen (15) days

after the order is served or no later than twenty (20) days after the date of the order if served by mail.

6602.6 The Department may issue an immediate order to require a person to correct a situation that immediately threatens health or the environment, or to restrain any person from engaging in any unauthorized activity that immediately endangers or causes damage to public health or the environment.

6602.7 The Department may issue an immediate order prohibiting the delivery of regulated substances or other use of an UST system in situations that threaten health or the environment including, but not limited to, the following:

- (a) An accumulation of toxic, flammable, or explosive vapors in a structure, sewer, or excavation;
- (b) Free floating product on surface or ground water;
- (c) Potential for migration of a release to surface waters or other sensitive environmental receptors;
- (d) An open pit or excavation that is not secured properly during or left in place after corrective action;
- (e) Anything which may cause potential exposure of humans, plants, or animals to hazardous substances;
- (f) Missing or inoperable required spill or overfill prevention, release detection, or corrosion protection equipment; or
- (g) Failure to register an UST system.

6602.8 An immediate order is effective upon issuance and is final unless the person named in the order requests a hearing under § 6604 within seventy-two (72) hours after the order is served.

### **6603 SUSPENSION, REVOCATION, RESTRICTION, OR DENIAL OF A LICENSE OR CERTIFICATE**

6603.1 In order to protect the public health, safety, and welfare, the Department may suspend, revoke, or refuse to issue, renew, or restore a license or certificate after giving written notice if the Department finds that the applicant or holder:

- (a) Failed to meet and maintain the standards established by the Act and the UST Regulations;
- (b) Submitted a false or fraudulent record, invoice, or report;

- (c) Engaged in fraud or misrepresentation in the application for licensure or certification;
  - (d) Had a history of repeated violations of the Act or the UST Regulations; or
  - (e) Had a license or certification denied, revoked, or suspended in another state or jurisdiction.
- 6603.2 Notice of a proposed action to suspend, revoke, or refuse to issue, renew, or restore a license or certificate will be served as specified in § 6601.3.
- 6603.3 A proposed action shall become effective and final, unless the applicant or license or certificate holder requests a hearing under § 6604 no later than fifteen (15) days after the action is served, or no later than twenty (20) days after the date of the action if served by mail.
- 6603.4 If the Department determines during or after an investigation that the conduct of any licensed business or certified individual presents an imminent danger to the health or safety of the residents of the District, the Department may summarily suspend or restrict the license of the business or the certificate of the individual in accordance with this chapter.
- 6603.5 At the time of the summary suspension or restriction, the Department will provide the licensee or certificate holder with a written notice stating:
- (a) The action that is being taken;
  - (b) The basis for the action; and
  - (c) The right of the licensee or certificate holder to request a hearing.
- 6603.6 In the case of a summary action under § 6603.5:
- (a) The suspension or restriction shall be effective immediately and shall become final, unless the license or certificate holder requests a hearing within seventy-two (72) hours after the notice is served; and
  - (b) A hearing will be held within fifteen (15) days of receipt of a timely request and a decision will be issued no later than fifteen (15) days after the hearing.

**6604 APPEALS TO THE DEPARTMENT**

- 6604.1 A person named in a directive, order, proposed order, action or proposed action of the Department under §§ 6210.7, 6601, 6602, or 6603 may appeal in accordance with this section.
- 6604.2 Before or in lieu of requesting a hearing under § 6605, a person named in a Department directive, order, or action may make an informal appeal in the manner and by the date stated in the directive, order, or action by providing orally or in writing any information or material that would support a change in or withdrawal of the Department's directive, order, or action.
- 6604.3 If the matter is not resolved under § 6604.2, the aggrieved person may appeal to the Deputy Director of the Department's Environmental Services Administration in accordance with § 5500.5.
- 6604.4 If the matter is not resolved under § 6604.3, the aggrieved person may appeal the decision of the Deputy Director of the Environmental Services Administration to the Director of the Department in accordance with § 5500.5.
- 6604.5 Appeals under §§ 6604.3 and 6604.4 must be in writing and present all information and material that the aggrieved person wishes to present for consideration on appeal.
- 6604.6 When considering an appeal, the Deputy Director or the Director may stay the effect of a decision or action being appealed pending determination of the appeal.
- 6604.7 Unless stayed by the Deputy Director or the Director, the original decision or action remains in effect during pendency of the appeal.
- 6604.8 Any person adversely affected or aggrieved by a decision of the Director may request a hearing in accordance with § 6605.

**6605 APPEALS TO THE OFFICE OF ADMINISTRATIVE HEARINGS**

- 6605.1 A person adversely affected or aggrieved by a decision of the Director under § 6604 or named in a notice of infraction assessing a civil fine, penalty, or fee under § 6600.5 may appeal in accordance with this section.
- 6605.2 To appeal the decision or notice of infraction, the person shall file an administrative appeal with, and request a hearing before, the District of Columbia Office of Administrative Hearings (OAH).
- 6605.3 The person shall file a written appeal with OAH within fifteen (15) calendar days of service of the decision or notice of infraction or no later than twenty (20) days after the date of the decision or notice if served by mail.

- 6605.4 The hearing and prehearing practice shall be conducted in accordance with the Department of Consumer and Regulatory Affairs Civil Infractions Act of 1985, effective October 5, 1985 (D.C. Law 6-42; D.C. Official Code §§ 2-1801 *et seq.*) and the regulations set forth at Title 1, Chapter 28 of the District of Columbia Municipal Regulations.
- 6605.5 The final OAH decision on an administrative appeal under this section shall constitute the final action of the Department, and shall be subject to the applicable statutes and rules of judicial review for OAH final orders.

**CHAPTER 67 UNDERGROUND STORAGE TANKS – FINANCIAL RESPONSIBILITY**

- 6700 PETROLEUM UST SYSTEMS**
- 6701 FINANCIAL RESPONSIBILITY MECHANISMS**
- 6702 FINANCIAL RESPONSIBILITY RECORDS AND REPORTS**
- 6703 FINANCIAL TEST OF SELF-INSURANCE**
- 6704 FINANCIAL TEST OF SELF-INSURANCE: TEST A**
- 6705 FINANCIAL TEST OF SELF-INSURANCE: TEST B**
- 6706 GUARANTEES**
- 6707 INSURANCE AND RISK RETENTION GROUP COVERAGE**
- 6708 SURETY BONDS**
- 6709 LETTER OF CREDIT**
- 6710 PRIVATE TRUST FUNDS**
- 6711 STANDBY TRUST FUNDS**
- 6712 DRAWING ON FINANCIAL ASSURANCE MECHANISM**
- 6713 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS**
- 6714 CANCELLATION OR NON-RENEWAL OF FINANCIAL ASSURANCE**
- 6715 BANKRUPTCY OR INCAPACITY**
- 6700 PETROLEUM UST SYSTEMS**
- 6700.1 The owner and operator of a petroleum UST shall demonstrate financial responsibility in accordance with the provisions of this chapter, except as otherwise provided in this section, for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs.
- 6700.2 State and federal government entities whose debts and liabilities are the debts and liabilities of a state, the United States, or the District of Columbia government are exempt from the requirements of this chapter.

- 6700.3 The requirements of this chapter do not apply to owners or operators of any UST described in §§ 5501.3 or 5503.
- 6700.4 If the owner and operator of a petroleum UST are separate persons, only the owner is required to demonstrate financial responsibility; however, both the owner and operator are liable for noncompliance.
- 6700.5 An owner is not required to maintain financial responsibility under this chapter for an UST after the UST has been permanently closed or undergone a change-in-service in accordance with Chapter 61, except as provided in § 6700.6.
- 6700.6 If the closure assessment performed in accordance with § 6101 indicates that corrective action is needed, the owner or operator shall maintain financial responsibility until the corrective action is completed in accordance with Chapter 62.
- 6700.7 The amounts of financial assurance required under this section do not include legal defense costs.
- 6700.8 The owner of any petroleum UST who has not previously filed a certification of financial responsibility with the Department shall immediately file, in accordance with § 5500.4, the certification in the form prescribed by Appendix 67-1 (Certification of Financial Responsibility).
- 6700.9 Within thirty (30) days after installation of a new petroleum UST or changing the substance stored in an UST to petroleum, the owner of the petroleum UST system shall file a certification of financial responsibility with the Department as described in § 6700.8.
- 6700.10 The owner of a petroleum UST shall demonstrate financial responsibility in the per-occurrence amount of at least one million dollars (\$1,000,000):
- (a) For a petroleum UST that is located at a petroleum marketing facility; and
  - (b) For a petroleum UST that handles an average of more than ten thousand (10,000) gallons of petroleum per month based on annual throughput for the previous calendar year.
- 6700.11 The owner of a petroleum UST not covered under § 6700.10 shall demonstrate financial responsibility in the per-occurrence amount of five hundred thousand dollars (\$500,000).
- 6700.12 The owner of a petroleum UST shall demonstrate financial responsibility in at least the following annual aggregate amounts:



- (a) For an owner of one (1) to one hundred (100) petroleum USTs, one million dollars (\$1,000,000); and
- (b) For an owner of one-hundred-one (101) or more petroleum USTs, two million dollars (\$2,000,000).

6700.13 For the purposes of §§ 6700.12 and 6700.16 only, the term "petroleum UST" means a single containment unit and does not mean combinations of single containment units.

6700.14 Except as provided in § 6700.15, if an owner uses separate mechanisms or separate combinations of mechanisms authorized under § 6701, the amount of assurance provided by each separate mechanism or combination of mechanisms shall be meet the aggregate amount specified in §§ 6700.10 through 6700.12.

6700.15 If an owner uses separate mechanisms or separate combinations of mechanisms to demonstrate financial responsibility for different USTs, the annual aggregate amount required under § 6700.12 shall be based on the number of tanks covered by each separate mechanism or separate combination of mechanisms.

6700.16 Owners shall review the amount of aggregate assurance required whenever one (1) or more additional petroleum USTs are acquired or installed. If, after review, the number of petroleum USTs for which financial responsibility must be demonstrated exceeds one hundred (100), the owner shall comply with the requirements of § 6700.12(b) by the anniversary of the date on which the mechanism demonstrating financial responsibility became effective. If financial responsibility is being demonstrated by a combination of mechanisms, the owner shall demonstrate financial responsibility in the amount of at least two million dollars (\$2,000,000) of annual aggregate assurance by the first-occurring effective date anniversary of any one of the mechanisms, combined (other than a financial test or guarantee) to provide assurance.

6700.17 The per-occurrence and annual aggregate coverage amounts required under this section shall not in any way limit the liability of the owner or operator.

## **6701 FINANCIAL RESPONSIBILITY MECHANISMS**

6701.1 Subject to the limitations of §§ 6701.2 and 6701.3, the owner of a petroleum UST may use any single mechanism or combination of mechanisms listed in §§ 6703 through 6710 to demonstrate financial responsibility under this chapter for one (1) or more USTs.

6701.2 An owner may use a guarantee or surety bond to establish financial responsibility only if the Office of the Attorney General of the District of Columbia has submitted a written statement to the Department that the guarantee or surety bond

executed as described in this chapter is a legally valid and enforceable obligation in the District.

- 6701.3 An owner may use self-insurance in combination with a guarantee only if, for the purpose of meeting the requirements of the financial test under §§ 6703 through 6705, the financial statements of the owner are not consolidated with the financial statements of the guarantor.
- 6701.4 Subject to the requirements of §§ 6701.5 and 6701.6, an owner may substitute any alternative financial assurance mechanism or combination of mechanisms specified in §§ 6703 through 6710 for a financial assurance mechanism currently in place.
- 6701.5 If an owner substitutes an alternative financial mechanism, the owner shall maintain the existing financial assurance mechanism or combination of mechanisms in effect, in compliance with the requirements of § 6700, until the transition to the alternative mechanism or mechanisms is completed.
- 6701.6 An owner shall obtain alternative assurance of financial responsibility within thirty (30) days after the owner receives notice of any of the following:
- (a) Commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy) naming a provider of financial assurance as a debtor;
  - (b) Suspension or revocation of the authority of a provider of financial assurance to issue a financial assurance mechanism;
  - (c) Failure of a guarantor to meet the requirements of the financial test required under this chapter; or
  - (d) Any other incapacity of a provider of financial assurance.
- 6701.7 Whenever there is a change in a financial assurance mechanism used to demonstrate financial responsibility, the owner shall update the certification of financial responsibility within thirty (30) days of the change in accordance with §5500.4 and in the form prescribed by Appendix 67-1 (Certification of Financial Responsibility).

## **6702 FINANCIAL RESPONSIBILITY RECORDS AND REPORTS**

- 6702.1 Each owner shall maintain a copy of each financial assurance mechanism used to demonstrate financial responsibility under §§ 6703 through 6710 of this chapter for each UST until released from the requirements of this chapter under §§ 6700.5 or 6700.6.

- 6702.2 An owner may maintain the documentary evidence required under § 6702.1 at the UST facility or the owner's or operator's place of business. Records that are not maintained at the UST facility shall be made available to the Department upon request.
- 6702.3 Each owner using an assurance mechanism specified in §§ 6703 through 6710 shall maintain a copy of the assurance instrument in the form prescribed in §§ 6703 through 6710.
- 6702.4 Each owner using a financial test of self-insurance or guarantee shall maintain a copy of the chief financial officer's letter of assurance based on year-end financial statements for the most recent completed financial reporting year. This letter shall be on file at the UST facility or the owner's or operator's place of business not later than one hundred twenty (120) days after the close of the owner's financial reporting year.
- 6702.5 An owner using a guarantee, surety bond, or letter of credit shall maintain a copy of the signed standby trust fund agreement and copies of any amendments to the agreement.
- 6702.6 An owner using an insurance policy or risk retention group coverage shall maintain a copy of the signed insurance policy or risk retention group coverage policy, along with the endorsement or certificate of insurance and any amendments to the agreements.
- 6702.7 An owner shall maintain a copy of the certification of financial responsibility that is required to be filed under §§ 6700.8, 6700.9 and 6701.7 at the UST facility or the owner's place of business.
- 6702.8 An owner shall submit evidence of current financial responsibility to the Department not later than thirty (30) days after the owner or operator identifies a spill, overfill, release, or suspected release from an UST system required to be reported under § 6201 or § 6202.
- 6702.9 An owner shall submit evidence of current financial responsibility to the Department not later than thirty (30) days after the owner or operator receives notice of the incapacity of a provider of assurance under § 6701.6.
- 6702.10 The Department may require an owner at any time to submit evidence of financial assurance or any other information relevant to compliance with §§ 6703 through 6711.

**6703 FINANCIAL TEST OF SELF-INSURANCE**

- 6703.1 An owner or a guarantor may satisfy the requirements of § 6700 by passing either of the financial tests set forth in this section.

- 6703.2 To pass a financial test of self-insurance, the owner or guarantor shall meet either of the following based on year-end financial statements for the latest completed fiscal year:
- (a) The criteria of Test A, as set forth in § 6704; or
  - (b) The criteria of Test B, as set forth in § 6705.
- 6703.3 To demonstrate that the owner or guarantor meets either of the financial tests under § 6703.2, the chief financial officer of the owner or guarantor shall sign a letter of assurance in the form specified in Appendix 67-2 (Financial Test of Self-Insurance) not later than one hundred twenty (120) days after the close of each financial reporting year, as defined by the twelve (12) month period for which financial statements used support the financial test are prepared.
- 6703.4 If an owner no longer meets the requirements of the financial test set forth in §§ 6704 or 6705 based on year-end financial statements, the owner shall obtain alternative assurance not later than one hundred fifty (150) days after the end of the year for which the financial statements used were prepared.
- 6703.5 The Department may require reports of financial condition at any time from the owner or guarantor demonstrating compliance with this section. If the Department finds, on the basis of any report or other information, that the owner or guarantor no longer meets the financial test requirements of this section, the owner shall be required to obtain alternative assurance not later than thirty (30) days after the Department notifies the owner of the finding.
- 6703.6 If an owner fails to obtain alternative assurance as required by §§ 6703.4 or 6703.5, the owner shall notify the Department, in accordance with § 5500.4, of the failure not later than ten (10) days after the expiration of the required period.

**6704 FINANCIAL TEST OF SELF-INSURANCE: TEST A**

- 6704.1 To meet financial Test A, the owner, guarantor, or both shall have a tangible net worth of at least ten (10) times the sum of the following:
- (a) The total of the applicable aggregate amount required by § 6700, based on the number of USTs for which a financial test is used to demonstrate financial responsibility to the Department;
  - (b) The sum of the corrective action cost estimates, the current closure and post-closure care cost estimates, and the amount of liability coverage for which a financial test is used to demonstrate financial responsibility to the Department; and

- (c) The sum of current plugging and abandonment cost estimates for which a financial test is used to demonstrate financial responsibility to the Department.
- 6704.2 The owner or guarantor seeking to meet financial Test A shall have a tangible net worth of at least ten million dollars (\$10,000,000).
- 6704.3 The owner or guarantor seeking to meet financial Test A shall have a letter of assurance signed by the chief financial officer in the form specified by Appendix 67-2 (Financial Test of Self-Insurance Letter from Chief Financial Officer).
- 6704.4 The owner or guarantor seeking to meet financial Test A must either:
- (a) File financial statements annually with the U.S. Securities and Exchange Commission, the Energy Information Administration, or the Rural Utilities Service; or
- (b) Report the firm's tangible net worth annually to Dun and Bradstreet, and Dun and Bradstreet must have assigned the firm a financial strength rating of 4A or 5A.
- 6704.5 The owner or guarantor seeking to meet financial Test A cannot have year-end financial statements, if independently audited, that include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- 6705 FINANCIAL TEST OF SELF-INSURANCE: TEST B**
- 6705.1 To meet financial Test B, the owner or a guarantor shall meet the federal financial test requirements set forth in 40 CFR § 264.147(f)(1), substituting the appropriate amount specified in § 6700.12(a) or (b) for the "amount of liability coverage" each time specified in the federal regulations.
- 6705.2 The fiscal year-end financial statements of the owner or guarantor seeking to meet financial Test B shall be examined by an independent certified public accountant and be accompanied by the accountant's report of the examination.
- 6705.3 The owner or guarantor seeking to meet financial Test B cannot have year-end financial statements that include an adverse auditor's opinion, a disclaimer of opinion, or a "going concern" qualification.
- 6705.4 The owner or guarantor seeking to meet financial Test B shall have a letter of assurance signed by the chief financial officer in the form specified by Appendix 67-2 (Financial Test of Self-Insurance).
- 6705.5 If the financial statements of the owner or guarantor seeking to meet financial Test B are not submitted annually to the U.S. Securities and Exchange Commission,

the Energy Information Administration, or the Rural Utilities Service, the owner or guarantor shall obtain a special report by an independent certified public accountant stating the following:

- (a) The certified public accountant has compared the data that the letter from the chief financial officer specifies as having been derived from the latest year-end financial statements of the owner or guarantor with the amounts in the financial statements; and
- (b) In connection with that comparison, no matters came to the attention of the certified public accountant that caused him or her to believe the specified data should be adjusted.

## **6706 GUARANTEES**

6706.1 An owner may satisfy the requirements of § 6700 by obtaining a guarantee that conforms to the requirements of this section.

6706.2 The guarantor shall be a firm that:

- (a) Has a controlling interest in the owner;
- (b) Has a controlling interest in a firm that has a controlling interest in the owner;
- (c) Is controlled through stock ownership by a common parent firm that has a controlling interest in the owner; or
- (d) Is engaged in a substantial business relationship with the owner and issues the guarantee as an act incident to that business relationship.

For purposes of this section, the phrase “controlling interest” means direct ownership of at least fifty percent (50%) of the voting stock of another entity.

6706.3 Each guarantee issued under this section shall be provided in the form prescribed by Appendix 67-3 (Guarantee).

6706.4 Not later than one hundred twenty (120) days after the close of each financial reporting year, the guarantor shall demonstrate that it meets the financial test criteria of §§ 6704 or 6705 based on year-end financial statements for the latest completed financial reporting year by completing a letter of assurance from the chief financial officer, as described in § 6703.3, and delivering the letter to the owner.

6706.5 If the guarantor fails to satisfy the financial tests of either §§ 6704 or 6705 at the end of any financial reporting year, the guarantor shall notify the owner by

certified mail, return receipt requested, not later than one hundred twenty (120) days after the end of that financial reporting year, and before cancellation or non-renewal of the guarantee.

6706.6 If the Department notifies the guarantor that the guarantor no longer satisfies the financial tests of either §§ 6704 or 6705, or the requirements of § 6703.3, the guarantor shall notify the owner by certified mail, return receipt requested, not later than ten (10) days after receiving the notification from the Department.

6706.7 The guarantee shall terminate not less than one hundred twenty (120) days after the date the owner receives the notification pursuant to §§ 6706.5 or 6706.6 as evidenced by the return receipt. The owner shall obtain alternative assurance in accordance with § 6701.6.

6706.8 An owner that uses a guarantee to satisfy the requirements of § 6700 shall establish a standby trust fund in accordance with § 6711 when the guarantee is obtained.

6706.9 Under the terms of the guarantee, all amounts paid by the guarantor under the guarantee shall be deposited directly into the standby trust fund in accordance with § 6712.

#### **6707 INSURANCE AND RISK RETENTION GROUP COVERAGE**

6707.1 An owner may satisfy the requirements of § 6700 by obtaining liability insurance that meets the requirements of this section from a qualified insurer or risk retention group.

6707.2 The liability insurance required under this section may be in the form of a separate insurance policy or an endorsement to an existing insurance policy.

6707.3 Each certificate of insurance and each insurance policy endorsement issued under this section shall be in the form prescribed by Appendix 67-4 (Certificate of Insurance) or Appendix 67-5 (Endorsement).

6707.4 Each insurance policy shall be issued by an insurer or risk retention group that, at a minimum, is licensed to transact the business of insurance or eligible to provide insurance as an excess or surplus lines insurer in the District of Columbia.

#### **6708 SURETY BONDS**

6708.1 An owner may satisfy the requirements of § 6700 by obtaining a surety or performance bond that conforms to the requirements of this section.

- 6708.2 The surety company issuing the bond shall be among those listed as acceptable sureties on federal bonds in the latest U.S. Department of the Treasury Circular 570.
- 6708.3 Each surety bond shall be provided in the form prescribed by Appendix 67-6 (Performance Bond).
- 6708.4 Under the terms of the bond, the surety shall become liable on the bond obligation when the owner fails to perform as guaranteed by the bond. In all cases, the surety's liability is limited to the per-occurrence and annual aggregate penal sums set forth in § 6700.
- 6708.5 The owner who uses a surety bond to satisfy the requirements of § 6700 shall establish a standby trust fund in accordance with § 6711 when the surety bond is acquired.
- 6708.6 Under the terms of the bond, all amounts paid by the surety under the bond shall be deposited directly into the standby trust fund in accordance with § 6712.

**6709 LETTER OF CREDIT**

- 6709.1 An owner may satisfy the requirements of § 6700 by obtaining an irrevocable standby letter of credit that meets the requirements of this section.
- 6709.2 The issuing institution shall be an entity that has the authority to issue letters of credit in the District of Columbia and whose letter of credit operations are regulated and examined by an agency of the federal government or the District of Columbia.
- 6709.3 Each letter of credit issued under this section shall be in the form prescribed by Appendix 67-7 (Irrevocable Standby Letter of Credit).
- 6709.4 An owner who uses a letter of credit to satisfy the requirements of § 6700 shall also establish a standby trust fund in accordance with § 6711 when the letter of credit is acquired.
- 6709.5 Under the terms of the letter of credit, all amounts paid pursuant to a draft by the Department shall be deposited by the issuing institution directly into the standby trust fund in accordance with § 6712.
- 6709.6 Each letter of credit shall be irrevocable with a term specified by the issuing institution.
- 6709.7 Each letter of credit shall provide that credit be automatically renewed for the same term as the original term, unless the issuing institution notifies the owner by certified mail, return receipt requested, of its decision not to renew the letter of



credit at least one hundred twenty (120) days before the current expiration date. Under the terms of the letter of credit, the one hundred twenty (120) days shall begin on the date when the owner receives the notice, as evidenced by the return receipt.

**6710 PRIVATE TRUST FUNDS**

6710.1 An owner may satisfy the requirements of § 6700 by establishing a private trust fund that conforms to the requirements of this section.

6710.2 The trustee shall be an entity that has the authority to act as a trustee and whose trust operations are regulated and examined by an agency of the federal government or the District of Columbia.

6710.3 Each trust agreement shall be in the form prescribed by Appendix 67-8 (Trust Agreement) and shall be accompanied by a formal certification of acknowledgement in the specified form.

6710.4 The private trust fund, when established, shall be funded for the full required amount of assurance or funded for part of the required amount of assurance and used in combination with other mechanism(s) that provide the remaining required assurance.

6710.5 If the value of the trust fund is greater than the required amount of assurance, the owner may submit a written request to the Department in accordance with § 5500.4 for release of the excess.

6710.6 If other financial assurance, or combination of assurance mechanisms, as specified in §§ 6703 through 6709, is substituted for all or part of the trust fund, the owner may submit a written request to the Department in accordance with § 5500.4 for release of the excess.

6710.7 Not later than sixty (60) days after receiving a request from the owner for release of funds as specified in §§ 6710.5 or 6710.6, the Department will instruct the trustee in writing to release to the owner the excess funds in the amount specified by the Department.

**6711 STANDBY TRUST FUNDS**

6711.1 An owner using any of the mechanisms authorized under §§ 6706, 6708, or 6709 shall establish a standby trust fund when the mechanism is acquired.

6711.2 The trustee of a standby trust fund shall be an entity that has the authority to act as a trustee and whose trust operations are examined and regulated by an agency of the federal government or the District of Columbia.

6711.3 Each standby trust agreement shall be in the form prescribed by Appendix 67-8 (Trust Agreement), and shall be accompanied by the prescribed formal certification of acknowledgement.

6711.4 The Department will instruct the trustee to refund the balance of the standby trust fund to the provider of financial assurance if the Department determines that no additional corrective action costs or third-party liability claims will occur as a result of a release covered by the financial assurance mechanism for which the standby trust fund was established.

6711.5 An owner may establish a single trust fund as the depository mechanism for all funds assured in compliance with this chapter, including standby trust funds.

## **6712 DRAWING ON FINANCIAL ASSURANCE MECHANISM**

6712.1 A guarantor, surety, or issuer of a letter of credit shall place the amount of funds specified by the Department, up to the limit of funds provided by the financial assurance mechanism, into the standby trust if both of the following occur:

- (a) The owner fails to establish alternative financial assurance within sixty (60) days after receiving notice of cancellation of the guarantee, surety bond, letter of credit, or other financial assurance mechanism; and
- (b) The Department determines or suspects that a release from an UST covered by the mechanism has occurred and has notified the owner or operator, or the owner or operator has notified the Department of a release from an UST covered by the assurance mechanism.

6712.2 A guarantor, surety, or person issuing a letter of credit shall place the amount of funds specified by the Department, up to the limit of funds provided by the financial assurance mechanism, into a standby trust if any of the conditions set forth in §§ 6712.3(a), (b)(1), or (b)(2) occurs.

6712.3 The Department may draw on a standby trust fund when either of the following occurs:

- (a) The Department makes a final determination that a release has occurred and immediate or long-term corrective action for the release is needed, and the owner or operator, after appropriate notice and opportunity to comply, has not conducted corrective action as required under Chapter 62; or
- (b) The Department has received either of the following:
  - (1) Certification from the owner, the third-party liability claimant(s), and the attorneys representing the owner and the third-party liability claimant(s) that a third-party liability claim should be paid.

The certification shall be in the form prescribed by Appendix 67-9 (Certification of Valid Claim); or

- (2) A valid final court order establishing a judgment against the owner or operator for bodily injury or property damage that was caused by an accidental release from an underground storage tank covered by financial assurance under this chapter, and the Department determines that the owner or operator has not satisfied the judgment.

6712.4 If the Department determines that the amount of corrective action costs and third-party liability claims eligible for payment as provided in § 6712.3(b) may exceed the balance of the standby trust fund and the obligation of the provider of financial assurance, the first priority for payment shall be corrective action costs necessary to protect human health and the environment.

6712.5 The Department will pay third-party liability claims in the order in which the Department receives certifications and valid court orders under § 6712.3(b).

**6713 REPLENISHMENT OF GUARANTEES, LETTERS OF CREDIT, OR SURETY BONDS**

6713.1 If at any time after a standby trust is funded with funds drawn from a guarantee, letter of credit, or surety bond, and the amount in the standby trust is reduced below the full amount of coverage required, the owner shall do either of the following by the anniversary date of the financial mechanism from which the funds were drawn:

- (a) Replenish the value of financial assurance to equal the full amount of coverage required; or
- (b) Acquire another financial assurance mechanism for the amount by which funds in the standby trust have been reduced.

6713.2 For purposes of this section, the full amount of coverage required is the amount of coverage required under § 6700. If a combination of mechanisms was used to provide the assurance funds that were drawn upon, replenishment shall occur by the earliest anniversary date among the mechanisms.

**6714 CANCELLATION OR NON-RENEWAL OF FINANCIAL ASSURANCE**

6714.1 Except as otherwise provided in this chapter, a provider of financial assurance may cancel or fail to renew an assurance mechanism by sending a notice of termination by certified mail, return receipt requested, to the owner.

- 6714.2 Termination of a guarantee, surety bond, or letter of credit may not occur until one hundred twenty (120) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt.
- 6714.3 Termination of insurance or risk retention group coverage, except for non-payment of premium(s) or misrepresentation by the insured, may not occur until sixty (60) days after the date on which the owner receives the notice of termination, as evidenced by the return receipt. Termination due to non-payment of premium(s) or misrepresentation by the insured may not occur until a minimum of ten (10) days after the date on which the owner or operator receives the notice of termination, as evidenced by the return receipt.
- 6714.4 The provider of financial assurance shall send a copy of each notice of cancellation or termination to the Department, in accordance with § 5500.4, at the same time the notice is sent to the owner.
- 6714.5 If a provider of financial responsibility cancels or fails to renew for reasons other than the incapacity of the provider as specified in § 6701.6, the owner shall obtain alternate coverage as specified in this section not later than sixty (60) days after receipt of the notice of termination.
- 6714.6 If an owner fails to obtain alternate coverage within sixty (60) days after receiving a notice of termination, the owner shall notify the Department of the failure in accordance with § 5500.4 and submit the following to the Department:
- (a) The name and address of the provider of the financial assurance mechanism subject to termination;
  - (b) The effective date of termination; and
  - (c) The evidence of the financial assurance mechanism subject to the termination that is maintained in accordance with § 6702.

## **6715 BANKRUPTCY OR INCAPACITY**

- 6715.1 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy) naming an owner as debtor, the owner shall, in accordance with § 5500.4, notify the Department by certified mail, return receipt requested, of the commencement of the proceedings, and submit to the Department the appropriate forms listed in §§ 6702.4 through 6702.7 documenting current financial responsibility.
- 6715.2 Within ten (10) days after commencement of a voluntary or involuntary proceeding under Title 11 of the United States Code (Bankruptcy) naming a guarantor providing financial assurance as debtor, the guarantor shall notify the

owner by certified mail, return receipt requested, of the commencement of proceedings, as required under § 6706.

- 6715.3 An owner who obtains financial assurances by a mechanism other than the financial test of self-insurance is deemed to be without the required financial assurance in the event of a bankruptcy or incapacity of its provider of financial assurance, or a suspension or revocation of the authority of the provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
- 6715.4 An owner shall obtain alternative financial assurance, in accordance with this chapter, not later than thirty (30) days after receiving notice of the bankruptcy or incapacity of its provider of financial assurance, or the suspension or revocation of the authority of its provider of financial assurance to issue a guarantee, insurance policy, risk retention group coverage policy, surety bond, or letter of credit.
- 6715.5 If an owner does not obtain alternative assurance within thirty (30) days after notification of bankruptcy or incapacity, as provided in this section, the owner shall notify the Department.

APPENDIX 67-1

CERTIFICATION OF FINANCIAL RESPONSIBILITY

[owner] hereby certifies that it is in compliance with the financial responsibility requirements of 20 DCMR Chapter 67.

The financial assurance mechanism(s) used to demonstrate financial responsibility under 20 DCMR Chapter 67 are as follows:

[Type of mechanisms]

\_\_\_\_\_

[Name of issuer]

\_\_\_\_\_

[Mechanism number (if applicable)]

\_\_\_\_\_

[Amount of coverage]

\_\_\_\_\_

[Effective period of coverage]

\_\_\_\_\_

[Whether mechanism covers "taking correction action" or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases."]

\_\_\_\_\_

\_\_\_\_\_

[Type of mechanisms]

\_\_\_\_\_

[Name of issuer]

\_\_\_\_\_

[Mechanism number (if applicable)]

\_\_\_\_\_

[Amount of coverage]

\_\_\_\_\_

[Effective period of coverage]

---

[Whether mechanism covers “taking correction action” or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases.”]

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[Signature of owner]

---

[Name of owner]

---

[Title]

---

[Date]

---

[Signature of witness or notary]

---

[Name of witness or notary]

---

[Date]

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APPENDIX 67-2

**FINANCIAL TEST OF SELF INSURANCE  
LETTER FROM CHIEF FINANCIAL OFFICER**

I am the chief financial officer of \_\_\_\_\_ [name and address of the owner or guarantor]. This letter is in support of the use of \_\_\_\_\_ [“the financial test of self-insurance” and/or “guarantee”] to demonstrate financial responsibility for \_\_\_\_\_ [“taking corrective action” and/or “compensating third parties for bodily injury and property damage”] caused by \_\_\_\_\_ [“sudden accidental releases” and/or “nonsudden accidental releases”] in the amount of at least \_\_\_\_\_ [dollar amount] per-occurrence and \_\_\_\_\_ [dollar amount] annual aggregate arising from operating (an) underground storage tank(s). Underground storage tanks at the following facilities are assured by this financial test by this \_\_\_\_\_ [“owner” and/or “guarantor”].

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List for each facility: the name and address of the facility where tanks assured by this financial test are located, and whether tanks are assured by this financial test. If separate mechanisms or combinations of mechanisms are being used to assure any of the tanks at this facility, list each tank assured by this financial test by the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600.]

A \_\_\_\_\_ [“financial test” and/or “guarantee”] is also used by \_\_\_\_\_ [“owner” or “guarantor”] to demonstrate evidence of financial responsibility in the following amounts under other EPA regulations or state programs authorized by EPA under 40 CFR Parts 145 and 271:

<b>EPA Regulation</b>	<b>Amount</b>
Closure (§§ 264.143 and 265.143)	_____
Post-Closure Care (§§ 264.145 and 265.145)	_____
Liability Coverage (§§ 264.147 and 265.147)	_____
Corrective Action (§ 264.101(b))	_____
Plugging and Abandonment (§ 144.63)	_____
Closure	_____



Post-Closure Care	_____
Liability Coverage	_____
Corrective Action	_____
Plugging and Abandonment	_____
Total	_____

This \_\_\_\_\_ [“owner” or “guarantor”] has not received an adverse opinion, a disclaimer of opinion, or a “going concern” qualification from an independent auditor on his or her financial statements for the latest completed fiscal year.

[Fill in the information for Alternative I if the criteria of 20 DCMR § 6704 are being used to demonstrate compliance with the financial test requirements. Fill in the information for Alternative II if the criteria of 20 DCMR § 6705 are being used to demonstrate compliance with the financial test requirements.]

**Alternative I**

1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$ \_\_\_\_\_
  2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test, and/or guarantee. \$ \_\_\_\_\_
  3. Sum of lines 1 and 2 \_\_\_\_ \$ \_\_\_\_\_
  4. Total tangible assets \_\_\_\_ \$ \_\_\_\_\_
  5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \_\_\_\_\_ \$ \_\_\_\_\_
  6. Tangible net worth [subtract line 5 from line 4]. \$ \_\_\_\_\_
- |  |     |    |
|--|-----|----|
|  | Yes | No |
|--|-----|----|
7. Is line 6 at least ten million dollars (\$ 10,000,000)? \_\_\_\_\_ \_\_\_\_\_
  8. Is line 6 at least 10 times line 3? \_\_\_\_\_ \_\_\_\_\_

- 9. Have financial statements for the latest fiscal year been filed with the Securities and Exchange Commission? \_\_\_\_\_
- 10. Have financial statements for the latest fiscal year been filed with the Energy Information Administration? \_\_\_\_\_
- 11. Have financial statements for the latest fiscal year been filed with the Rural Utilities Service? \_\_\_\_\_
- 12. Has financial information been provided to Dun and Bradstreet, and has Dun and Bradstreet provided a financial strength rating of 4A or 5A? [Answer "Yes" only if both criteria have been met.] \_\_\_\_\_

**Alternative II**

- 1. Amount of annual UST aggregate coverage being assured by a financial test, and/or guarantee. \$\_\_\_\_\_
  - 2. Amount of corrective action, closure and post-closure care costs, liability coverage, and plugging and abandonment costs covered by a financial test or guarantee. \$\_\_\_\_\_
  - 3. Sum of lines 1 and 2 \_\_\_\_\_ \$\_\_\_\_\_
  - 4. Total tangible assets \_\_\_\_\_ \$\_\_\_\_\_
  - 5. Total liabilities [if any of the amount reported on line 3 is included in total liabilities, you may deduct that amount from this line and add that amount to line 6] \_\_\_\_\_ \$\_\_\_\_\_
  - 6. Tangible net worth [subtract line 5 from line 4] \$\_\_\_\_\_
  - 7. Total assets in the U.S. [required only if less than ninety percent (90%) of assets are located in the U.S.] \_\_\_\_\_ \$\_\_\_\_\_
- Yes                      No
- 8. Is line 6 at least ten million dollars (\$ 10,000,000)? \_\_\_\_\_

- 9. Is line 6 at least six (6) times line 3? \_\_\_\_\_
- 10. Are at least ninety percent (90%) of assets located in the U.S.? [If "No," complete line 11] \_\_\_\_\_
- 11. Is line 7 at least six (6) times line 3? [Fill in either lines 12-15 or lines 16-18] \_\_\_\_\_
- 12. Current Assets \_\_\_\_\_ \$ \_\_\_\_\_
- 13. Current Liabilities \_\_\_\_\_ \$ \_\_\_\_\_
- 14. Networking capital [subtract line 13 from line 12] \$ \_\_\_\_\_  
Yes No
- 15. Is line 14 at least six (6) times line 3? \_\_\_\_\_
- 16. Current bond rating of most recent bond issue. \_\_\_\_\_
- 17. Name of rating service \_\_\_\_\_
- 18. Date of maturity of bond \_\_\_\_\_  
Yes No
- 19. Have financial statements for the latest fiscal year been filed with the SEC, the Energy Information Administration, or the Rural Utilities Service? \_\_\_\_\_

[If "No," please attach a report from an independent certified public accountant certifying that there are no material differences between the data as reported in lines 4-18 above and the financial statements for the latest fiscal year.]

[For both Alternative I and Alternative II complete the certification with this statement.]

I hereby certify that the wording of this letter is identical to the wording specified in Appendix 67-2 of 20 DCMR Chapter 67 as such regulations were constituted on the date shown immediately below.

[Signature]\_\_\_\_\_

[Name]\_\_\_\_\_

[Title]\_\_\_\_\_

[Date]\_\_\_\_\_

APPENDIX 67-3

GUARANTEE

Guarantee made this \_\_\_\_\_[date] by \_\_\_\_\_[name of guaranteeing entity], a business entity organized under the laws of the District of Columbia, herein referred to as guarantor, to the Department of Energy and Environment (Department) and to any and all third parties, and obligees, on behalf of \_\_\_\_\_[owner] of \_\_\_\_\_[business address].

RECITALS:

- (1) Guarantor meets or exceeds the financial test criteria of 20 DCMR § 6703 and agrees to comply with the requirements for guarantors as specified in 20 DCMR §§ 6706.4 through 6706.8.
- (2) \_\_\_\_\_[owner] owns the following underground storage tank(s) covered by this guarantee:

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST(s) Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600, and the name and address of the facility.]

This guarantee satisfies 20 DCMR Chapter 67 requirements for assuring funding for \_\_\_\_\_[“taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from the above-identified underground storage tank(s) in the amount of \_\_\_\_\_[dollar amount] per-occurrence and \_\_\_\_\_[dollar amount] annual aggregate.

- (3) \_\_\_\_\_[Insert appropriate phrase: “On behalf of our subsidiary” (if guarantor is corporate parent of the owner); “On behalf of our affiliate” (if guarantor is a related firm of the owner); or “Incident to our business relationship with” (if guarantor is providing the guarantee as an incident to a substantial business relationship with owner)] \_\_\_\_\_[owner], guarantor guarantees to the Department and to any and all third parties that:

In the event that \_\_\_\_\_[owner] fails to provide alternate coverage within sixty (60) days after receipt of a notice of cancellation of this guarantee and the Director of the Department has determined or suspects that a release has occurred at an underground storage tank covered by this guarantee, the guarantor, upon instructions from the Director, shall fund a standby trust fund in accordance with the provisions of 20 DCMR § 6712, in an amount not to exceed the coverage limits specified above.

In the event that the Director determines that \_\_\_\_\_[owner] has failed to perform corrective action for releases arising out of the operation of the above-identified tank(s) in accordance with 20 DCMR Chapter 62, the guarantor upon written instructions from the Director shall fund a standby trust fund in accordance with the provisions of 20 DCMR § 6712 in an amount not to exceed the coverage limits specified above.

If \_\_\_\_\_[owner] fails to satisfy a judgment or award based on a determination of liability for bodily injury or property damage to third parties caused by \_\_\_\_\_[“sudden” and/or “nonsudden”] accidental releases arising from the operation of the above identified tank(s), or fails to pay an amount agreed to in settlement of a claim arising from or alleged to arise from such injury or damage, the guarantor, upon written instructions from the Director, shall fund a standby trust fund in accordance with the provisions of 20 DCMR § 6712 to satisfy such judgment(s), award(s), or settlement agreement(s) up to the limits of coverage specified above.

- (4) Guarantor agrees that if, at the end of any fiscal year before cancellation of this guarantee, the guarantor fails to meet the financial test criteria of § 6703, guarantor shall send within one hundred twenty (120) days of such failure, by certified mail, notice to \_\_\_\_\_[owner]. The guarantee will terminate one hundred twenty (120) days from the date of receipt of the notice by \_\_\_\_\_[owner], as evidenced by the return receipt.
- (5) Guarantor agrees to notify \_\_\_\_\_[owner] by certified mail of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code naming guarantor as debtor, within ten (10) days after commencement of the proceeding.
- (6) Guarantor agrees to remain bound under this guarantee notwithstanding any modification or alteration of any obligation of \_\_\_\_\_[owner] pursuant to 20 DCMR Chapters 55 through 70.
- (7) Guarantor agrees to remain bound under this guarantee for so long as \_\_\_\_\_[owner] must comply with the applicable financial responsibility requirements of the regulations under 20 DCMR Chapter 67 for the above-identified tank(s), except that guarantor may cancel this guarantee by sending notice by certified mail to \_\_\_\_\_[owner], such cancellation to become effective no earlier than one hundred twenty (120) days after receipt of such notice by \_\_\_\_\_[owner], as evidenced by the return receipt.
- (8) The guarantor’s obligation does not apply to any of the following:

- (a) Any obligation of \_\_\_\_\_[owner] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
  - (b) Bodily injury to an employee of \_\_\_\_\_[owner] arising from, and in the course of, employment by \_\_\_\_\_[owner];
  - (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
  - (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by \_\_\_\_\_[owner] that is not the direct result of a release from a petroleum underground storage tank; and
  - (e) Bodily damage or property damage for which \_\_\_\_\_[owner] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of §§ 6700.10 through 6700.17; and
- (9) Guarantor expressly waives notice of acceptance of this guarantee by the Department, by any or all third parties, or by \_\_\_\_\_[owner].

I hereby certify that the wording of this guarantee is identical to the wording specified in Appendix 67-3 of 20 DCMR Chapter 67 as such regulations were constituted on the effective date shown immediately below.

[Effective date] \_\_\_\_\_

[Name of guarantor] \_\_\_\_\_

[Authorized signature for guarantor] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

{Signature of witness or notary} \_\_\_\_\_

APPENDIX 67-4

CERTIFICATE OF INSURANCE

Name and address of each covered location:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Policy number:

\_\_\_\_\_

Period of coverage [current policy period]:

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_  
\_\_\_\_\_

Name of insured:

\_\_\_\_\_

Address of insured:

\_\_\_\_\_

CERTIFICATION:

(1) \_\_\_\_\_ [name of Insurer or Risk Retention Group], [the “Insurer” or “Group”], as identified above, hereby certifies that it has issued liability insurance covering the following underground storage tank(s):

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600 and the name and address of the facility] for \_\_\_\_\_ [insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”; in accordance with and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different



tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are \_\_\_\_\_[insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each underground storage tank or location], exclusive of legal defense costs, which are subject to a separate limit under the policy.

This coverage is provided under \_\_\_\_\_[policy number]. The effective date of said policy is \_\_\_\_\_[date].

(2) The [“Insurer” or “Group”] further certifies the following with respect to the insurance described in paragraph 1:

(a) Bankruptcy or insolvency of the insured shall not relieve the \_\_\_\_\_ [Insurer or Group] of its obligations under the policy to which this certificate applies.

(b) The \_\_\_\_\_ [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured from any such payment made by the \_\_\_\_\_ [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20 DCMR §§ 6703 through 6710.

(c) Whenever requested by the Director, the \_\_\_\_\_ [“Insurer” or “Group”] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements.

(d) Cancellation or any other termination of the insurance by the \_\_\_\_\_ [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured.

[Insert for claims-made policies]:

(e) The insurance covers claims otherwise covered by the policy that are reported to the \_\_\_\_\_ [“Insurer” or “Group”] within six (6) months of the effective date of cancellation or non-renewal of the policy except where the new

or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-4 of 20 DCMR Chapter 67, and that the \_\_\_\_\_[“Insurer” or “Group”] is \_\_\_\_\_[“licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states”]

[Signature of Authorized Representative of Insurer] \_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Authorized representative of \_\_\_\_\_[name of Insurer or Risk Retention Group]

[Address of Representative] \_\_\_\_\_

APPENDIX 67-5

ENDORSEMENT

Name and address of each covered location:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Policy number:

\_\_\_\_\_

Period of coverage [current policy period]:

\_\_\_\_\_

Address of [Insurer or Risk Retention Group]:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name of insured:

\_\_\_\_\_

Address of insured:

\_\_\_\_\_

ENDORSEMENT:

- (1) This endorsement certifies that the policy to which the endorsement is attached provides liability insurance covering the following underground storage tanks:

<u>UST Facility I.D. Number</u>	<u>Number of UST(s)</u>	<u>Name/Address of UST Facility</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600 and the name and address of the facility.]

For \_\_\_\_\_[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" in accordance with

and subject to the limits of liability, exclusions, conditions, and other terms of the policy; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tank(s) identified above.

The limits of liability are \_\_\_\_\_ [insert the dollar amount of the “each occurrence” and “annual aggregate” limits of the Insurer’s or Group’s liability; if the amount of coverage is different for different types of coverage or for different underground storage tanks or locations, indicate the amount of coverage for each type of coverage and/or for each UST or location], exclusive of legal defense costs which are subject to a separate limit under the policy]. This coverage is provided under \_\_\_\_\_ [policy number]. The effective date of said policy is \_\_\_\_\_ [date].

- (2) The insurance afforded with respect to such occurrences is subject to all of the terms and conditions of the policy; provided, however, that any provisions inconsistent with subsections (a) through (e) of this paragraph 2 are hereby amended to conform with subsections (a) through (e):
- (a) Bankruptcy or insolvency of the insured shall not relieve the \_\_\_\_\_ [“Insurer” or “Group”] of its obligations under the policy to which this endorsement is attached;
  - (b) The \_\_\_\_\_ [“Insurer” or “Group”] is liable for the payment of amounts within any deductible applicable to the policy to the provider of corrective action or a damaged third-party, with a right of reimbursement by the insured for any such payment made by the \_\_\_\_\_ [“Insurer” or “Group”]. This provision does not apply with respect to that amount of any deductible for which coverage is demonstrated under another mechanism or combination of mechanisms as specified in 20 DCMR §§ 6703-6710;
  - (c) Whenever requested by the Director of the Department of Energy and Environment, \_\_\_\_\_ [“Insurer” or “Group”] agrees to furnish to the Director a signed duplicate original of the policy and all endorsements;
  - (d) Cancellation or any other termination of the insurance by the \_\_\_\_\_ [“Insurer” or “Group”], except for non-payment of premium or misrepresentation by the insured, will be effective only upon written notice and only after the expiration of sixty (60) days after a copy of such written notice is received by the insured. Cancellation for non-payment of premium or misrepresentation by the insured will be effective only upon written notice and only after expiration of a minimum of ten (10) days after a copy of such written notice is received by the insured.

[Insert for claims made policies]:

- (e) The insurance covers claims otherwise covered by the policy that are reported to the \_\_\_\_\_ [“Insurer” or “Group”] within six (6) months of the effective date of the cancellation or non-renewal of the policy except where the new or renewed policy has the same retroactive date or a retroactive date earlier than that of the prior policy, and which arise out of any covered occurrence that commenced after the policy retroactive date, if applicable, and prior to such policy renewal or termination date. Claims reported during such extended reporting period are subject to the terms, conditions, limits, including limits of liability, and exclusions of the policy.

I hereby certify that the wording of this instrument is identical to the wording in Appendix 67-5 of 20 DCMR Chapter 67 and that the \_\_\_\_\_ [“Insurer” or “Group”] is \_\_\_\_\_ [“licensed to transact the business of insurance or eligible to provide insurance as excess or surplus lines insurer in one or more states”].

[Signature of Authorized Representative of Insurer or Risk Retention Group]

\_\_\_\_\_

[Name of person signing] \_\_\_\_\_

[Title of person signing] \_\_\_\_\_

Authorized Representative of \_\_\_\_\_ [name of Insurer or Risk Retention Group]

[Address of Representative] \_\_\_\_\_

APPENDIX 67-6

PERFORMANCE BOND

Date bond executed: \_\_\_\_\_

Period of coverage: \_\_\_\_\_

Principal: \_\_\_\_\_ [legal name and business address of owner]

Type of Organization: \_\_\_\_\_ [insert "individual," "joint venture," "partnership," or "corporation"]

State of incorporation (if applicable): \_\_\_\_\_

Surety(ies): \_\_\_\_\_ [name(s) and business address(es)]

SCOPE OF COVERAGE:

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST(s) Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600, and the name and address of the facility as above.]

List the coverage guaranteed by the bond: \_\_\_\_\_  
["Taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases" "arising from operating the underground storage tank."]

Penal Sums of Bond:

Per-occurrence \$ \_\_\_\_\_

Annual aggregate \$ \_\_\_\_\_

Surety's bond number: \_\_\_\_\_

Know All Persons by These Presents, that we, the Principal and Surety(ies), hereto are firmly bound to the District of Columbia Department of Energy and Environment (Department) in the above penal sums for the payment of which we bind ourselves, our heirs, executors,

administrators, successors, and assigns jointly and severally; provided, that where the Surety(ies) are corporations acting as co-sureties, we, the Sureties, bind ourselves in such sums jointly and severally only for the purpose of allowing a joint action or actions against any or all of us, and for all other purposes each Surety binds itself, jointly and severally with the Principal, for the payment of such sums only as is set forth opposite the name of such Surety, but if no limit of liability is indicated, the limit of liability shall be the full amount of the penal sums.

Whereas said Principal is required under Subtitle I of the Solid Waste Disposal Act, as amended, to provide financial assurance for \_\_\_\_\_  
[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"; if coverage is different for different tanks or locations, indicate the type of coverage applicable to each tank or location] arising from operating the underground storage tanks identified above; and

Whereas said Principal shall establish a standby trust fund as is required when a surety bond is used to provide such financial assurance;

Now, therefore, the conditions of the obligation are such that if the Principal shall faithfully \_\_\_\_\_ ["take corrective action, in accordance with 20 DCMR Chapter 62 and the Director of the Department's instructions for," and/or "compensate injured third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the tank(s) identified above, or if the Principal shall provide alternative financial assurance, as specified in 20 DCMR Chapter 67, within one hundred twenty (120) days after the date the notice of cancellation is received by the Principal from the Surety(ies), then this obligation shall be null and void; otherwise it is to remain in full force and effect.

This obligation does not apply to any of the following:

- (a) Any obligation of \_\_\_\_\_ [owner] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of \_\_\_\_\_ [owner] arising from, and in the course of, employment by \_\_\_\_\_ [owner];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care of, custody, or control of, or occupied by \_\_\_\_\_ [owner] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which \_\_\_\_\_ [owner] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a

contract or agreement entered into to meet the requirements of 20 DCMR §§ 6700.10 through 6700.17.

The Surety(ies) shall become liable on this bond obligation only when the Principal has failed to fulfill the conditions described above.

Upon notification by the Director that the Principal has failed to \_\_\_\_\_ [“take corrective action, in accordance with 20 DCMR Chapter 62 and the Director’s instructions,” and/or “compensate injured third parties”] as guaranteed by this bond, the Surety(ies) shall either perform \_\_\_\_\_ [“corrective action in accordance with 20 DCMR Chapter 62 and the Director’s instructions,” and/or “third-party liability compensation”] or place funds in an amount up to the annual aggregate penal sum into the standby trust fund as directed by the Director under 20 DCMR § 6712.

Upon notification by the Director that the Principal has failed to provide alternate financial assurance within sixty (60) days after the date the notice of cancellation is received by the Principal from the Surety(ies) and that the Director has determined or suspects that a release has occurred, the Surety(ies) shall place funds in an amount not exceeding the annual aggregate penal sum into the standby trust fund as directed by the Director under § 6712.

The Surety(ies) hereby waive(s) notification of amendments to applicable laws, statute, rules and regulations and agrees that no such amendment shall in any way alleviate its (their) obligation on this bond.

The liability of the Surety(ies) shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the annual aggregate to the penal sum shown on the face of the bond, but in no event shall the obligation of the Surety(ies) hereunder exceed the amount of said annual aggregate penal sum.

The Surety(ies) may cancel the bond by sending notice of cancellation by certified mail to the Principal, provided, however, that cancellation shall not occur during the one hundred twenty (120) days beginning on the date of receipt of the notice of cancellation by the Principal, as evidenced by the return receipt.

The Principal may terminate this bond by sending written notice to the Surety(ies).

In Witness Whereof, the Principal and Surety(ies) have executed this Bond and have affixed their seals on the date set forth above.



The persons whose signatures appear below hereby certify that they are authorized to execute this surety bond on behalf of the Principal and Surety(ies) and that the wording of this surety bond is identical to the wording specified in Appendix 67-6 of 20 DCMR Chapter 67 as such regulations were constituted on the date this bond was executed.

Principal

[Signature(s)] \_\_\_\_\_

[Name(s)] \_\_\_\_\_

[Title(s)] \_\_\_\_\_

[Corporate seal] \_\_\_\_\_

Corporate surety(ies)

[Name and address] \_\_\_\_\_

[State of incorporation] \_\_\_\_\_

[Liability limit] \$ \_\_\_\_\_

[Signature(s)] \_\_\_\_\_

[Names(s) and title(s)] \_\_\_\_\_

[Corporate seal] \_\_\_\_\_

[For every co-surety, provide signature(s), corporate seal, and other information in the same manner as for Surety above.]

Bond premium: \$ \_\_\_\_\_

APPENDIX 67-7

IRREVOCABLE STANDBY LETTER OF CREDIT

\_\_\_\_\_[Name and address of issuing institution]

\_\_\_\_\_[Name and address of Director of District of Columbia Department of Energy and Environment]

Dear Sir or Madam:

We hereby establish our Irrevocable Standby Letter of Credit No. \_\_\_\_\_ in your favor, at the request and for the account of \_\_\_\_\_[owner] of \_\_\_\_\_[address] up to the aggregate amount of \_\_\_\_\_[in words] U.S. dollars (\$ \_\_\_\_\_[insert dollar amount]), available upon presentation of:

- (1) Your sight draft, bearing reference to this letter of credit, No. \_\_\_\_\_; and
- (2) Your signed statement reading as follows: "I certify that the amount of the draft is payable pursuant to regulations issued under authority of Subtitle I of the Solid Waste Disposal Act, as amended."

This letter of credit may be drawn on to cover \_\_\_\_\_[insert: "taking corrective action" and/or "compensating third parties for bodily injury and property damage caused by" either "sudden accidental releases" or "nonsudden accidental releases" or "accidental releases"] arising from operating the underground storage tank(s) identified below in the amount of \_\_\_\_\_[in words] \$ \_\_\_\_\_[insert dollar amount] per occurrence and \_\_\_\_\_[in words] \$ \_\_\_\_\_[insert dollar amount] annual aggregate:

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST(s) Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR § 5600, and the name and address of the facility.]

The letter of credit may not be drawn on to cover any of the following:

- (a) Any obligation of \_\_\_\_\_[owner] under a workers' compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to an employee of \_\_\_\_\_[owner] arising from, and in the course of, employment by \_\_\_\_\_[owner];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by \_\_\_\_\_[owner] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which \_\_\_\_\_[owner] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other than a contract or agreement entered into to meet the requirements of 20 DCMR §§ 6700.10 through 6700.17.

This letter of credit is effective as of \_\_\_\_\_[date] and shall expire on \_\_\_\_\_[date], but such expiration date shall be automatically extended for a period of \_\_\_\_\_[at least the length of the original term] on \_\_\_\_\_[expiration date] and on each successive expiration date, unless, at least one hundred twenty (120) days before the current expiration date, we notify \_\_\_\_\_[owner] by certified mail that we have decided not to extend this letter of credit beyond the current expiration date. In the event that \_\_\_\_\_[owner] is so notified, any unused portion of the credit shall be available upon presentation of your sight draft for one hundred twenty (120) days after the date of receipt by \_\_\_\_\_[owner], as shown on the signed return receipt.

Whenever this letter of credit is drawn on under and in compliance with the terms of this credit, we shall duly honor such draft upon presentation to us, and we shall deposit the amount of the draft directly into the standby trust fund of \_\_\_\_\_[owner] in accordance with your instructions.

We certify that the wording of this letter of credit is identical to the wording specified in Appendix 67-7 of 20 DCMR Chapter 67 as such regulations were constituted on the date shown immediately below.

[Signature(s) of official(s) of issuing institution]

---

[Title(s) of official(s) of issuing institution]

---

[Date]

---

This credit is subject to \_\_\_\_\_[insert “the most recent edition of the Uniform Customs and Practice for Documentary Credits, published by the International Chamber of Commerce,” or “the Uniform Commercial Code”].

**APPENDIX 67-8****TRUST AGREEMENT**

Trust agreement, the “Agreement,” entered into as of \_\_\_\_\_[date] by and between \_\_\_\_\_[name of owner], a \_\_\_\_\_[name of state] \_\_\_\_\_[“corporation,” “partnership,” “association,” or “proprietorship”], the “Grantor,” and \_\_\_\_\_[name of corporate trustee], \_\_\_\_\_[insert “Incorporated in the state of \_\_\_\_\_” or “a national bank”], the Trustee.

Whereas, the United States Environmental Protection Agency, “EPA,” an agency of the United States Government, has established certain regulations applicable to the Grantor, requiring that an owner or operator of an underground storage tank shall provide assurance that funds will be available when needed for corrective action and third-party compensation for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from the operation of the underground storage tank. The attached Schedule A lists the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located that are covered by the [insert “standby” where trust agreement is a standby trust agreement] trust agreement.

(This paragraph is only applicable to the standby trust agreement.) [Whereas, the Grantor has elected to establish \_\_\_\_\_[insert either “a guarantee,” “surety bond,” or “letter of credit”] to provide all or part of such financial assurance for the underground storage tanks identified herein and is required to establish a standby trust fund able to accept payments from the instrument];

Whereas, the Grantor, acting through its duly authorized officers, has selected the Trustee to be the trustee under this agreement, and the Trustee is willing to act as trustee;

Now, therefore, the Grantor and the Trustee agree as follows:

**SECTION 1. DEFINITIONS**

As used in this Agreement:

- (a) The term “Grantor” means the owner who enters into this Agreement and any successors or assigns of the Grantor.
- (b) The term “Trustee” means the Trustee who enters into this Agreement and any successor Trustee.

**SECTION 2. IDENTIFICATION OF THE FINANCIAL ASSURANCE MECHANISM**

(This section and paragraph is only applicable to the standby trust agreement.) [This Agreement pertains to the \_\_\_\_\_[identity the financial assurance mechanism,

either a guarantee, surety bond, or letter of credit, from which the standby trust fund is established to receive payments].

### **SECTION 3. ESTABLISHMENT OF FUND**

The Grantor and the Trustee hereby establish a trust fund, the “Fund,” for the benefit of the District of Columbia Department of Energy and Environment (Department). The Grantor and the Trustee intend that no third-party have access to the Fund except as herein provided. (The following sentence is only applicable to the standby trust agreement) [The Fund is established initially as a standby to receive payments and shall not consist of any property.] Payments made by the provider of financial assurance pursuant to the Director of the Department’s instruction are transferred to the Trustee and are referred to as the Fund, together with all earnings and profits thereon, less any payments or distributions made by the Trustee pursuant to this Agreement. The Fund shall be held by the Trustee, IN TRUST, as hereinafter provided. The Trustee shall not be responsible nor shall it undertake any responsibility for the amount or adequacy of, nor any duty to collect from the Grantor as provider of financial assurance, any payments necessary to discharge any liability of the Grantor established by the Department.

### **SECTION 4. PAYMENT FOR [“CORRECTIVE ACTION” AND/OR “THIRD-PARTY LIABILITY CLAIMS”]**

The Trustee shall make payments from the Fund as the Director shall direct, in writing, to provide for the payment of the costs of \_\_\_\_\_[insert: “taking corrective action” and/or “compensating third parties for bodily injury and property damage caused by” either “sudden accidental releases” or “nonsudden accidental releases” or “accidental releases”] arising from operating the tanks covered by the financial assurance mechanism identified in the Agreement.

The Fund may not be drawn upon to cover any of the following:

- (a) Any obligation of \_\_\_\_\_[owner] under a workers’ compensation, disability benefits, or unemployment compensation law or other similar law;
- (b) Bodily injury to any employee of \_\_\_\_\_[owner] arising from, and in the course of employment by \_\_\_\_\_[owner];
- (c) Bodily injury or property damage arising from the ownership, maintenance, use, or entrustment to others of any aircraft, motor vehicle, or watercraft;
- (d) Property damage to any property owned, rented, loaned to, in the care, custody, or control of, or occupied by \_\_\_\_\_[owner] that is not the direct result of a release from a petroleum underground storage tank;
- (e) Bodily injury or property damage for which \_\_\_\_\_[owner] is obligated to pay damages by reason of the assumption of liability in a contract or agreement other

than a contract or agreement entered into to meet the requirements of 20 DCMR §§ 6700.10 through 6700.17.

The Trustee shall reimburse the Grantor, or other persons as specified by the Department, from the Fund for corrective action expenditures and/or third-party liability claims in such amounts as the Director shall direct in writing. In addition, the Trustee shall refund to the Grantor such amounts as the Director specifies in writing. Upon refund, such funds shall no longer constitute part of the Fund as defined herein.

#### **SECTION 5. PAYMENTS COMPRISING THE FUND**

Payments made to the Trustee for the Fund shall consist of cash and securities acceptable to the Trustee.

#### **SECTION 6. TRUSTEE MANAGEMENT**

The Trustee shall invest and reinvest the principal and income of the Fund and keep the Fund invested as a single fund, without distinction between principal and income, in accordance with general investment policies and guidelines which the Grantor may communicate in writing to the Trustee from time to time, subject, however, to the provisions of this section. In investing, reinvesting, exchanging, selling, and managing the Fund, the Trustee shall discharge his or her duties with respect to the trust fund solely in the interest of the beneficiaries and with the care, skill, prudence, and diligence under the circumstances then prevailing which persons of prudence, acting in a like capacity and familiar with such matters, would use in the conduct of an enterprise of a like character and with like aims; except that:

- (a) Securities or other obligations of the Grantor, or any other owner or operator of the tanks, or any of their affiliates as defined in the Investment Company Act of 1940, as amended, 15 USC §§ 80a-2(a), shall not be acquired or held, unless they are securities or other obligations of the federal or a state government;
- (b) The Trustee is authorized to invest the Fund in time or demand deposits of the Trustee, to the extent insured by an agency of the federal or state government; and
- (c) The Trustee is authorized to hold cash awaiting investment or distribution uninvested for a reasonable time and without liability for the payment of interest thereon.

#### **SECTION 7. COMMINGLING AND INVESTMENT**

The Trustee is expressly authorized in its discretion:

- (a) To transfer from time to time any or all of the assets of the Fund to any common, commingled, or collective trust fund created by the Trustee in which the Fund is eligible to participate, subject to all of the provisions thereof, to be commingled with the assets of other trusts participating therein; and

- (b) To purchase shares in any investment company registered under the Investment Company Act of 1940, 15 USC §§ 80a-1 *et seq.*, including one which may be created, managed, underwritten, or to which investment advice is rendered or the shares of which are sold by the Trustee. The Trustee may vote such shares in its discretion.

## **SECTION 8. EXPRESS POWERS OF TRUSTEE**

Without in any way limiting the powers and discretion conferred upon the Trustee by the other provisions of this Agreement or by law, the Trustee is expressly authorized and empowered:

- (a) To sell, exchange, convey, transfer, or otherwise dispose of any property held by it, by public or private sale. No person dealing with the Trustee shall be bound to see to the application of the purchase money or to inquire into the validity or expediency of any such sale or other disposition;
- (b) To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;
- (c) To register any securities held in the Fund in its own name or in the name of a nominee and to hold any security in bearer form or in book entry, or to combine certificates representing such securities with certificates of the same issue held by the Trustee in other fiduciary capacities, or to deposit or arrange for the deposit of such securities in a qualified central depository even though when so deposited, such securities may be merged and held in bulk in the name of the nominee of such depository with other securities deposited therein by another person or to deposit or arrange for the deposit of any securities issued by the United States Government, or any agency or instrumentality thereof, with a Federal Reserve Bank, but the books and records of the Trustee shall at all times show that all such securities are part of the Fund;
- (d) To deposit any cash in the Fund in interest-bearing accounts maintained or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee, to the extent insured by an agency of the federal or state government; and
- (e) To compromise or otherwise adjust all claims in favor of or against the Fund.

## **SECTION 9. TAXES AND EXPENSES**

All taxes of any kind that may be assessed or levied against or in respect of the Fund and all brokerage commissions incurred by the Fund shall be paid from the Fund. All other expenses incurred by the Trustee in connection with the administration of this Trust, including fees for legal services rendered to the Trustee, the compensation of the Trustee to the extent not paid directly by the Grantor, and all other proper charges and disbursements of the Trustee shall be paid from the Fund.



**SECTION 10. ADVICE OF COUNSEL**

The Trustee may from time to time consult with counsel, who may be counsel to the Grantor, with respect to any questions arising as to the construction of this Agreement or any action to be taken hereunder. The Trustee shall be fully protected, to the extent permitted by law, in acting upon the advice of counsel.

**SECTION 11. TRUSTEE COMPENSATION**

The Trustee shall be entitled to reasonable compensation for its services as agreed upon in writing from time to time with the Grantor.

**SECTION 12. SUCCESSOR TRUSTEE**

The Trustee may resign or the Grantor may replace the Trustee, but such resignation or replacement shall not be effective until the Grantor has appointed a successor trustee and this successor accepts the appointment. The successor trustee shall have the same powers and duties as those conferred upon the Trustee hereunder. Upon the successor trustee's acceptance of the appointment, the Trustee shall assign, transfer, and pay over to the successor trustee the funds and properties then constituting the Fund. If for any reason the Grantor cannot or does not act in the event of the resignation of the Trustee, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor trustee or for instructions. The successor trustee shall specify the date on which it assumes administration of the trust in writing sent to the Grantor and the present Trustee by certified mail ten (10) days before such change becomes effective. Any expenses incurred by the Trustee as a result of any of the acts contemplated by this section shall be paid as provided in Section 9.

**SECTION 13. INSTRUCTIONS TO THE TRUSTEE**

All orders, requests, and instructions by the Grantor to the trustee shall be in writing, signed by such persons as are designated in Schedule B or such other designees as the Grantor may designate by amendment to Schedule B. The Trustee shall be fully protected in acting without inquiry in accordance with the Grantor's orders, requests, and instructions. All orders, requests, and instructions by the Director to the Trustee shall be in writing, signed by the Director, and the Trustee shall act and shall be fully protected in acting in accordance with such orders, requests, and instructions. The Trustee shall have the right to assume, in the absence of written notice to the contrary, that no event constituting a change or a termination of the authority of any person to act on behalf of the Grantor or the Director hereunder has occurred. The Trustee shall have no duty to act in the absence of such orders, requests, and instructions from the Grantor and/or the Director, except as provided for herein.

**SECTION 14. AMENDMENT OF AGREEMENT**

This Agreement may be amended by an instrument in writing executed by the Grantor and the Trustee, or by the Trustee and the Director if the Grantor ceases to exist.

**SECTION 15. IRREVOCABILITY AND TERMINATION**

Subject to the right of the parties to amend this Agreement as provided in Section 14, above, this Trust shall be irrevocable and shall continue until terminated at the written direction of the Grantor and the Trustee, or by the Trustee and the Director, if the Grantor ceases to exist. Upon termination of the Trust, all remaining trust property, less final trust administration expenses, shall be delivered to the Grantor.

**SECTION 16. IMMUNITY AND INDEMNIFICATION**

The Trustee shall not incur personal liability of any nature in connection with any act or omission, made in good faith, in the administration of this Trust, or in carrying out any directions by the Grantor or the Director issued in accordance with this Agreement. The Trustee shall be indemnified and saved harmless by the Grantor from and against any personal liability to which the Trustee may be subjected by reason of any act or conduct in its official capacity, including all expenses reasonably incurred in its defense in the event the Grantor fails to provide such defense.

**SECTION 17. CHOICE OF LAW**

This Agreement shall be administered, construed, and enforced according to the laws of the District of Columbia, or the Comptroller of the Currency in the case of National Association banks.

**SECTION 18. INTERPRETATION**

As used in this Agreement, words in singular include the plural and words in the plural include the singular. The descriptive headings for each section of this Agreement shall not affect the interpretation or the legal efficacy of this Agreement.

In Witness whereof the parties have caused this Agreement to be executed by their respective officers duly authorized and their corporate seals (if applicable) to be hereunto affixed and attested as of the date first above written. The parties below certify that the wording of this Agreement is identical to the wording specified in Appendix 67-8 of 20 DCMR Chapter 67 as such regulations were constituted on the date written above.

[Signature of grantor] \_\_\_\_\_

[Name of the grantor] \_\_\_\_\_

[Title] \_\_\_\_\_

Attest:

[Signature of trustee] \_\_\_\_\_

[Name of trustee] \_\_\_\_\_

[Title] \_\_\_\_\_

[Seal] \_\_\_\_\_

Attest:

[Signature of witness] \_\_\_\_\_

[Name of witness] \_\_\_\_\_

[Title] \_\_\_\_\_

[Seal] \_\_\_\_\_

District of Columbia, \_\_\_\_\_ ss:

On this \_\_\_\_\_ [date], before me personally came \_\_\_\_\_ [owner] who, being by me duly sworn, did depose and say that he/she resides at \_\_\_\_\_ [address] that he/s he is \_\_\_\_\_ [title] of \_\_\_\_\_ [corporation], the corporation described in and which executed the above instrument; that he/she knows the seal of said corporation; that the seal affixed to such instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he/she signed his/her name thereto by like order.

[Signature of notary public] \_\_\_\_\_

[Name of notary public] \_\_\_\_\_

**SCHEDULE A TO PRIVATE TRUST AGREEMENT**

UST Facility I.D. Number	Number of UST(s)	Name/Address of UST(s) Facility
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

[List the number of tanks at each facility and the name(s) and address(es) of the facility(ies) where the tanks are located. If more than one instrument is used to assure different tanks at any one facility, for each tank covered by this instrument, list the tank identification number provided in the notification submitted pursuant to 20 DCMR §5600, and the name and address of the facility.]

**SCHEDULE B TO PRIVATE TRUST AGREEMENT**

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[Grantor should list here the name, title, and business address of each person with authority to issue orders, requests or instructions pertaining to this Private Trust Agreement on behalf of Grantor.]

APPENDIX 67-9

CERTIFICATION OF VALID CLAIM

The undersigned, as principals and as legal representatives of \_\_\_\_\_[owner] and \_\_\_\_\_[insert name and address of third-party claimant], hereby certify that the claim of bodily injury [and/or] property damage caused by accidental release arising from operating \_\_\_\_\_[owner's] underground storage tank should be paid in the amount of \$ [\_\_\_\_\_].

[Signatures]

\_\_\_\_\_  
Owner

\_\_\_\_\_  
Attorney(s) for Owner

\_\_\_\_\_  
(Notary)

\_\_\_\_\_  
Date

[Signatures]

\_\_\_\_\_  
Claimant(s)

\_\_\_\_\_  
Attorney(s) for Claimant(s)

\_\_\_\_\_  
(Notary)

\_\_\_\_\_  
Date

## CHAPTER 70 UNDERGROUND STORAGE TANKS – DEFINITIONS

## 7099 DEFINITIONS

7099.1 When used in the UST Regulations, the following terms and phrases shall have the meanings ascribed:

**Accidental release** - any release of petroleum, neither expected nor intended by the tank owner or operator, arising from operating an underground storage tank that results in the need for corrective action or compensation for bodily injury or property damage.

**Act** - the District of Columbia Underground Storage Tank Management Act of 1990, effective March 8, 1991 (D.C. Law 8-242; D.C. Official Code §§ 8-113.01 *et seq.*).

**Agent in charge** - a person designated by an owner or operator with direct supervisory responsibility for an activity or operation at a facility, such as the transfer of a regulated substance to or from any point in the facility.

**Airport hydrant fuel distribution system** or **airport hydrant system** - an UST system used to fuel aircraft and that operates under high pressure with large diameter piping that typically terminates into one or more hydrants or fill stands. The airport hydrant system begins where fuel enters one or more tanks from an external source, such as a pipeline, barge, rail car, or other motor fuel carrier.

**Ancillary equipment** - any device, including but not limited to piping, fittings, flanges, valves, and pumps, used to distribute, meter, or control the flow of regulated substances to and from an UST.

**Authorized agent** - a person authorized by appointment or by law to receive service of process for another person, including a registered agent.

**Beneath the surface of the ground** - located under the land's surface or covered with earthen materials.

**Bodily injury** - the meaning given to this term under applicable District of Columbia law; however, the term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for bodily injury.

**Cathodic protection** - a technique to prevent corrosion of a metal surface by making the surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

**Change-in-service** - the transition from storing a regulated substance in an UST system to storing a non-regulated substance, such as water, in the UST system.

**Chemical(s) of concern** - constituents of a regulated substance that are identified for evaluation in the risk assessment process.

**Class A operator** - the individual who has primary responsibility to operate and maintain the UST system in accordance with applicable requirements of the Act and UST Regulations. The Class A operator typically manages resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.

**Class B operator** - the individual who has day-to-day responsibility for implementing applicable regulatory requirements of the Act and UST Regulations. The Class B operator typically implements in-field aspects of operations, maintenance, and associated recordkeeping for the UST system.

**Class C operator** - the individual responsible for initially addressing emergencies presented by a spill or release from an UST system. The Class C operator typically controls or monitors the dispensing or sale of regulated substances.

**Closure-in-place** - a method of permanently closing an UST system that cannot be removed from the ground by removing all of the regulated substances left in the UST system and filling the tank with inert material.

**Compatible** - the ability of two (2) or more substances to maintain the respective physical and chemical properties upon contact with one another for the design life of the UST system under conditions likely to be encountered in the UST.

**Consumptive use** - when describing heating oil use, consumed on the premises where the UST is located.

**Containment sump** - a liquid-tight container that protects the environment by containing leaks and spills of regulated substances from piping, dispensers, pumps, and related components in the containment area. Containment sumps may be single walled or secondarily contained and located at the top of tank (such as a tank top or submersible turbine pump sump), underneath the dispenser (such as a under-dispenser containment sump), or at other points in the piping run (such as a transition or intermediate sump).

**Corrective action** - the sequence of actions that address a release or threatened release from an UST or UST system, which include site investigation, initial response and abatement, free product removal, well installation, site assessment, development of a corrective action plan, remediation, site monitoring, and well closure.

**Corrosion expert** - a person who is accredited or certified as being qualified by the National Association of Corrosion Engineers, or is a registered professional engineer with certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

**Department** - the District of Columbia Department of Energy and Environment.

**Dielectric material** - a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST system from one another, such as a tank from piping.

**Dispenser** - equipment located aboveground that dispenses regulated substances from the UST system.

**Dispenser system** - the dispenser and the equipment necessary to connect the dispenser to the UST system.

**District** - the District of Columbia.

**Earthen materials** - earth, soil, ground, clay, gravel, sand, silt, and rock.

**Electrical equipment** - underground equipment that contains dielectric fluid that is necessary for the operation of equipment, such as transformers and buried electrical cable.

**Emergency generator tank** - an UST that stores fuel solely for the use of emergency power generation or backup systems.

**Engineering control** - a physical modification to a site or facility (such as a slurry wall, cap, vapor barrier, or point of use water treatment system) to reduce or eliminate the potential for exposure to chemical(s) of concern.

**Environmentally sensitive receptor** - a wetland; wildlife breeding or wintering area for a species of concern; habitat for an endangered plant or animal species; federal or local park; or other area or thing that can be adversely impacted by exposure to pollution or contamination.



**Excavation zone** - the volume containing the UST system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

**Existing UST system** - an UST system used to contain a regulated substance for which installation commenced on or before November 12, 1993. Installation is considered to have commenced if the owner or operator obtained all federal and District of Columbia government approvals or permits necessary to begin physical construction of the facility or installation of the tank system, and either:

- (a) A continuous physical construction or installation program has begun at the facility; or
- (b) The owner or operator has entered into contractual obligations for physical construction at the facility or installation of the tank system to be completed within a reasonable time and that could not be canceled or modified without substantial loss.

**Exposure** - an organism's contact with chemical(s) of concern that may be absorbed at the exchange boundaries (such as skin, lungs, and liver).

**Exposure assessment** - an assessment to determine the extent of exposure of, or potential for exposure of, receptors to regulated substances from a release from an UST based on factors such as the nature and extent of the contamination, the existence of or potential for exposure pathways (including ground or surface water contamination, air emissions, and food chain contamination), the size of the community within the likely pathways of exposure, and the comparison of expected exposure levels to the short-term and long-term health effects associated with identified contaminants and any available recommended exposure or tolerance limits for such contaminants.

**Exposure pathway** - the course a chemical (or chemicals) of concern takes from the source area(s) to an exposed organism. An exposure pathway describes a unique mechanism by which an individual or population is exposed to a chemical(s) of concern originating from a site. Each exposure pathway includes a source or release from a source, a point of exposure, and an exposure route. If the exposure point differs from the source, a transport medium (such as air) is also included.

**Exposure route** - the manner in which a chemical(s) of concern comes in contact with an organism (such as ingestion, inhalation, or dermal contact).

**Facility** - a location containing one (1) or more underground storage tanks .

**Farm tank** - a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. Farms include fish hatcheries, rangeland, and nurseries with growing operations.

**Field-constructed tank** - a tank constructed in the field, such as a tank constructed of concrete that is poured in the field, or a steel or fiberglass tank primarily fabricated in the field.

**Financial reporting year** - the latest consecutive twelve (12) month period for which any of the following reports used to support a financial test is prepared:

- (a) A 10-K report submitted to the Securities and Exchange Commission;
- (b) An annual report of tangible net worth submitted to Dun and Bradstreet; or
- (c) Annual reports submitted to the Energy Information Administration or the Rural Utilities Service.

**Flow-through process tank** - a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process, or for the storage of finished products or by-products from the production process.

**Free product** - a regulated substance that is present as a non-aqueous phase liquid.

**Gathering line** - any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

**Green remediation** - integrating environmentally beneficial or neutral practices into decision making, design, and implementation of remedial action, including conservation of natural resources, efficient use of energy, protection of air quality, recycling wastes, and minimizing pollution at the source.

**Guarantor** - any person, other than the owner, who provides evidence of financial responsibility for the underground storage tank facility.

**Hazard index** - the sum of two (2) or more hazard quotients for all relevant chemicals of concern and each of their exposure pathways.

**Hazard quotient** - the ratio of the level of exposure of a chemical of concern over a specified time period to a reference dose for that chemical of concern derived for a similar exposure period and exposure pathway.

**Hazardous substance** - a hazardous substance as defined in § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 USC § 9601(14) (but not including any substance regulated as a hazardous waste under Subtitle C of the Resource Conservation and Recovery Act of 1976, 42 USC §§ 6901 *et seq.*).

**Hazardous substance UST system** - an UST system that contains a hazardous substance, or any mixture of hazardous substances and petroleum, and which is not a petroleum UST system.

**Heating oil** - petroleum that is No. 1, No. 2, No. 4 (light), No. 4 (heavy), No. 5 (light), No. 5 (heavy), and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

**Heating oil tank** - an UST used for storing heating oil for consumptive use on the premises where the tank is located.

**Hydraulic lift tank** - a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate a lift, elevator, or other similar device.

**Inert material** - a substance or material that is not chemically or biologically reactive, such as cement slurry, flowable fly ash, flowable mortar, or polyurethane or expandable foam.

**Initial response** the action first taken to mitigate hazards to human health, safety, and the environment, including immediate or short-term abatement or containment measure to prevent the spread of a release.

**Institutional control** - a limitation on use of or access to a site or facility to eliminate or minimize potential exposure to one or more chemicals of concern, such as an easement, environmental covenant, zoning restriction, groundwater use restriction, or enforcement order.

**Interim remedial action** - ongoing action to mitigate fire and safety hazards and to prevent further migration of hydrocarbons in their vapor, dissolved, or liquid phase.

**Leaking underground storage tank system or LUST system** - an UST system from which there is a release of a regulated substance to the environment.

**Legal defense cost** - any expense that an owner or operator, or a provider of financial assurance, incurs in defending against claims or actions brought:

- (a) By the U.S. Environmental Protection Agency, the District of Columbia, or a state to require corrective action or to recover the costs of corrective action;
- (b) By or on behalf of a third party for bodily injury or property damage caused by an accidental release; or
- (c) By any person to enforce the terms of a financial assurance mechanism.

**Liquid trap** - a sump, well cellar, or other trap used in association with oil and gas production, gathering, and extraction operations (including gas production plants) for the purpose of collecting oil, water, and other liquids. A liquid trap may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

**Maintenance** - the normal operational upkeep to prevent an UST system from releasing a regulated substance.

**Monitoring pipe** - an observation well installed in the excavation zone, and used for measuring a release of regulated substance from the tank. The term does not include a groundwater monitoring well installed outside the excavation zone and used to sample groundwater for the presence of contamination.

**Motor fuel** - a complex blend of hydrocarbons typically used in the operation of a motor engine, such as motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any blend containing one or more of these substances (such as motor gasoline blended with alcohol).

**Natural attenuation** - the reduction in the concentration(s) of chemicals of concern in environmental media due to naturally occurring physical, chemical, and biological processes (such as diffusion, dispersion, adsorption, chemical degradation, and biodegradation).

**New UST system** - an UST system that is or will be used to contain an accumulation of regulated substances and for which installation began after November 12, 1993. Installation is considered to have commenced if

the owner or operator obtained all federal and District of Columbia government approvals or permits necessary to begin physical construction of the facility or installation of the tank system, and either:

- (a) A continuous physical construction or installation program has begun at the facility; or
- (b) The owner or operator has entered into contractual obligations for physical construction at the facility or installation of the tank system to be completed within a reasonable time and that could not be canceled or modified without substantial loss.

**Non-aqueous phase liquid** - a chemical that is insoluble or only slightly soluble in water and exists on or below the groundwater table.

**Non-safe suction piping** - all suction piping not meeting the definition of safe suction piping.

**Occurrence** - an accident, including continuous or repeated exposure to conditions, that results in a release from an UST. This definition is not intended either to limit the meaning of "occurrence" in a way that conflicts with standard insurance usage or to prevent the use of other standard insurance terms in place of "occurrence."

**On the premises where located** - with respect to heating oil USTs, located on the same property where the stored heating oil is used.

**Operational life** - the period beginning from when installation of an UST system has commenced until the time the UST system is permanently closed in accordance with Chapter 61.

**Operator** - any person in control of, or having responsibility for, the daily operation of a facility.

**Overfill release**- a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

**Owner** -

- (a) In the case of an UST in use on or after November 8, 1984, any person who owns an UST used for the storage, use, or dispensing of regulated substances; or
- (b) In the case of an UST in use before November 8, 1984, but no longer in use on that date, any person who owned a tank immediately before discontinuation of its use.

**Person** - any individual, partnership, corporation (including a government corporation), trust, firm, joint stock company, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, the District of Columbia government, the United States government, a foreign government, or any interstate body.

**Petroleum** - crude oil or any fraction of crude oil, that is liquid at standard conditions of temperature and pressure of sixty degrees (60°) Fahrenheit and fourteen and seven tenths pounds per square inch (14.7 psi) absolute.

**Petroleum marketing facility** - a facility at which petroleum is produced or refined, and any facility from which petroleum is sold or transferred to other petroleum marketers or to the public.

**Petroleum UST system** - an UST system that contains petroleum or a mixture of petroleum with *de minimis* quantities of other regulated substances. Petroleum UST systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**Pipe or piping** - a hollow cylinder or tubular conduit that is constructed of non-earthen materials.

**Pipeline facility** - a new or existing pipe right-of-way and any associated equipment, facilities, or buildings, including gathering lines.

**Point of demonstration** - a location selected at or between the source and the potential point of exposure where the concentration of one or more chemicals of concern shall be at or below the determined target levels in media (for example, ground water, soil, or air).

**Point of exposure** - the point at which an individual or population may come in contact with one or more chemicals of concern originating from a source.

**Pressurized piping** - UST system piping that regularly carries a regulated substance with a force behind the flow that is greater than the ambient atmospheric pressure.

**Property damage** - the meaning given to this term by applicable law of the District of Columbia. This term shall not include those liabilities which, consistent with standard insurance industry practices, are excluded from coverage in liability insurance policies for property damage. However, exclusions for property damage shall not include corrective action associated with releases from tanks which are covered by the policy.

**Provider of financial assurance** - an entity that provides financial assurance to an owner or operator of an UST through one of the mechanisms listed in §§ 6703-6710, including a guarantor, insurer, risk retention group, surety, issuer of a letter of credit, or trustee.

**Real property owner** - the owner of real property where an underground storage tank is or was located, or where contamination from an underground storage tank is discovered.

**Receptors** - individuals, populations, structures, utilities, wildlife, wetlands, habitats, parks, surface waters, and water supply wells that are or may be adversely affected by a release.

**Regulated substance** -

- (a) Any hazardous substance defined in § 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 USC § 9601(14), but not including any substance regulated as a hazardous waste under subtitle C of title II of the Solid Waste Disposal Act, approved October 21, 1976, 42 USC §§ 6901 *et seq.*;
- (b) Petroleum; or
- (c) Any petroleum-based substance comprised of a complex blend of hydrocarbons, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

**Release** - any spill, leak, emission, discharge, escape, leach, or disposing from an UST. The term includes, but is not limited to, any release into ground water, surface water, or subsurface soils.

**Release detection** - determining whether a release of a regulated substance has occurred from an UST system into the environment or a leak has occurred into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

**Remediation or remedial action** - any activity conducted to clean up a site where contamination by petroleum or chemicals of concern exceeds District of Columbia or federal standards for soil or water quality, or otherwise deemed necessary to protect human health, safety, and the environment. Examples include removal of contaminated soil, treatment of soil or groundwater, or installation of engineering controls, including the use of green remediation techniques.

**Repair** - to restore to proper operating condition a tank, pipe, spill prevention equipment, overfill prevention equipment, corrosion protection equipment, release detection equipment, or other UST system component that has caused a release of product from the UST system or has failed to function properly.

**Replace -**

- (a) For a tank, to remove a tank and install another tank; and
- (b) For piping, to remove fifty percent (50%) or more of piping and install other piping, excluding connectors, connected to a single tank. For tanks with multiple piping runs, this definition applies independently to each piping run.

**Residential tank** - a tank located on property used primarily for dwelling purposes.

**Responsible party -**

- (a) An owner or operator;
- (b) A person who caused or contributed to a release from an underground storage tank system;
- (c) A person who caused a release as a result of transfer of a regulated substance to or from an underground storage tank system;
- (d) A person found to be negligent, including any person who previously owned or operated an underground storage tank or facility, or who arranged for or agreed to the placement of an underground storage tank system by agreement or otherwise; or
- (e) The owner of real property where an underground storage tank is or was located, or where contamination from an underground storage tank is discovered if the owner or operator of the tank as defined in this chapter cannot be located or is insolvent, or if the real property owner refuses without good cause to permit the owner or operator of the tank access to the property to investigate or remediate the site.

**Risk assessment** - an analysis of the potential for adverse health effects from exposure to a chemical of concern to determine whether remedial action is needed or to develop target levels for remedial action.



**Risk-based corrective action or RBCA** - a risk-based decision making process designed to integrate risk and exposure assessments to tailor corrective action activities to site-specific conditions and risks, and to ensure that the chosen action is protective of human health and the environment.

**Risk-based screening level or screening level** – the risk-based corrective action target level for a chemical of concern developed under the Tier 1 evaluation.

**Safe suction piping** - suction piping designed and constructed to meet the following standards:

- (a) The below-grade piping operates at less than atmospheric pressure;
- (b) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;
- (c) Only one (1) check valve is included in each suction line; and
- (d) The check valve is located directly below and as close as practical to the suction pump.

**Secondary containment** - a release prevention and release detection system for a tank or piping. This system has an inner and outer barrier with a space in-between, also called the interstitial space, that is monitored for leaks. This term includes containment sumps when used for interstitial monitoring of piping.

**Septic tank** - a water-tight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from the receptacle is distributed for disposal through the soil and settled solids, and scum from the tank are pumped out periodically and hauled to a treatment facility.

**Significant operational compliance inspection or SOC inspection** – an inspection by a DOEE inspector or an approved third party to verify the compliance of an active UST facility with release detection, spill and overflow prevention, financial responsibility, recordkeeping, and operator training requirements.

**Site** - the area where one or more chemicals of concern have migrated, including areas outside the property boundary where an UST is or was located.

**Site assessment** - an evaluation of subsurface geology, hydrology, and surface characteristics to determine if a release has occurred, the levels of chemicals of concern, and the extent of the migration of chemicals of

concern. The site assessment collects data on ground water quality and potential receptors, and generates information to support remedial action decisions.

**Site investigation** - initial testing at the location of a release or suspected release to confirm the existence of a release by sampling the soil and water around the UST system for the presence of contaminants.

**Site-specific target level** - risk-based remedial action target level for one or more chemicals of concern developed for a particular site under the Tier 2 evaluation.

**Soil vapor** - gaseous elements and compounds in the small spaces between particles in the subsurface unsaturated zone and that may be transported under pressure towards ground surface.

**Source** - with respect to a release from an UST, the UST, its piping, and any product contained therein.

**Source area** - either the location of free product or the location of the highest soil and ground water concentrations of chemicals of concern.

**Stage I vapor recovery** - control of gasoline vapors during UST tank refueling operations by delivery truck.

**Stage II vapor recovery** - control of gasoline vapors from vehicle refueling stations in accordance with 20 DCMR § 705.

**Stormwater or wastewater collection system** - piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water runoff resulting from precipitation, or domestic, commercial, or industrial wastewater, to and from retention areas or any areas where treatment is designated to occur. The collection of stormwater and wastewater does not include treatment except where incidental to conveyance.

**Substantial business relationship** - the extent of a business relationship necessary under the applicable laws of the District of Columbia to make a guarantee contract issued incident to that relationship valid and enforceable. A guarantee contract is issued “incident to that relationship” if it arises from and depends on existing economic transactions between the guarantor and the owner.

**Suction piping** - Underground piping that conveys regulated substances under suction, not pressure, which could be safe suction or non-safe suction.

**Surface impoundment** - a natural topographic depression, man-made excavation, or dike area formed primarily of earthen materials (although it may be lined with man-made materials) that is not an injection well.

**Tangible net worth** - the tangible assets that remain after deducting all liabilities. These assets do not include intangibles such as goodwill and rights to patents or royalties. For purposes of this definition, "assets" means all existing and all probable future economic benefits obtained or controlled by a particular entity as a result of past transactions.

**Tank** - a stationary device designed to contain an accumulation of regulated substances and constructed of non-earthen materials (such as concrete, steel, or plastic) that provide structural support.

**Target levels** - numeric values or other performance criteria that are protective of human health, safety, and the environment.

**Termination** - with respect to Appendices 67-4 and 67-5, only those changes that could result in a gap in coverage as where the insured has not obtained substitute coverage or has obtained substitute coverage with a different retroactive date from the retroactive date of the original policy.

**Tier 0 evaluation** - an analysis of levels of chemicals of concern based upon a comparison of test results from soil and water samples to the District of Columbia's standards for concentrations of chemicals of concern, as established in § 6208.

**Tier 1 evaluation** - a risk-based analysis conducted in accordance with the District's RBCA technical guidance to develop non-site-specific values for direct and indirect exposure pathways using conservative exposure factors and fate and transport for potential pathways and various property use categories (such as residential, commercial, and industrial uses).

**Tier 2 evaluation** - a risk-based analysis conducted in accordance with the District's RBCA technical guidance applying the direct exposure values established under a Tier 1 evaluation at the point(s) of exposure developed for a specific site and developing values for potential indirect exposure pathways at the points of exposure based on site-specific conditions.

**Training program** - any program that meets the requirements of Chapter 65 that provides information to and evaluates the knowledge of a Class A, Class B, or Class C operator about requirements for UST systems through testing, practical demonstration, classroom or online instruction, or another approach approved by the Department.

**Under-dispenser containment** - containment underneath a dispenser system that will prevent leaks from the dispenser and piping within or above the under-dispenser containment from reaching soil or groundwater.

**Underground area** - an underground room, such as a basement, cellar, shaft, or vault, that provides enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

**Upgrade** - the addition or retrofit of some systems, such as cathodic protection, lining, or spill and overfill controls, to improve the ability of an UST system to prevent the release of a regulated substance.

**UST** or **Underground storage tank** - one (1) or a combination of tanks, including the underground pipes that connect tanks, that is used to contain an accumulation of regulated substances, the volume of which (including the volume of connected underground pipes connected) is ten (10) percent or more beneath the surface of the ground.

**UST Closure Specialist** - a person performing oversight of UST closures, including tank removal, closure-in-place, inspection, and review and submittal of closure report.

**UST Regulations** - Chapters 55-70 of Title 20 (Environment) of the District of Columbia Municipal Regulations.

**UST system** or **tank system** - an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

**UST System Technician** - a person responsible for conducting, or providing continuous on-site supervision of, the installation, upgrade, repair, retrofit, abandonment, or removal of UST tanks.

**UST System Tester** - a person conducting, or providing continuous on-site supervision of, UST system tightness testing.

**Voluntary remediating party** - a person, who is not a responsible party, who undertakes a corrective action at a LUST site or facility.

**Voluntary remediation** - a corrective action performed by a person who is not a responsible party.

**Wastewater treatment tank** - a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

## 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 the following amendments to Chapter 2 (Communicable and Reportable Diseases) of Subtitle B (Public Health and Medicine) of Title 22 (Health) of the District of Columbia Municipal Regulations (DCMR).

The rules add reporting requirements and procedures for reporting all maternal mortalities, defined as pregnancy-associated and pregnancy-related deaths (as defined in Section 2 of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.01 (2019 Supp.)), as well as deaths resulting from severe maternal morbidity (as defined in Section 299 of the rulemaking). Severe maternal morbidity includes twenty-one specific morbidities identified by the U.S. Centers for Disease Control and Prevention.

This rulemaking implements efforts to reduce maternal mortalities by providing better and more timely data to the Maternal Mortality Review Committee established by Section 3 of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.02 (2019 Supp.)), 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.

A Notice of Emergency and Proposed Rulemaking adopted on July 25, 2019 and was published in the *D.C. Register* at 66 DCR 15765 on November 29, 2019. A Notice of Second Emergency Rulemaking was adopted on November 12, 2019, published at 66 DCR 16698 (December 27, 2019), became effective immediately on that date, and will expire one hundred twenty (120) days from the date of adoption (*i.e.*, on March 11, 2020), or upon publication of this Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The District of Columbia Hospital Association (DCHA) submitted the only set of comments making three specific comments: (1) While it is reasonable to require reporting of any maternal death that occurs within a hospital and while all maternal deaths should be reported regardless of the etiology, DCHA has significant concerns with the workload requirement to report the severe maternal morbidity as a separate entity. (2) The listing of morbidity indicators is broad, but not inclusive, and the indications of "significant short-term consequences" is vague and the number of cases that could be reported may be large. For example, reporting all patients with pulmonary edema, sickle crisis, and blood transfusions, which are not uncommon and are managed successfully, is an additional burden when there were no long-term consequences. If the patient experienced these conditions, they are already listed as discharge diagnoses on the medical record, which is searchable and could be identified that way. DCHA is concerned with a regulation that requires separate reporting. (3) The regulation should also include language

about the post-partum period as follows: "Death that occurs during pregnancy or in the post-partum period, defined as one year after birth."

After considering DCHA's comments, the Department of Health has determined there is no need to modify the regulations because: (1) The rule only requires reporting of mortalities (which the DCHA agrees should be reported). The rule does not require the reporting of a severe maternal morbidity without a mortality. (2) The rule already covers the period of pregnancy and the period of one year post-pregnancy. There is no need to add the language suggested by the DCHA. D.C. Official Code § 7-671.01(4) provides: "(4) 'Pregnancy-associated death' means the death of a woman while the woman is pregnant or within one year after the end of the pregnancy, irrespective of the cause, other than a pregnancy-related death." D.C. Official Code § 7-671.01(5) provides: "(5) 'Pregnancy-related death' means the death of a woman while the woman is pregnant or within one year after the end of the pregnancy, from any cause related to the pregnancy or its management, but not from accidental or incidental causes."

No substantive changes were made to these rules as published in the original Notice of Emergency and Proposed Rulemaking. The Director took final action to adopt these rules on January 17, 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 219 as follows:**

**219 MATERNAL MORTALITY REPORTING**

219.1 Each health care facility shall report to the Department all maternal mortalities, as defined in § 299.1.

219.2 All health care facilities shall report all maternal mortalities required by § 219.1 in writing within five (5) days after death and before final disposition of the corpse.

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

**Maternal Mortality:**

- (a) A pregnancy-associated death or pregnancy-related death, as those terms are defined in section 2 of the Maternal Mortality Review Committee Establishment Act of 2018, effective June 5, 2018 (D.C. Law 22-111; D.C. Official Code § 7-671.01)); or
- (b) A death of a woman that resulted from Severe Maternal Morbidity.

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

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

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF FINAL RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and (11) and 216 of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3), (11), and 216; D.C. Official Code §§ 34-2202.03(3) and (11) and § 34-2202.16 (2019 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2016 Repl.)), hereby gives notice of the adoption of amendments to Section 112 (Fees) of Chapter 1 (Water Supply) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

Pursuant to Board Resolution #19-74, dated November 7, 2019, DC Water's Notice of Proposed Rulemaking was published in the *District of Columbia Register (D.C. Register or DCR)* at 66 DCR 15549 on November 22, 2019 to receive comments on the proposed rulemaking.

On January 28, 2020, the DC Retail Water and Sewer Rates Committee met to consider the comments offered during the public comment period and recommendations from the General Manager. No comments were received during the public comment period. At that meeting, the DC Retail Water and Sewer Rates Committee recommended the Board adopt amendments to 21 DCMR § 112 to amend the DC Water permit service engineering review fees and charges.

At its regularly scheduled meeting on February 6, 2020, the Board, through Resolution #20-10, after consideration of the comments received, the report from the DC Retail Water and Sewer Rates Committee, and recommendations from the General Manager, voted to amend 21 DCMR § 112 to amend the DC Water permit service engineering review fees and charges.

No substantive changes were made to the proposed regulations. Clarifying revisions were made: 1) §§112.5(a)(1) and (2) - revised the term "as defined by" to read "subject to" clarifying the terms "Small Residential or Townhouse" and "Small Non-Residential" are not explicitly defined in the 12 DCMR B Residential Code Supplement or 12-A DCMR Building Code Supplement, but these structures are subject to the referenced codes; 2) § 112.5(b) - revised "Large Project Plan Submission Administrative Fee" to read "Large Project Base Plan-1st Submission Administrative Fee" to clarify that this only applies to the 1st Submission, and not Resubmission"; 3) § 112.5(e) - revised "(Each Connection)" to read "(Each Connection-water and sewer)" to clarify that this fee applies to both water and sewer connections; and 4) other minor grammatical revisions.

These rules were adopted as final on February 6, 2020 by resolution, and will become effective on March 2, 2020, after publication of this notice in the *D.C. Register*.



**Chapter 1, WATER SUPPLY, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:**

**Section 112, FEES, Subsection 112.5, is amended to read as follows:**

112.5 Fees for engineering reviews both standard and expedited, excessive submission, and as-builts shall be as follows:

- (a) **Small Project Plan Review Fees** shall be as provided in the table below for Small Projects, including:
  - (1) Small Residential or Townhouse subject to 12 DCMR B Residential Code Supplement with water service and meter two inches (2”) or less;
  - (2) Small Non-Residential subject to 12 DCMR A Building Code Supplement with water service and meter two inches (2”) or less;
  - (3) Small Hybrid means a Small Residential or Non-Residential project with a domestic water service and meter two inches (2”) or less and a fire service greater than two inches (2”); or
  - (4) Projects requiring only a sewer connection six inches (6”) or less in diameter or only a storm connection less than fifteen inches (15”) in diameter.

Fee Name	Small Project Plan Review Fees			
	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
Small Project Base Plan - 1 <sup>st</sup> Submission Administrative Fee – All Small Projects	\$140	N/A	N/A	N/A
Small Project Rejected Plan Resubmission Administrative Fee - All Small Projects	\$75	N/A	N/A	N/A
Small Project Water and Sewer Availability Letter - All Small Projects	\$125	\$215	14	7
Small Project Sheet and Shore - All Small Projects	\$1,000	\$1,750	14	7
<b>Small Residential or Townhouse Project:</b>				
1 to 5 metered connections	\$700 each	\$1,200 each	14	7

Fee Name	Small Project Plan Review Fees			
	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
6 to 20 metered connections	\$700 each	\$1,200 each	21	11
21 to 50 metered connections	\$700 each	\$1,200 each	40	20
greater than 50 metered connections	\$700 each up to 50; and \$350 each above 50	\$1,200 each up to 50 and \$600 each above 50	50	25
<b>Small Non-Residential Project:</b>				
1 metered connection	\$3,300	\$5,800	21	11
2 metered connections	\$6,600	\$11,600	21	11
3 metered connections	\$9,900	\$17,400	21	11
4 or more metered connections	\$13,200+ Determined on a per project basis	\$23,200+ Determined on a per project basis	30	15
<b>Small Hybrid Project:</b>				
1 metered connection	\$5,000	\$8,700	21	11
2 metered connections	\$10,000	\$17,400	21	11
3 metered connections	\$15,000	\$26,100	21	11
4 or more metered connections	\$20,000 + Determined on a per project basis	\$34,800 + Determined on a per project basis	30	15
Small Residential Approved Plan Revision (APR) per metered connection	\$250	\$500	14	7
Small Non-Residential or Hybrid APR per metered connection	\$1,000	\$1,750	21	11
Small Sanitary or Combined Sewer Connection Only – 6	\$700	\$1,200	14	7

<b>Small Project Plan Review Fees</b>				
<b>Fee Name</b>	<b>Standard Fee</b>	<b>Expedited Review Fee</b>	<b>Standard Review Time* (Business Days)</b>	<b>Expedited Review Time* (Business Days)</b>
inch or less for Small Residential, Non-Residential or Hybrid				
Small Storm Sewer Connection Only - less than 15 inches – All Small Projects	\$700	\$1,200	14	7
Small Residential, Non-Residential or Hybrid Raze Utility Release Letter - No Abandonment	\$330	\$580	14	7
Small Raze Permit Review and Utility Release Letter - With Abandonments	\$700	\$1,200	14	7
Small Water Meter Size Reduction	\$700	\$1,200	14	7
Small Temporary Water Connections	\$3,300	\$5,800	21	11
Small Project Review and Sign Off - only in DCRA ProjectDox or for DCRA Walk-In Applicants	\$100	N/A	7	N/A

**\*Review Times are estimated; Actual Time may vary.**

- (b) **Large Project Plan Review Fees** (large means having a domestic water service and fire service greater than two inches (2”) in diameter) shall be as provided in the table below as follows:

<b>Large Project Plan Review Fees</b>				
<b>Fee Name</b>	<b>Standard Fee</b>	<b>Expedited Review Fee</b>	<b>Standard Review Time* (Business Days)</b>	<b>Expedited Review Time* (Business Days)</b>
Large Project Base Plan -1 <sup>st</sup> Submission Administrative	\$140	N/A	N/A	N/A

## Large Project Plan Review Fees

Fee Name	Standard Fee	Expedited Review Fee	Standard Review Time* (Business Days)	Expedited Review Time* (Business Days)
Fee				
Large Project Rejected Plan Resubmission Administrative Fee	\$75	N/A	N/A	N/A
<b>Large Plan Review Fee:</b>				
1 metered connection	\$10,000	\$17,400	30	15
2 metered connections	\$20,000	\$34,800	30	15
3 metered connections	\$30,000	\$52,200	30	15
4 or more metered connections	\$40,000+ Determined on a per project basis	\$69,600+ Determined on a per project basis	45	23
Large Project Foundation to Grade	\$1,000	\$1,750	21	11
Large Project Approved Plan Revision (APR)	\$1,000	\$1,750	14	7
Large Project Sheeting and Shoring	\$6,500	\$11,300	30	15
Large Project Abandonment Waiver Request	\$500	\$880	14	7
Large Project Water and Sewer Availability Letter (Large)	\$500	\$880	30	15
Large Project Temporary Water Connections	\$3,300	\$5,800	21	11
Large Fire Service Only Greater than 2" - with no interior renovations	\$4,500	\$7,800	21	11
Large Sanitary or Combined Connection Only 8" or larger	\$4,500	\$7,800	21	11
Large Storm Connection Only 15" or larger	\$4,500	\$7,800	21	11

**Large Project Plan Review Fees**

<b>Fee Name</b>	<b>Standard Fee</b>	<b>Expedited Review Fee</b>	<b>Standard Review Time* (Business Days)</b>	<b>Expedited Review Time* (Business Days)</b>
Large Project (no new water/sewer work) and Sign Off Only in DCRA ProjectDox	\$400	\$700	10	5
Large Water Meter Size Reduction Plan (with no other work)	\$3,300	\$5,800	21	11
Large Project Raze Utility Release Letter - No Abandonments	\$330	\$580	14	7
Large Project Raze Utility Release Letter - With Abandonments	\$700	\$1,200	14	7

**\*Review Times are estimated; Actual Time may vary.**

(c) **Miscellaneous Fees** shall be as provided in the table below as follows:

<b>Fee Name</b>	<b>Miscellaneous Fees</b>		<b>Standard Review Time* (Business Days)</b>	<b>Expedited Review Time* (Business Days)</b>
	<b>Standard Fee</b>	<b>Expedited Review Fee</b>		
<b>Small Residential or Townhouse Plan Excessive Submission Review (5<sup>th</sup> review or more):</b>	\$360	\$630	Based on No. of metered connections	Based on No. of metered connections
1 to 5 metered connections			14	7
6 to 20 metered connections			21	11
21 to 50 metered connections			40	20
greater than 50 metered connections			50	25
<b>Small Non-Residential and Hybrid Plan Excessive</b>	\$600	\$1,050	Based on No. of metered	Based on No. of metered

Fee Name	Miscellaneous Fees		Standard Review Time* (Business Days connections)	Expedited Review Time* (Business Days connections)
	Standard Fee	Expedited Review Fee		
<b>Submission Review (5<sup>th</sup> review or more):</b>				
1-3 metered connections			21	11
4 or more metered connections			30	15
Large Plan Excessive Submission Review (5 <sup>th</sup> review or more)	\$2,400	\$4,200		
Request for Information (RFI)	\$30	\$60	20	10
Request for As-Built Drawings	\$90	\$150	20	10
Water Meter Sizing Computation – DC Water Staff Assistance for preparing water meter sizing computations	\$90	N/A	N/A	N/A
Delayed Abandonment or Waiver from Standards Letter	\$500	\$880	14	7
Processing of Standard Easement and Covenant (Initial Document)	\$1,000	\$1,750	14	7
Processing of Non-Standard Easement and Covenant (Initial Document)	\$5,000	\$8,750	21	11

**\*Review Times are estimated; Actual Time may vary.**

(d) **DC Water “Velocity” Sign-Off Program** (One Day Final Plan Review and Approval) - a DCRA permit applicant may request to participate in the DC Water “Velocity” program in accordance with the following requirements:

- (1) Participation in DC Water’s “Velocity” Sign-Off Program only applies to plans resubmitted after DC Water’s initial standard or expedited plan review.

- (2) Applicant shall pay the DC Water “Velocity” Sign-Off Program fee of \$20,000 in an addition to the applicable plan review fee and any other applicable fees.
  - (3) DC Water shall determine if the plans are eligible (complete and suitable) to participate in the program and that staff are available to perform the review requested.
  - (4) Upon acceptance into the DC Water “Velocity” Sign-Off Program, DC Water shall schedule a meeting with the Applicant to review and approve the plans, not less than one (1) week after the request to participate in the program.
  - (5) DC Water shall schedule one four-hour plan review and approval meeting, during which the Applicant shall present the revised plans and responses.
  - (6) If approved, the Applicant shall pay all required fees (e.g., SAF, inspection review, deposits, etc.) and DC Water shall issue the Water and Sewer Approval Certificate and approve the plans in ProjectDox.
  - (7) If DC Water issues additional comments or requirements, the applicant shall resubmit the revised plans within two (2) business days, and if all comments are acceptable, the plans shall be approved within one business day.
- (e) **Existing/Proposed As-Built Fees** shall be as provided in the table below as follows:

<b>Fee Name</b>	<b>Existing/Proposed As-Built Fees</b>
Small Residential or Townhouse	Fee \$250 (each bldg.)
Small Non-Residential	\$500 (each bldg.)
Small Hybrid	\$750 (each bldg.)
Large Project	\$750 (Each Connection – water or sewer)
Installation of New Water or Sewer Main (20 to 100 feet)	\$2,500
Each additional foot of water line	\$10/foot
Each additional foot of sewer main/line	\$5/foot
Installation of Water Line - larger than 24" in diameter	Determined on a per project basis
Installation of Sewer - larger than 60" in diameter	Determined on a per project basis

## DEPARTMENT ON DISABILITY SERVICES

NOTICE OF PROPOSED RULEMAKING

The Director of the District of Columbia Department on Disability Services (DDS), pursuant to the authority set forth in Section 109 of the Department on Disability Services Establishment Act of 2006, effective March 14, 2007 (D.C. Law 16-264, D.C. Official Code § 7-761.09 (2018 Repl.)), and Mayor's Order 2007-68, dated March 20, 2007, hereby gives notice of his intent to adopt the following amendments to Chapter 2 (Blind Vendors Program) of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR), which governs the Department on Disability Services, Rehabilitation Services Administration (DDS/RSA), and applies solely to the District of Columbia's Randolph-Sheppard Vending Facilities Program (DC-RSVFP).

These proposed rules will create a new Section 205 entitled "Vending Providers". These proposed rules are necessary to: (1) revise and standardize the vending machine commissions from vending machines on federal and District of Columbia property provided to the DC-RSVFP by vending company providers; (2) standardize the vending machine commission rates to ensure fair and equitable commission rates for DC-RSVFP's provider community, as the current process wherein rates are individually set with each provider has resulted in often substantial differences in rates for the same unit of service provided across the provider community; (3) standardize the type of information in the full service account summary provided to the DC-RSVFP by the vending company providers; (4) clarify that the vending company providers are to provide and service the vending machines; and (5) ensure vending providers comply with both local and federal healthy vending guidelines.

This proposed rulemaking seeks to ensure the integrity and sustainability of the DC-RSVFP. Issuance of these rules is necessary for the stability of the provider community and, therefore, the continued provision of necessary services for the DC-RSVFP program participants. Any delay in promulgating the new vending machine commission rates may lead to a reduction in services, which may be detrimental to the DC-RSVFP program participants. Further, the current regulations are not consistent with the current practices, policies, and procedures of the DC-RSVFP. These rules are necessary for the DC-RSVFP to be in compliance with the District of Columbia's Workplace Wellness Policy.

The Director gives notice of the intent to take final rulemaking action to adopt these proposed rules not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 2, BLIND VENDORS PROGRAM, of Title 29 DCMR, PUBLIC WELFARE, is amended by creating a new Section 205, VENDING PROVIDERS, to read as follows:**

**205 VENDING PROVIDERS**

205.1 Consistent with the scope of appropriate income from vending machines on federal and District of Columbia property described in § 204 and in 34 CFR §§ 395.32(b)-(d), the District of Columbia Randolph-Sheppard Vending Facilities



Program as the state licensing agency shall receive vending machine commissions for authorized services from vending providers at a rate not higher than the provider’s customary payment for such services.

- (a) For the following vending machine products, the vending provider shall pay the state licensing agency vending machine commissions at the following rates based on gross sales:

<b>Type of Vending Machine Product</b>	<b>Rate/Unit in machine</b>
Beverage	21 percent/beverage machine
Snack and/or sundry items	13 percent/snack or sundry item machine
Gumball	25 percent/gumball machine

- (b) For micro-markets, the vending provider shall pay the state licensing agency vending machine commissions at a rate of twelve and sixth-tenths percent (12.6%) based on gross sales.

205.2 Each vending provider shall pay the state licensing agency a commission of gross sales with no deduction for taxes.

205.3 The vending provider shall pay the vending machine commissions monthly with respect to vending machines filled with beverages, snacks, and/or sundry items; and quarterly with respect to vending machines filled exclusively with gumballs.

205.4 The vending provider shall provide a monthly sales report with a full service account summary with each check for vending machine commission payment and shall include information on the vending machine location, the total gross sales per machine, the total net sales per machine, and the month in which the commission is being paid.

205.5 Each vending machine must be equipped with a non-resettable meter. Meter readings will be taken on at least a monthly basis, and shall be part of the submitted sales report.

205.6 The vending provider agrees to indemnify, defend, and hold harmless the state licensing agency against all claims, demands, liabilities, suits, damages, and costs of every kind and nature whatsoever, including court costs and attorneys’ fees arising out of or caused by the provider, its agents, or employees. The provider shall maintain workers’ compensation insurance, which shall inure to the benefit of all provider personnel provided hereunder and comprehensive general liability insurance. The provider will furnish the licensing agency with a certificate of insurance providing the aforesaid coverage.

- 205.7 The vending provider shall ensure timely commission payments to the state licensing agency. If the state licensing agency does not receive payment from the vending provider within ten (10) days of the end of the previous reporting period, the payment shall be considered late a penalty not to exceed five percent (5%) may be assessed against the vending provider.
- 205.8 The state licensing agency shall have the right to conduct audits of all reasonably-aged records at the vending provider's place of business. The vending provider shall provide all records in a timely manner.
- 205.9 The vending provider shall alert the state licensing agency of site management issues at each of the vending facilities on which there is a vending machine serviced by the provider.
- 205.10 Each vending machine will contain, at a minimum, the ability to provide wireless remote monitoring by the state licensing agency twenty-four (24) hours per day, including daily sales transactions of cash or credit card, and an alert system for all malfunctions and status checks of the equipment.
- 205.11 The vending provider must provide vending machines that are able to meet the District of Columbia healthy vending requirements listed in the District of Columbia Workplace Wellness Policy (D.C. Official Code §§ 1-541.01 *et seq.*), the Health and Sustainability Guidelines for Federal Concessions and Vending Operations developed by the United States Department of Health and Human Services and the United States General Services Administration, and the 2013 District of Columbia Energy Conservation Code Supplement (12-I DCMR).
- 205.12 The state licensing agency will evaluate the vending provider's performance to ensure services are performed in accordance with the provisions of this section. In doing so, the state licensing agency may conduct quality assurance inspections at any time.
- 205.13 The state licensing agency shall convene meetings, when necessary, between the vending provider and the host site to resolve any site management issues that may arise.

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

**Energy Conservation Code** – a set of guidelines that regulates the design and construction of buildings for the effective use and conservation of energy over the useful life of each building. A full copy of the text may be obtained at:

[https://codes.iccsafe.org/category/DistrictofColumbia?year\[\]=Current+Adoption&page=1](https://codes.iccsafe.org/category/DistrictofColumbia?year[]=Current+Adoption&page=1).

**Health and Sustainability Guidelines for Federal Concessions and Vending Operations** – guidance developed by the U.S. General Services Administration and the U.S. Department of Health and Human Services to assist federal contractors in maximizing a healthier and sustainable food service by increasing the offering of healthier and sustainable food choices. A copy of the text can be obtained at <https://gsa.gov/portal/content/104429>.

**Micro-market** – an unstaffed, self-checkout retail food establishment with an automated payment kiosk that is located within an enclosed building accessible only to employees who work in the building and guests of those employees.

**Workplace Wellness Policy** – a set of standards requiring healthy food and beverage options in vending machines under District control consistent with D.C. Official Code §§ 1-541.01 *et seq.*

All persons desiring to comment on these proposed regulations must submit them in writing by mail or email, no later than thirty (30) days from the date of publication of this notice in the *D.C. Register*. Mailed comments should be sent to: Darryl Evans, Deputy Director, Department on Disability Services/Rehabilitation Services Administration, 250 E Street, S.W., 1st Floor, Washington, D.C. 20024. Emailed comments should be submitted to [darryl.evans@dc.gov](mailto:darryl.evans@dc.gov). Copies of these proposed regulations may be obtained from DDS/RSA's offices located at 250 E Street, S.W., Washington, D.C. 20024 or online via DDS's website at [www.dds.dc.gov](http://www.dds.dc.gov).

DEPARTMENT OF HEALTH

NOTICE OF PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in § 302(14) of the District of Columbia Health Occupations Revision Act of 1985 (“Act”), effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1203.02(14) (2016 Repl.)), and Mayor’s Order 98-140, dated August 20, 1998, hereby gives notice of the intent to adopt the following new Chapter 104 of Title 17 (Business, Occupations, and Professionals) of the District of Columbia Municipal Regulations (DCMR), entitled “Athletic Trainers,” in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The adoption of Chapter 104 is necessary to implement §§ 501(a) and 504(s) of the Act (D.C. Official Code § 3-1205.01(a) (2016 Repl.)), for licensure of athletic trainers in the District of Columbia.

**Chapter 104, ATHLETIC TRAINERS, of Title 17 DCMR, BUSINESS, OCCUPATIONS, AND PROFESSIONALS, is added to read as follows:**

- 10400 GENERAL PROVISIONS**
- 10401 TERM OF LICENSE**
- 10402 QUALIFICATIONS**
- 10403 CERTIFICATION MAINTENANCE**
- 10404 SCOPE OF PRACTICE**
- 10405 PRACTICE OF ATHLETIC TRAINING BY STUDENTS**
- 10406 PRACTICE OF ATHLETIC TRAINING BY APPLICANTS**
- 10407 RENEWAL, REACTIVATION AND REINSTATEMENT APPLICATIONS**
- 10408 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES**
- 10409 STANDARDS OF CONDUCT**
- 10499 DEFINITIONS**

**10400 GENERAL PROVISIONS**

10400.1 This chapter shall apply to persons authorized to practice athletic training and persons applying for or holding a license to practice athletic training.

10400.2 Chapters 40 (Health Occupations: General Rules) and 41 (Health Occupations: Administrative Procedures) of this title shall supplement this chapter.

**10401 TERM OF LICENSE**

10401.1 Subject to § 10401.2, a license issued pursuant to this chapter shall expire at 12:00 midnight of December 31<sup>st</sup> of each even-numbered year.

10401.2 If the Director changes the renewal system pursuant to § 4006.3 of Chapter 40 of this title, a license issued pursuant to this chapter shall expire at 12:00 midnight of the last day of the month of the birth date of the holder of the license, or other date established by the Director.

## **10402 QUALIFICATIONS**

10402.1 Except as otherwise provided in this chapter, to qualify for a license to practice athletic training, an applicant shall meet the following requirements:

- (a) Possess at least a baccalaureate degree in athletic training from a four (4)-year college or university that is accredited by an agency recognized for that purpose by the United States Department of Education and with an athletic training curriculum meeting one of the following standards:
  - (1) Accredited by the Commission on Accreditation of Athletic Training Education (CAATE) or its successor organization;
  - (2) Approved by the National Athletic Trainers Association (NATA);  
or
  - (3) Substantially equivalent programs approved by the Board;
- (b) Successfully passed the entry-level athletic trainers examination administered by the Board of Certification for the Athletic Trainer (BOC), or its successor, or an equivalent organization approved or recognized by the Board of Medicine (Board); and
- (c) Possess a valid Emergency Cardiac Care (ECC) certification at the Basic Life Support/Professional Rescuer level or above.

10402.2 The Board may waive the requirement of a baccalaureate degree for applicants holding a license, certification or registration in food standing in another state to engage in the practice of athletic training, if that state maintains qualifications for licensure, certification or registrations that are substantially equivalent to those required in the District.

## **10403 CERTIFICATION MAINTENANCE**

10403.1 To maintain his or her qualification for an athletic training license during the period of licensure, an athletic trainer shall maintain continuously and without interruption a valid BOC Certification and a valid Emergency Cardiac Care (ECC) certification, required pursuant to § 10402.1(c).

**10404 SCOPE OF PRACTICE**

- 10404.1 An athletic trainer may, under the general supervision of a physician who has issued any written order, protocol or recommendation, perform treatment and rehabilitation of an athletic injury that is within the professional and educational ability of that trainer, which may include but is not limited to:
- (a) Coordinating or administering a treatment or rehabilitation plan, assessing progress, and discharging based on their functional status for the post-operative, acute, subacute, and chronic injury or medical condition of a patient;
  - (b) Providing treatment or rehabilitation by utilizing physical modalities of heat, cold, light, massage, traction, water, air, electric stimulation, sound, or mechanical, therapeutic and post rehabilitative exercise; or
  - (c) Using appropriate preventative or supportive devices to assist in the recovery or prevention of injury or illness.
- 10404.2 An athletic trainer may provide immediate and emergency care of athletic injuries, including common emergency medical situation, which may include, but is not limited to, cardiopulmonary resuscitation (CPR), an automated external defibrillator (AED), spinal stabilization techniques, standardized testing for head-related injuries, or making referrals for follow-up care.
- 10404.3 An athletic trainer may provide education, guidance, or counseling regarding athletic training and the prevention, care, and treatment of athletic injuries. He or she may also assess and promote awareness and education concerning issues such as, but not limited to, risks of illness or injury (orthopedic, neurological, systemic), environmental stress, nutrition, equipment and facilities, and general health and well-being.
- 10404.4 An athletic trainer may organize and administer athletic training programs and related services.
- 10404.5 An athletic trainer is not authorized to:
- (a) Render a medical diagnosis or opinion regarding a physical disability;
  - (b) Use x-rays, radium, or electricity for cauterization or surgery;
  - (c) Treatment of rehabilitation of neurologic injuries, conditions or disease other than the preventive and emergency medical treatment authorized by Subsections 10404.1; or

- (d) The expansion of treatment beyond the determination of the supervising physician.

**10405 PRACTICE OF ATHLETIC TRAINING BY STUDENTS**

- 10405.1 Students enrolled as candidates for at least a baccalaureate degree in an athletic training program accredited by the Commission on Accreditation of Athletic Training Education (CAATE) and engaging or seeking to engage in an internship or practicum required for the completion of the degree may practice athletic training without a license issued pursuant to this chapter and only in accordance with this section.
- 10405.2 A student practicing pursuant to this section shall do so only under the direct supervision of an athletic trainer licensed in the District.
- 10405.3 An athletic trainer supervising a student shall be fully responsible for all of the actions performed by the student during the time of the supervision and may be subject to disciplinary action for any violation of the Act or this chapter by the person supervised.
- 10405.4 The supervising athletic trainer shall review and co-sign any documentation written by a student practicing pursuant to this section.
- 10405.5 A student practicing pursuant to this section shall be subject to all of the applicable provisions of the Act and this chapter. The Board may deny an application for a license by, or take other disciplinary action in accordance with § 514 of the Act (D.C. Official Code § 3-1205.14 (2016 Repl.)) against, a student who is found to have violated the Act or this chapter.
- 10405.6 If the Board finds that a student has violated the Act or this chapter, the Board may, in addition to any other disciplinary actions permitted by the Act, revoke, suspend, or restrict the privilege of the student to practice.
- 10405.7 A student practicing pursuant to this section shall identify himself or herself as a student at all times when performing actions of an athletic trainer.
- 10405.8 A student may not be paid or receive compensation of any nature, directly or indirectly from a patient.

**10406 PRACTICE OF ATHLETIC TRAINING BY APPLICANTS**

- 10406.1 An applicant with a pending application pursuant to this chapter may practice athletic training only in accordance with this section.
- 10406.2 An applicant with a pending application pursuant to this chapter may practice athletic training under the supervision of an athletic trainer licensed in the District

if the applicant has received authorization from the Board to practice under supervision. Such authorization shall not exceed ninety (90) days.

10406.3 An athletic trainer supervising an applicant shall be fully responsible for all of the actions performed by the applicant during the time of the supervision and may be subject to disciplinary action for any violation of the Act or this chapter by the person supervised.

#### **10407 RENEWAL, REACTIVATION AND REINSTATEMENT APPLICATIONS**

10407.1 This section shall apply to applicants for the renewal, reactivation, or reinstatement of a license but shall not apply to applicants for an initial license or applicants seeking renewal for the first time after the initial grant of a license.

10407.2 A continuing education credit shall be valid only if it is part of a program or activity approved by the Board in accordance with § 10408.

10407.3 To qualify for the renewal of a license, an applicant shall have completed, during the two (2)-year period preceding the date the license expires, fifty (50) hours of approved continuing education meeting the requirement of § 10408. At least two (2) hours must be regarding lesbian, gay, bisexual, transgender, gender nonconforming, queer, or questioning their sexual orientation or gender identity and expression (LGBTQ) continuing education meeting the requirements of § 10408.4. At least ten percent (10%) of the total required continuing education shall be in the subjects determined by the Director as public health priorities of the District every five (5) years, or less frequently as deemed appropriate by the Director, with notice of the subject matter published in the *D.C. Register*. The Board shall disseminate the identified subjects to its licensees when determined by the Director via electronic communication and through publication on its website.

10407.4 To qualify for the reactivation of a license, a person in inactive status within the meaning of § 511 of the Act (D.C. Official Code § 3-1205.11 (2016 Repl.)) shall possess a current and valid BOC Certification. If the person applying for reactivation has not been in the active practice of athletic training for two or more years immediately preceding the application, the person shall comply with any re-entry to practice requirements determined by the Board to be necessary to ensure competent practice.

10407.5 To qualify for the reinstatement of a license, an applicant seeking reinstatement shall have completed, during the two (2) years before the submission of the application, twenty-five (25) hours of approved continuing education for each year after the last expiration of the license up to a maximum of one hundred (100) hours and shall possess a current BOC certification. If the person applying for reinstatement has not been in the active practice of athletic training for two or more years immediately preceding the application, the person shall comply with



any re-entry to practice requirements determined by the Board to be necessary to ensure competent practice.

10407.6 An applicant under this section shall prove completion of required continuing education credits by submitting the following information with respect to each program:

- (a) The name and address of the sponsor of the program;
- (b) The name of the program, its location, a description of the subject matter covered, and the names of the instructors;
- (c) The dates on which the applicant attended the program;
- (d) The hours of credit claimed; and
- (e) Verification by the sponsor of completion.

10407.7 The Board may periodically conduct an audit of some or all licensees to determine compliance with the continuing education requirements. During the audit, the Board may also require proof of a current BOC Certification and a valid Emergency Cardiac Care (ECC) certification to determine the licensee’s compliance with § 10403.1.

**10408 APPROVED CONTINUING EDUCATION PROGRAMS AND ACTIVITIES**

10408.1 The Board may approve continuing education programs and activities that contribute to the growth of professional competence in athletic training and meet the relevant requirements of this section.

10408.2 The Board shall approve continuing education programs or activities approved by the BOC or offered by BOC-approved providers.

10408.3 The Board may approve continuing education programs if the program meets the requirements of § 10408.1 and is pre-approved by the Board.

10408.4 Continuing education hours that are completed in cultural competence and appropriate clinical treatment specifically for individuals who are LGBTQ shall, at a minimum, provide information and skills to enable a licensed athletic trainer to care effectively and respectfully for patients who identify as LGBTQ, which may include:

- (a) Specialized clinical training relevant to patients who identify as LGBTQ, including training on how to use cultural information and terminology to establish clinical relationships;

- (b) Training that improves the understanding and application, in a clinical setting, of relevant data concerning health disparities and risk factors for patients who identify as LGBTQ;
- (c) Training that outlines the legal obligations associated with treating patients who identify as LGBTQ;
- (d) Best practices for collecting, storing, using, and keeping confidential, information regarding sexual orientation and gender identity;
- (e) Best practices for training support staff regarding the treatment of patients who identify as LGBTQ and their families;
- (f) Training that improves the understanding of the intersections between systems of oppression and discrimination and improves the recognition that those who identify as LGBTQ may experience these systems in varying degrees of intensity; and
- (g) Training that addresses underlying cultural biases aimed at improving the provision of nondiscriminatory care for patients who identify as LGBTQ.

**10409 STANDARDS OF CONDUCT**

- 10409.1 An athletic trainer shall comply with the Code of Ethics established and adopted by the National Athletic Trainers’ Association (NATA) and the Board of Certification Standards of Professional Practice adopted and implemented by the BOC, as they may be amended or adopted from time to time.
- 10409.2 An athletic trainer shall not sell, dispense, or administer anabolic steroids to any person.
- 10409.3 An athletic trainer shall comply with the requirements regarding youth athletic concussion protection of Chapter 28B of Title 7 of the D.C. Official Code and any amendments.

**10499 DEFINITIONS**

- 10499.1 As used in this chapter the following terms shall have the meanings ascribed:  
  
**Act** – District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.* (2016 Repl.)).

**Athlete** -

- (a) A person participating in, or preparing for a competitive team or individual sport or other athletic activity being conducted by an educational institution, professional athletic organization, or a board sanctioned amateur athletic organization;
- (b) A member of an athletic team; or
- (c) Any physically active person seeking treatment for athletic injuries.

**Athletic injury** - a musculoskeletal or orthopedic injury or other medical condition suffered by an athlete resulting from, or limiting participation in or training for scholastic, recreational, professional, amateur athletic activities or other physical activities.

**Athletic trainer** – a person licensed to practice athletic training pursuant to this chapter.

**Board** – the Board of Medicine, established by § 209 of the Act (D.C. Official Code § 3-1202.03 (2016 Repl.)).

**BOC** – Board of Certification for the Athletic Trainer.

**Direct supervision** – supervision provided to a student authorized to practice athletic training by an athletic trainer licensed in the District in which the supervising athletic trainer shall be physically present within the line of sight at the time that the student performs an athletic training function.

**Director** – the Director of the Department of Health or any successor or assignee.

**General supervision of a physician** – the overall direction and control of a physician over the services of an athletic trainer, which may be achieved through the planning of services with a physician; the development and approval by the physician of procedures and protocols to be followed in the event of an injury or illness; the mutual review of the protocols on a periodic basis; a written order or recommendation; and the appropriate consultation with a physician. The physical presence of the supervising physician is not required during the provision of the services.

**LGBTQ Continuing Education** - continuing education focusing on patients or clients who identify as lesbian, gay, bisexual, transgender, gender nonconforming, queer, or question their sexual orientation or gender identity and expression (“LGBTQ”) meeting the requirements of § 510(b)(5) of the Act (D.C. Official Code § 3-1205.10 (b)(5) (2016 Repl.)).

**Requestor** – a person who seeks continuing education credit.

**Treatment** - the prevention, evaluation, recognition, management, treatment, rehabilitation, or reconditioning of an athletic injury, including the usage of appropriate preventative and supportive devices, temporary splinting and bracing, physical modalities of heat, cold, light, massage, water, electric stimulation, sound, and passive or active exercise, temporary mechanical devices, mechanical equipment, or any other therapeutic modality for which an athletic trainer has received appropriate training or education.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 6<sup>th</sup> Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:15 a.m. and 4:45 p.m. at the address listed above, or by contacting Angli Black, Paralegal Specialist, at [Angli.Black@dc.gov](mailto:Angli.Black@dc.gov), (202) 442-5977.

## DISTRICT DEPARTMENT OF TRANSPORTATION

NOTICE OF PROPOSED RULEMAKING

The Director of the District Department of Transportation (“Department”), pursuant to the authority set forth in Section 3(C) (coordinating and managing public space permits and records), Section 5(3)(D)(i) (allocating and regulating on-street parking), Section 5(4)(A) (reviewing and approving public space permit requests), Section 6(b) (transferring the public right-of-way maintenance and parking management functions previously delegated to the Department of Public Works (“DPW”) under Section III (F) of Reorganization Plan No. 4 of 1983, effective March 1, 1984, to the Department), and Section 7 (transferring to the Director of the Department all transportation-related authority previously delegated to the DPW Director by Mayor’s Order 96-175, dated December 9, 1996) of the Department of Transportation Establishment Act of 2002 (“DDOT Establishment Act”), effective May 21, 2002 (D.C. Law 14-137; D.C. Official Code §§ 50-921.03(3)(C), 50-921.04(a)(3)(Q), 50-921.04(a)(3)(E), 50-921.05(b) and 50-921.06 (2014 Repl.)), and the Electric Vehicle Public Infrastructure Expansion Amendment Act of 2018, effective March 29, 2018 (D.C. Law 22-78; D.C. Official Code § 50-921.23 (2019 Supp.)), hereby gives notice of the intent to adopt the following rulemaking to amend Chapters 24 (Stopping, Standing, Parking, and Other Non-Moving Violations) and 26 (Civil Fines for Moving and Non-Moving Infractions) of Title 18 (Vehicles and Traffic), and Chapter 2 (Rental of Public Space) and Chapter 33 (Public Right-of-Way Occupancy Permits) of Title 24 (Public Space and Safety) of the District of Columbia Municipal Regulations (DCMR).

This rulemaking will clarify criteria for installation of electric vehicle charging stations in public space; and authorize fining and towing of unauthorized vehicles parked in designated electric vehicle charging station parking spaces. It will also correct an error in Chapter 26 of Title 18 DCMR pertaining to the infraction of “Stopping, standing, or parking in a bicycle lane or shared use path”. This change will move this infraction to align with other non-moving infractions, rather than keeping it in the section for moving infractions.

This rulemaking shall be submitted to the Council of the District of Columbia for a forty-five (45) day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. Pursuant to D.C. Official Code § 50-2301.05(a)(1) (2014 Repl.), the rulemaking shall be deemed approved if within the 45-day period, the Council takes no action.

**Chapter 24, STOPPING, STANDING, PARKING AND OTHER NON-MOVING VIOLATIONS, of Title 18 DCMR, VEHICLES AND TRAFFIC, is amended as follows:**

**Section 2406, PARKING PROHIBITED BY POSTED SIGN, is amended as follows:**

**Subsections 2406.14 through 2406.17 are repealed.**

**Subsections 2406.21 through 2406.29 are added to read as follows:**

- 2406.21 The Director is authorized to establish reserved on-street parking spaces for the exclusive use of charging electric vehicles (“electric vehicle charging spaces”) and to reserve space on the sidewalk and street for electric vehicle charging stations and associated equipment, through the issuance in accordance with 24 DCMR 226 of a Public Space Occupancy Permit to a charging station vendor.
- 2406.22 An electric vehicle charging space established pursuant to § 2406.14 shall not:
- (a) Extend more than twenty feet (20') in length;
  - (b) Be located where parking is currently prohibited including blocks with rush hour and snow emergency restrictions;
  - (c) Be located on blocks with Residential Permit Parking (RPP) restrictions pursuant to 18 DCMR § 2432; or
  - (d) Be located at a metered space reserved for individuals with disabilities, unless the metered space is relocated at the cost of the applicant and approved by DDOT.
- 2406.23 The Director shall not issue permits for more than two (2) electric vehicle charging stations per square block.
- 2406.24 For every two (2) charging stations installed in the Central Business District by a charging station vendor, seven (7) charging stations, each serving at least two (2) spaces, must be installed outside the Central Business District by the charging station vendor until the charging station vendor has installed one (1) electric vehicle charging station, serving at least two (2) spaces, in each ward.
- 2406.25 A vendor’s permit application for its fifteenth (15<sup>th</sup>) or later charging station shall not be approved unless the vendor has installed and maintains one (1) electric vehicle charging station, serving at least two (2) spaces, in each ward.
- 2406.26 An electric vehicle charging station shall:
- (a) Be located outside of a tree box;

- (b) Be located ten feet (10') or more from a fire hydrant;
- (c) Be located twenty-five feet (25') or more from a marked or unmarked intersection;
- (d) Be located so that it does not protrude into a roadway or a bike lane;
- (e) Be so located as to ensure compliance with the minimum pedestrian clearance widths as set forth in the District Department of Transportation Design and Engineering Manual; and
- (f) Display the contact information of the vendor to report any issues.

2406.27 Electric vehicle supply equipment placed on a sidewalk that supplies an on-street electric vehicle charging station shall not interfere with the minimum pedestrian clearance widths as set forth in the District Department of Transportation Design and Engineering Manual;

2406.28 Cords, cables, and connector equipment of a charging station shall not be placed in such a manner as to extend across the path of travel within the sidewalk or walkway whether or not in use by an electric vehicle

2406.29 The following rules shall apply to the use by the public of electric vehicle parking spaces and charging stations and violation of this subsection shall be subject to the fines set forth in § 2601:

- (a) Parking in electric vehicle charging spaces is permitted only for electric vehicles and plug-in hybrids and only in accordance with the guidelines provided on the charging station.
- (b) An electric vehicle may park in an electric vehicle charging space only while the vehicle is plugged in to the charging station.
- (c) An electric vehicle may park in an electric vehicle charging space for no more than a total of four (4) hours between 9:00 a.m. and 8:00 p.m. on any calendar day.
- (d) A vehicle occupying an electric vehicle charging space shall pay any applicable charging fee required by the charging station vendor.
- (e) In addition to all other applicable fees, a person parking a vehicle an electric vehicle charging space shall be assessed a one dollar (\$1.00) per hour fee for the use of public space while charging the vehicle and ten dollars (\$10.00) per hour while not charging.

Chapter 26, CIVIL FINES FOR MOVING AND NON-MOVING INFRACTIONS, is amended as follows:

Section 2600, CIVIL FINES FOR MOTOR VEHICLE MOVING INFRACTIONS, is amended as follows:

Subsection 2600.1 is amended as follows:

The following infraction under the category of “Right-of-way,” is repealed:

Stopping, standing, or parking a vehicle in a bicycle lane or shared use path \$65.00  
[§ 2405.1]

Section 2601, PARKING AND OTHER NON-MOVING INFRACTIONS, is amended as follows:

The chart set forth in Subsection 2601.1 is amended as follows:

The section labeled “INFRACTION (Regulatory/Statutory Citation)” is amended as follows:

The following row is inserted after the row labeled “Barricade, in front of [§ 2405.2(h)]”:

Bicycle lane or shared use path, stopping, standing, or parking a vehicle in [§ 2405.1]	\$150.00
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The infraction “No parking except for an electric vehicle while being charged [§ 2406.14]” is amended to read as follows:

No parking except for an electric vehicle while plugged in [ §§ 2406.14 (b), 2406.14 (c),]	\$100.00
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The following row is inserted after the row labeled “Parallel, fail to park (except where permitted) [§ 2400.1]”:

Plugged in electric vehicle remaining for more than four (4) hours between 9:00 a.m. and 8:00 p.m. Monday through Sunday at an on-street parking space reserved for charging vehicles [§ 2406.14 (b), 2406.14 (c)]	\$30.00
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The following row is repealed:

Vehicle remaining for more than four (4) hours between 6:00 a.m. and 10:00 p.m. Monday through Saturday at an on-street parking space reserved for charging vehicles [§ 2406.16]	\$ 100.00
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**Chapter 2, RENTAL OF PUBLIC SPACE, of Title 24 DCMR, PUBLIC SPACE AND SAFETY, is amended as follows:**

**Section 225, PUBLIC SPACE PERMIT FEES, is amended as follows:**

**Subsection 225.1 is amended by amending paragraph (r) to read as follows:**

**(r) Charging station:**

Installation of charging station- reserving the equivalent of 2 parking spaces for electric vehicles	\$2,400/year
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**Chapter 33, PUBLIC RIGHT-OF-WAY OCCUPANCY PERMITS, is amended as follows:**

**Section 3399, DEFINITIONS, is amended as follows:**

**Subsection 3399.1 is amended as follows:**

**The following definitions are added after the definition of “Dockless vehicle operating company”:**

**Electric Vehicle** - a vehicle that is propelled by an electric motor and is capable of being recharged from an external source of electricity.

**Electric Vehicle Charging Station** - a publicly accessible facility or equipment that is located in the public right-of-way, including any public space in the District, and is used to charge the battery or other energy storage device of an electric vehicle.

All persons interested in commenting on the subject matter in this proposed rulemaking may file comments in writing, no later than thirty (30) days after the publication of this notice in the *D.C. Register*, with Anthony C. Willingham, Policy Analyst, Policy and Legislative Affairs Division, Office of the Director, 55 M Street S.E., 7<sup>th</sup> Floor, Washington, D.C. 20003. Comments may also be sent electronically to [publicspace.policy@dc.gov](mailto:publicspace.policy@dc.gov). Copies of this proposed rulemaking are available, at cost, by writing to the above address, and are also available electronically, at no cost, on the District Department of Transportation’s web site at [ddot.dc.gov](http://ddot.dc.gov).

UNIVERSITY OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED RULEMAKING

The Board of Trustees of the University of the District of Columbia, pursuant to the authority set forth under the District of Columbia Public Postsecondary Education Reorganization Act Amendments effective January 2, 1976 (D.C. Law 1-36; D.C. Official Code §§ 38-1202.01(a); 38-1202.06(13) (2018 Repl.)) hereby gives notice of its intent to amend Chapter 16 (Grievances) of Subtitle B (University of the District of Columbia) of Title 8 (Higher Education) of the District of Columbia Municipal Regulations (DCMR) in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

The purpose of the proposed rule is to revise the University’s grievance procedures for employees not represented by a collective bargaining agreement.

The Board of Trustees will take final action to adopt these amendments to the University Rules in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

**Chapter 16, GRIEVANCES, of Title 8-B DCMR, UNIVERSITY OF THE DISTRICT OF COLUMBIA, is amended by deleting it and replacing it in its entirety as follows:**

- 1600 GENERAL PROVISIONS: APPLICABILITY**
- 1601 GENERAL PROVISIONS**
- 1602 RIGHTS OF EMPLOYEES**
- 1603 RESPONSIBILITIES OF SUPERVISORS**
- 1604 FORMAL GRIEVANCE PROCEDURE: STEP 1**
- 1605 FORMAL GRIEVANCE PROCEDURE: STEP 2**
- 1606 FORMAL GRIEVANCE PROCEDURE: STEP 3**
- 1607 FORMAL GRIEVANCE PROCEDURE: STEP 4 – FINAL APPEAL TO THE PRESIDENT**
- 1608 EMPLOYEES REPORTING TO THE PRESIDENT OR A CABINET MEMBER**
- 1609 DISMISSAL OF GRIEVANCE**

**1600 GENERAL PROVISIONS: APPLICABILITY**

1600.1 The informal presentation by employees of concerns and grievances is encouraged and shall be reasonably accommodated by management. The provisions of this chapter set forth formal grievance procedures that shall be used by University employees (except those excluded below) to seek resolution of conflict, the prompt and equitable relief of personal concerns and the redress of grievances.

1600.2 This chapter shall apply only to non-bargaining unit employees.

1600.3 The grievance procedures set forth in this chapter shall not apply to the following employees:

- (a) A bargaining unit employee subject to a negotiated grievance process;
- (b) A probationary employee seeking to challenge his/her termination during probation;
- (c) A temporary employee or an employee with a time-limited appointment seeking to challenge the termination of that appointment.

1600.4 The grievance procedures set forth in this chapter shall not apply to:

- (a) Applicants for employment; or
- (b) Former employees.

1600.5 A grievance may consist of a complaint of dissatisfaction or dispute concerning the following:

- (a) The interpretation or application of University policies or procedures;
- (b) A claimed violation, misrepresentation, or misapplication of University rules or applicable law; or
- (c) A failure to act pursuant to the policies and practices of the University or other applicable policies and practices.

1600.6 The following matters are not subject to this grievance procedure:

- (a) Any action implemented to comply with a decision by the Office of Employee Appeals, an arbitrator of competent jurisdiction, the Office of the Inspector General, the Executive Office of the Mayor, the Office of Human Rights, the Commission on Human Rights, a court of competent jurisdiction, or any other agency authorized by law to mandate a particular action;
- (b) Any action terminating an employee's temporary promotion that returns the employee to the position from which the employee was temporarily promoted or to a different position that is not at a lower grade or level than the position from which the employee was temporarily promoted;
- (c) Expiration of an appointment with a specific time limit;

- (d) Forfeiture of position due to failure to maintain bona fide District residency, or to meet the residency or domicile requirements;
- (e) Termination or discipline of an employee serving a probationary period;
- (f) The return or assignment to the position from which promoted or to an equivalent position of an employee who does not successfully complete a supervisory probationary period;
- (g) Termination of a term promotion upon completion or termination of an assigned project, and the return of the employee to the position from which promoted or to a different position of equivalent grade and pay;
- (h) An action reassigning an employee to a different position that is not at a lower grade;
- (i) Termination or discipline prior to the expiration of a temporary appointment;
- (j) An appeal from a disciplinary action or adverse action under the provisions of Chapter 15 of this subtitle;
- (k) Voluntary action initiated by, or at the request of, an employee;
- (l) Reduction of an employee's rate of pay from an erroneous rate;
- (m) An allegation of unlawful discrimination, or any other matter within the jurisdiction of the Office of Human Rights;
- (n) An allegation of an unfair labor practice, or any other matter required to be decided by the Public Employee Relations Board;
- (o) A final University decision which, pursuant to the D.C. Official Code Section 1-606.03(a), may be appealed to the Office of Employee Appeals;
- (p) A grievance that could be submitted through the grievance procedures contained in a collective bargaining agreement
- (q) Non-selection for any competitive or non-competitive appointment or promotion from a group of candidates who were properly qualified, ranked or certified;
- (r) Performance evaluations conducted under the provisions of Chapter 19 of Title 8-B DCMR;
- (s) The application or coverage of the Fair Labor Standards Act;

- (t) A prior grievance dismissed with prejudice;
- (u) Non-adoption of a suggestion;
- (v) Disapproval of a quality salary increase, performance award or other kind of honorary or discretionary award;
- (w) Any matter which is not subject to the jurisdiction of the Board of Trustees; and/or
- (x) The substantive content of any resolution, policy or procedure of the Board of Trustees.

**1601 GENERAL PROVISIONS**

- 1601.1 An employee shall first attempt to resolve a grievance informally through discussions with his or her supervisor. If the grievance is not resolved satisfactorily through informal discussion, the employee may pursue the grievance formally, beginning with the procedures set forth in § 1604.
- 1601.2 An employee shall not knowingly make false or unfounded charges when presenting a grievance.
- 1601.3 An employee filing a grievance under this chapter shall present the grievance within fifteen (15) days after the date that he or she knew or should have known of the act or occurrence that is the subject of the grievance.
- 1601.4 Each grievant and/or witness will be free from restraint, coercion, interference, discrimination, or reprisal for the act of filing or supporting a grievance.
- 1601.5 The timeframes set forth in this chapter may be extended by mutual consent of the parties involved.

**1602 RIGHTS OF EMPLOYEES**

- 1602.1 An employee shall have the right to be accompanied by a person of his or her choosing at any stage in the consideration of a grievance. If the employee chooses to be represented by an attorney, notice shall be provided to the supervisor or Cabinet member as applicable, forty-eight (48) hours before the grievance is heard. In such case, the supervisor or Cabinet member may have an attorney present.
- 1602.2 An employee submitting a grievance under the provisions of this chapter may be granted a reasonable amount of official time for the preparation and/or

presentation of the grievance. If questions arise, the Vice President for Talent Management will determine what constitutes a reasonable amount of time.

**1603 RESPONSIBILITIES OF SUPERVISORS**

- 1603.1 An employee's supervisor shall be responsible for making a sincere effort to resolve the grievance presented by the employee.
- 1603.2 During an interview with the employee, the supervisor will note the employee's specific allegations, the facts supporting those assertions, and the relief being sought by the employee and determine whether a legitimate grievance has been presented based upon §§ 1600 and 1601.
- 1603.3 Each supervisor shall use sound judgment, keep superiors informed of the status of each grievance, and as necessary, request guidance from Talent Management.
- 1603.4 A grievance shall be given full, impartial, and prompt consideration, and (except in unusual circumstances) a decision shall be rendered by the supervisor on a grievance within ten (10) days after receipt of the grievance.
- 1603.5 If a supervisor hearing a grievance has reason to believe that the employee is knowingly making false and damaging statements, the supervisor should advise the employee that if those charges are found to be intentionally false and damaging, the employee may be subject to disciplinary action up to and including termination.

**1604 FORMAL GRIEVANCE PROCEDURE: STEP 1**

- 1604.1 To begin formal grievance procedures at Step 1, the employee shall present the grievance in writing to his or her immediate supervisor within fifteen (15) days of the act, violation, or occurrence, or within 15 days of the date the employee became aware of the act, violation, or occurrence.
- 1604.2 The formal grievance will be referred to as a "Statement of the Grievance". The Statement of the Grievance shall contain enough detail to clearly identify the basis for the grievance, the facts supporting the grievance, and the specific relief requested.
- 1604.3 Within five (5) days of receipt of the Statement of the Grievance, the supervisor shall do one of the following:
- (a) Acknowledge receipt of the grievance and begin processing;
  - (b) Deny the grievance as being a matter not subject to review;
  - (c) Deny the grievance as being untimely; or

(d) Request the employee to supply additional information or inform the employee that additional information will be gathered. The parties may agree to extend timeframes to permit the gathering of such additional information.

1604.4 The supervisor shall conduct an interview and discussion with the employee and advise the employee in writing of his or her decision within ten (10) days following receipt of the Statement of the Grievance, unless additional information is required and the parties have agreed to extend timeframes.

1604.5 If the supervisor does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the supervisor shall advise the employee in writing, stating the basis for the decision and inform the employee of his or her right to appeal the grievance to the Step 2 level within five (5) days from the date of receipt of the notification.

1604.6 If the employee does not receive a written answer to the Statement of the Grievance within ten (10) days following receipt of the Statement of the Grievance (and the parties have not agreed upon an extension of time), or the employee disagrees with the supervisor's decision, the employee shall have the right to appeal the grievance to Step 2.

#### **1605 FORMAL GRIEVANCE PROCEDURE: STEP 2**

1605.1 If a grievance is not resolved under § 1604, it shall be presented by the employee to the employee's second level supervisor in the chain of command within five (5) days after receipt of the supervisor's decision or the expiration of the required period for a decision to be made in Step 1.

1605.2 The Step 1 grievance appeal shall be in writing, shall contain the materials presented at Step 1 and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 2 grievance.

1605.3 The second level supervisor shall review the grievance materials and advise the employee in writing of his or her decision within ten (10) days of receipt of the Step 1 grievance appeal or advise the employee of the need for additional information. The parties may agree to extend timeframes to permit the gathering of such additional information.

1605.4 If the second level supervisor does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the second level supervisor shall advise the employee in writing, stating the basis for the decision and inform the employee of his or her right to appeal the grievance to the Step 3 level within five (5) days from date of receipt of the Step 2 decision.

1605.5 If the employee does not receive a written answer within ten (10) days following the second level supervisor's receipt of the Step 2 appeal (and the parties have not agreed upon an extension of time), or if the employee disagrees with the second level supervisor's decision, the employee shall have the right to appeal the grievance to Step 3.

**1606 FORMAL GRIEVANCE PROCEDURE: STEP 3**

1606.1 Within five (5) days of receipt of the Step 2 decision or the expiration of the required period for a decision to be made, the grievant may appeal the action to the appropriate Cabinet member (the official within the employee's chain of command or a Cabinet member designated by the President).

1606.2 The Step 2 grievance appeal shall be in writing, shall contain the materials presented at Step 2 and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 3 grievance.

1606.3 The appropriate Cabinet member shall review the grievance materials and advise the employee in writing of his or her decision within ten (10) days from receipt of the Step 2 appeal or advise the employee of the need for additional information. The parties may agree to extend timeframes to permit the gathering of such additional information.

1606.4 If the appropriate Cabinet member does not grant the relief sought by the employee, or lacks authority to grant the relief sought, the appropriate Cabinet member shall advise the employee in writing, stating the basis for the decision and inform the employee of his or her right to appeal the grievance to the Step 4 level within five (5) days from the date of receipt of the Step 3 decision.

1606.5 If the employee does not receive a written answer within ten (10) days following receipt of the Step 3 appeal (and the parties have not agreed upon an extension of time), or if the employee disagrees with the appropriate Cabinet member's decision, the employee shall have the right to appeal the grievance to Step 4.

**1607 FORMAL GRIEVANCE PROCEDURE: STEP 4 – FINAL APPEAL TO THE PRESIDENT**

1607.1 Within ten (10) days of the Step 3 decision or the expiration of the required period for a decision to be made, the grievant may appeal the action to the President.

1607.2 The appeal must be in writing with all documentation from the previous appeals attached, and enough details to clearly identify the basis for the appeal, and the relief sought by the employee. No new allegations may be added to the Step 4 grievance.



1607.3 The President shall review the grievance materials, and advise the employee in writing of his or her decision within ten (10) days from receipt of the Step 3 appeal, or advise the employee of the need for additional information, in which case, the President shall advise the employee of the date by which a final decision will be issued.

1607.4 The decision of the President shall be final.

**1608 EMPLOYEES REPORTING TO THE PRESIDENT OR A CABINET MEMBER**

1608.1 In all instances where the President is the first or second line supervisor, the employee's appeal rights shall terminate with the President, whose decision shall be final.

**1609 DISMISSAL OF GRIEVANCE**

1609.1 An employee may request a dismissal of the grievance at any time.

1609.2 A supervisor or second level supervisor may dismiss a grievance if the employee fails to carry out his or her responsibilities; fails to participate; separates from the University; or otherwise impedes the grievance process under this chapter.

1609.3 A dismissal requested by an employee or issued pursuant to this section following the issuance of a Step 2 grievance shall be final.

All persons desiring to comment on the subject matter of the proposed rulemaking should file comments in writing not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Comments should be filed with the Office of General Counsel, Building 39, Room 301-Q, University of the District of Columbia, 4200 Connecticut Avenue, N.W., Washington, D.C. 20008.

Comments may also be submitted by email to [OfficeofGC@udc.edu](mailto:OfficeofGC@udc.edu). Individuals wishing to comment by email must include the phrase "Comment to Proposed Rulemaking: Revision of Grievance Procedures for Employees Not Represented by a Collective Bargaining Agreement" in the subject line.

## DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

NOTICE OF PROPOSED RULEMAKING

The Board of Directors (Board) of the District of Columbia Water and Sewer Authority (DC Water), pursuant to the authority set forth in Sections 203(3) and 205(a)(4) of the Water and Sewer Authority Establishment and Department of Public Works Reorganization Act of 1996, effective April 18, 1996 (D.C. Law 11-111, §§ 203(3) and 205(a)(4); D.C. Official Code §§ 34-2202.03(3) and 2202.05(a)(4) (2019 Repl.)); and Section 6(a) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(a) (2016 Repl.)), hereby gives notice that at its regularly scheduled meeting on February 6, 2020, the Board adopted Resolution #20-06 to propose the amendment of Chapter 52 (D.C. Water and Sewer Authority Personnel Regulations) of Title 21 (Water and Sanitation) of the District of Columbia Municipal Regulations (DCMR).

The purpose of this rulemaking is to add Paid Parental Leave to the types of un-accrued leave made available to DC Water employees.

The Board requests comments on these proposed regulations. Final rulemaking action shall be taken in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

This proposed rulemaking, if finalized, will be effective no sooner than the date of publication of the notice of final rulemaking in the *D.C. Register*.

**Chapter 52, D.C. WATER AND SEWER AUTHORITY PERSONNEL REGULATIONS, of Title 21 DCMR, WATER AND SANITATION, is amended as follows:**

**Section 5204, LEAVES, HOLIDAYS AND OTHER ABSENCES, Subsection 5204.4 is amended to read as follows:**

5204.4 The Authority recognizes the following types of un-accrued leave that may be granted to eligible employees in qualifying circumstances:

- (a) Leave of Absence Without Pay.
- (b) Federal and District of Columbia Family and Medical Leave.
- (c) Jury Duty Leave of Absence.
- (d) Military Leave of Absence.
- (e) Administrative Leave.
- (f) Bereavement Leave.

- (g) Paid Parental Leave.
- (h) Leave approved by the Board of Directors.

Comments on these proposed rules should be submitted in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register* to Linda R. Manley, Secretary to the Board, District of Columbia Water and Sewer Authority, 1385 Canal Street, S.E., Washington, D.C. 20003, by email to [Lmanley@dcwater.com](mailto:Lmanley@dcwater.com), or by FAX at (202) 787-2795. Copies of these proposed rules may be obtained from the DC Water at the same address or by contacting Ms. Manley at (202) 787-2332.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-022  
February 12, 2020

**SUBJECT:** Appointment — Public Charter School Credit Enhancement Committee

**ORIGINATING AGENCY:** Executive Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and pursuant to Mayor's Order 2016-037, dated March 10, 2016, it is hereby **ORDERED** that:

1. **STEFAN HUH**, is appointed as a member of the Public Charter School Credit Enhancement Committee, replacing James Henderson, for a term to end October 28, 2022.
2. **EFFECTIVE DATE:** This order shall become effective immediately.




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MURIEL BOWSER  
MAYOR

ATTEST:  \_\_\_\_\_  
 KIMBERLY A. BASSETT  
 SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2020-023  
February 12, 2020

**SUBJECT:** Reappointments and Appointments — Commission on Latino Community Development

**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia by section 422(2) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(2) (2016 Repl.), and in accordance with section 401 of the District of Columbia Latino Community Development Act, effective September 29, 1976, D.C. Law 1-86, D.C. Code §§ 2-1322 (2016 Repl.), it is hereby **ORDERED** that:

1. The following persons are appointed as public members of the Commission on Latino Community Development (“Commission”) for terms ending July 26, 2022:
  - a. **ANNIETE COHN-LOIS EUSEBIO**, replacing David Aguayo;
  - b. **DORA CURREA**, replacing Marjhorys Ibarquen; and
  - c. **MIOZOTIS FLOREZ RUIZ**, replacing Alida Sanchez.
  
2. The following persons are reappointed as public members of the Commission for terms ending July 26, 2022:
  - a. **JOHNNY GARCIA**;
  - b. **ANA REYES**;
  - c. **MARGARITA DILONE**;
  - d. **ANGELIQUE SINA**;
  - e. **JONAS MININO**;
  - f. **GUSTAVO VITERI**;
  - g. **EDUARDO GUTY**; and
  - h. **JAMES DEVLIN-BRASWELL**.

3. EFFECTIVE DATE: This Order shall become effective immediately.

  
\_\_\_\_\_  
MURIEL BOWSER  
MAYOR

ATTEST:   
\_\_\_\_\_  
KIMBERLY A. BASSETT  
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF COLUMBIA****ADMINISTRATIVE ISSUANCE SYSTEM**

Mayor's Order 2020-024

February 12, 2020

**SUBJECT:** Amendment – Establishment of the Interagency Working Group on Autonomous Vehicles

**ORIGINATING AGENCY:** Executive Office of the Mayor


By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to sections 422(3) and (11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. 93-198, D.C. Official Code § 1-204.22(3) and (11) (2016 Repl.), it is hereby **ORDERED** that:

1. Mayor's Order 2018-018, dated February 12, 2018, establishing the Interagency Working Group on Autonomous Vehicles, is amended as follows:
  - a. Section III.A. is amended by:
    - i. Striking the phrase "fifteen (15)" and inserting the phrase "sixteen (16)" in its place; and
    - ii. Adding a new paragraph 16 to read as follows:

"16. The Deputy Mayor for Operations and Infrastructure, or his or her designee".
  - b. Section IV. A. is amended by striking the phrase "Deputy Mayor for Planning and Economic Development" and inserting the phrase "Deputy Mayor for Operations and Infrastructure" in its place.
  - c. Section VII is amended by striking the phrase "Office of the Deputy Mayor for Planning and Economic Development" and inserting the phrase "Office of the Deputy Mayor for Operations and Infrastructure" in its place.
2. This Order supersedes all prior Mayor's Orders to the extent of any inconsistency therein.

3. **EFFECTIVE DATE:** This Order shall become effective immediately.

  
MURIEL BOWSER  
MAYOR

ATTEST:   
KIMBERLY A. BASSETT  
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA



**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES****NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF  
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Christopher Costa. This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Costa’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Costa has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his two-year term on May 15, 2020.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Costa’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before March 10, 2020. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of Administrative Hearings  
District of Columbia Government  
441 4<sup>th</sup> Street, N.W.  
Suite 450N  
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams  
Chief Administrative Law Judge Eugene A. Adams  
Nadine C. Wilburn, Esq.  
Joseph N. Onek, Esq.  
Rob Hawkins, Esq.

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES****NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF  
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge John Howard. This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Howard’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Howard has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his two-year term on May 14, 2020.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Howard’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before March 10, 2020. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of Administrative Hearings  
District of Columbia Government  
441 4<sup>th</sup> Street, N.W.  
Suite 450N  
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams  
Chief Administrative Law Judge Eugene A. Adams  
Nadine C. Wilburn, Esq.  
Joseph N. Onek, Esq.  
Rob Hawkins, Esq.

**OFFICE OF ADMINISTRATIVE HEARINGS****DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF  
ADMINISTRATIVE LAW JUDGES****NOTICE SEEKING COMMENTS REGARDING REAPPOINTMENT OF  
ADMINISTRATIVE LAW JUDGE**

The Commission on Selection and Tenure of Administrative Law Judges (“Commission”) seeks comments regarding the potential reappointment of Administrative Law Judge Tannisha Bell. This is to notify members of the District of Columbia Bar and the general public, pursuant to section 3705.7 of Title 6 of the District of Columbia Municipal Regulations (“DCMR”), that the Commission has begun reviewing Administrative Law Judge Bell’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Bell has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of her two-year term on May 21, 2020.

Section 3705.21 of Title 6 of the DCMR provides:

In deciding whether to reappoint an Administrative Law Judge, the Commission shall consider all information it has received concerning the reappointment, and the voting members shall give significant weight to the recommendation of the Chief Administrative Law Judge, unless they determine that the recommendation is not founded on substantial evidence. The Commission shall reappoint the Administrative Law Judge if it finds that the Administrative Law Judge has satisfactorily performed the responsibilities of his or her office and is likely to continue to do so.

In addition to the specific qualifications contained in Section 3703 of Title 6 of the DCMR (*Appointment, Reappointment, Discipline and Removal of Administrative Law Judges by the Commission on Selection and Tenure of Administrative Law Judges*), applicable to all Administrative Law Judges, Section 3703.5 of Title 6 of the DCMR states: “An Administrative Law Judge shall possess judicial temperament, judgment, expertise and analytical and other skills necessary and desirable for an Administrative Law Judge.”

The Commission hereby requests that members of the Bar and other attorneys, litigants, interested organizations, and members of the public submit any information bearing on Administrative Law Judge Bell’s qualifications, which they believe will aid the Commission in deciding whether to reappoint this Administrative Law Judge. The cooperation of the community at an early stage will greatly aid the Commission in fulfilling its responsibilities. The identity of any person submitting information shall be kept confidential unless expressly authorized by the person submitting the information.

All communications must be received by the Commission on or before March 10, 2020. All communications must be mailed or delivered in a sealed envelope marked “Confidential – ALJ Reappointments,” addressed to:

Commission on Selection and Tenure of Administrative Law Judges  
Office of Administrative Hearings  
District of Columbia Government  
441 4<sup>th</sup> Street, N.W.  
Suite 450N  
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams  
Chief Administrative Law Judge Eugene A. Adams  
Nadine C. Wilburn, Esq.  
Joseph N. Onek, Esq.  
Rob Hawkins, Esq.

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PUBLIC HEARINGS  
CALENDAR

WEDNESDAY, FEBRUARY 26, 2020  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S  
WASHINGTON, D.C. 20009

Donovan W. Anderson, Chairperson

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

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00153; Club Cinema of Mazza, Inc., t/a Club Cinema, 5300 Wisconsin Ave NW, License #60040, Retailer CT, ANC 3E  
**Petition to Amend or Terminate the Settlement Agreement**

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00142; Woodland Group, LLC, t/a Cortez, 1905 9th Street NW License #108275, Retailer CR, ANC 1B  
**Substantial Change (Class Change from CR to CT)**

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00132; 2718 Corporation, t/a Chuck & Bill Bison Lounge 2718 Georgia Ave NW, License #14759, Retailer CT, ANC 1B  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00133; Salma, LLC, t/a Red Lounge Hookah, 2013 14th Street NW, License #76011, Retailer CT, ANC 1B  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00134; Brixton Pub, LLC, t/a The Brixton, 901 U Street NW License #82871, Retailer CT, ANC 1B  
**Application to Renew the License**

**Protest Hearing (Status)** **9:30 AM**  
Case # 19-PRO-00136; Etete Ethiopian Cuisine, Inc., t/a 1942 DC, 1942 9th Street NW, License #70728, Retailer CT, ANC 1B  
**Application to Renew the License**

Board's Calendar  
February 26, 2020

**Protest Hearing (Status) 9:30 AM**

**Case # 19-PRO-00137;** 801 Restaurant, LLC, t/a 801 Restaurant & Bar, 801 Florida Ave NW, License #103120, Retailer CT, ANC 1B  
**Application to Renew the License**

**Protest Hearing (Status) 9:30 AM**

**Case # 19-PRO-00138;** Ching, LLC, t/a Uproar, 639 Florida Ave NW, License #92012, Retailer CT, ANC 1B  
**Application to Renew the License**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 19-CMP-00150;** 919 U Street, LLC, t/a El Rey, 919 U Street NW License #86604, Retailer CT, ANC 1B  
**Substantial Change without Board Approval (Increase in Occupancy)**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 19-CIT-00524;** GBR-DC, LLC, t/a Georgia Brown's, 950 15th Street NW, License #77127, Retailer CR, ANC 2B  
**No ABC Manager on Duty**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 19-CIT-00450;** Hightide, LLC, t/a Johnny's Halfshell, 1819 Columbia Road NW, License #103801, Retailer CR, ANC 1C  
**Failed to File Quarterly Statement**

**Show Cause Hearing (Status) 9:30 AM**

**Case # 19-CMP-00171;** ALFA, LLC, t/a Gold Coast Café & Mart, 5501 Colorado Ave NW, License #98589, Retailer B, ANC 4C  
**Sold an Individual Container of Alcohol with a Capacity of 70 Ounces or Less**

**Show Cause Hearing\* 11:00 AM**

**Case # 19-CMP-00097;** Betty's Gojo Restaurant and Lounge, LLC, t/a Betty's Gojo, 7616 Georgia Ave NW, License #102500, Retailer CR, ANC 4A  
**Operating After Hours, Failed to Follow Security Plan (Three Counts)**

**Show Cause Hearing\* 11:30 AM**

**Case # 18-CIT-00595;** Ugly Mug, LLC, t/a Katherine's Catering, 5018 Connecticut Ave NW, License #93580, Retailer Caterer, ANC 3F  
**Failed to File a Caterers Report**

**BOARD RECESS AT 12:00 PM**

**ADMINISTRATIVE AGENDA**



Board's Calendar  
February 26, 2020

**1:00 PM**

**Fact Finding Hearing\***

**1:30 PM**

**Case # 20-251-00011**; 9th Street Lounge, LLC, t/a Mirror Lounge, 1920 9th Street NW, License #111950, Retailer CT, ANC 1B

**Assault with a Deadly Weapon, Failed to Provide Pertinent Information to the ABRA Investigator**

**Protest Hearing\***

**2:00 PM**

**Case # 19-PRO-00166**; Highland Community Entertainment Hall, LLC, t/a Highland Community Entertainment Hall, 2533 Pennsylvania Ave SE, License #115394, Retailer CT, ANC 7B

**Application for a New License**

**Protest Hearing\***

**4:30 PM**

**Case # 19-PRO-00110**; Deset Ethiopian Restaurant, LLC, t/a Deset Ethiopian Restaurant, 6128 Georgia Ave NW, License #98818, Retailer CR, ANC 4A

**Application to Renew the License**

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

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF MEETING  
LICENSING AGENDA

WEDNESDAY, FEBRUARY 26, 2020 AT 1:00 PM  
2000 14<sup>TH</sup> STREET, N.W., SUITE 400S, WASHINGTON, D.C. 20009

1. Review Application for Safekeeping of License – Original Request. ANC 1B. SMD 1B09. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Sister's Mediterranean Corner Café*, 2827 Sherman Avenue NW, Retailer CT, License No. 109849.

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2. Review Application for Safekeeping of License – Original Request. ANC 8C. SMD 8C03. The Establishment has an outstanding fine. No conflict with Settlement Agreement. *MLK Mini Market*, 3333 Martin Luther King Jr. Avenue SE, Retailer B Grocery, License No. 113398.

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3. Review Application for Safekeeping of License – Original Request. ANC 2E. SMD 2E05. The Establishment has an outstanding citation and fine. No Settlement Agreement. *RiRa Irish Pub*, 3123-3125 M Street NW, Retailer CR, License No. 092168.

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4. Review Application for Class CX Multipurpose Facility License. ANC 5E. SMD 5E03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *W Houses*, 628 W Street NE, Retailer CX Multipurpose Facility, License No. 116384.

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5. Review of architectural floor plans for new class B full-service grocery. ANC 1B. SMD 1B11. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. *Whole Foods Market*, 967 Florida Avenue NW, Retailer B Full-Service Grocery, License No. 115987.

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6. Review Request to increase Total Occupancy Load from 120 to 153. ANC 2F. SMD 2F03. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. *Jinya Ramen Bar*, 1336 14<sup>th</sup> Street NW, Retailer CR, License No. 101302.

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7. Review Application for Change of Hours of interior operation and alcoholic beverage service. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 12pm to 1:45am, Friday-Saturday 12pm to 2:45am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 12pm to 2am, Friday-Saturday 12pm to 3am. ANC 2F. SMD 2F02. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Number Nine***, 1435 P Street NW, Retailer CT, License No. 086354.
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8. Review Application for a Change of Hours to operate the establishment 24 hours per day. The hours of alcoholic beverage sales will not change. ***Approved Hours of Operation:*** Sunday-Thursday 6am to 2am, Friday-Saturday 6am to 3am. ***Approved Hours of Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 8am to 2am, Friday-Saturday 8am to 3am. ***Approved Hours of Live Entertainment:*** Sunday 10am to 2am, Monday-Thursday 5pm to 2am, Friday-Saturday 5pm to 3am. ***Proposed Hours of Operation:*** Sunday-Saturday 12am to 12am (24-hour operations). ANC 5D. SMD 5D01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Ari's Diner***, 2003 Fenwick Street NE, Retailer CT, License No. 101456.
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9. Review Application for Change of Hours of interior operation. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Sunday-Thursday 10:30am to 2am, Friday-Saturday 10:30am-3am. ***Proposed Hours of Operation:*** Sunday-Saturday 10:30am-5am. ANC 6E. SMD 6E05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. ***Cloakroom***, 476 K Street NW, Retailer CN, License No. 087875.
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10. Review Application for a Change of Hours to operate earlier. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Saturday-Sunday 4:30pm to 10pm, Monday-Friday 11:30am to 10pm. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption:*** Saturday-Sunday 12pm to 10pm, Monday-Friday 11am to 10pm. ANC 2A. SMD 2A05. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. ***Magic Gourd Restaurant***, 528 23<sup>rd</sup> Street NW, Retailer CR, License No. 115942.
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11. Review Application for a Change of Hours to operate earlier in the Summer Garden. ***Approved Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer Garden:*** Sunday-Thursday 11am to 11pm, Friday-Saturday 11am to 12am. ***Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Summer***

**Garden:** Sunday-Thursday 10am to 11pm, Friday-Saturday 10am to 12am. ANC 2B. SMD 2B08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. **Bar Charley**, 1825 18<sup>th</sup> Street NW, Retailer CR, License No. 092461.

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12. Review Application to add a Sidewalk Café endorsement with 31 seats. **Proposed Hours of Operation and Alcoholic Beverage Sales and Consumption for Sidewalk Café:** Sunday-Saturday 10am to 2am. ANC 2B. SMD 2B01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Annabelle**, 2130 Florida Avenue NW, Retailer CR, License No. 111740.
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13. Review Application for a Sports Wagering Substantial Change. Betting will take place via mobile app, and no physical betting devices will be present. ANC 2B. SMD 2B08. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Exiles**, 1610 U Street NW, Retailer CT, License No. 102051.
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14. Review Application for Entertainment Endorsement with Cover Charge inside the premises only. **Proposed Hours of Live Entertainment:** Sunday-Thursday 11am to 2am, Friday-Saturday 11am to 3am. ANC 1C. SMD 1C07. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No conflict with Settlement Agreement. **The Game Sports Pub/Tiki on 18<sup>th</sup>**, 2411 18<sup>th</sup> Street NW, Retailer CR, License No. 112308.
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15. Review Application to add Dancing and Cover Charge to the licensee's existing Entertainment Endorsement. **Approved Hours of Live Entertainment Inside the Premises:** Sunday-Thursday 6pm to 2am, Friday-Saturday 6pm to 3am. ANC 5E. SMD 5E01. No outstanding fines/citations. No outstanding violations. No pending enforcement matters. No Settlement Agreement. **Dew Drop Inn**, 2801 8<sup>th</sup> Street NE, Retailer CT, License No. 097569.
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**\*In accordance with D.C. Official Code §2-547(b) of the Open Meetings Amendment Act, this portion of the meeting will be closed for deliberation and to consult with an attorney to obtain legal advice. The Board's vote will be held in an open session, and the public is permitted to attend. This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov).**

DEPARTMENT OF BEHAVIORAL HEALTH

NOTICE OF FUNDING AVAILABILITY

**School-Based Behavioral Health Services Comprehensive Expansion (Cohort 3)**

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

**General Information:**

Funding Opportunity Title:	School-Based Behavioral Health Services Comprehensive Expansion (Cohort 3)
Funding Opportunity Number:	RM0 SBH 022120
Program RFA ID#:	RM0 SBH 022120
Opportunity Category:	Competitive
DBH Branch/Division Unit:	Child and Youth Services
DBH Administrative Unit:	Prevention and Early Intervention Division
Program Contact:	Charneta C. Scott, Ph.D. Project Manager 202-654-6175 Charneta.scott@dc.gov
Program Description:	The Department of Behavioral Health (DBH) is soliciting applications of Community Based Organizations (CBOs) within the behavioral health sector to provide school-based behavioral health services in District of Columbia Public Schools (DCPS) and District of Columbia Public Charter Schools (DCPCS). A CBO may apply to provide services based on its projected capacity to hire and place full-time licensed clinicians in school placements. A CBO shall be responsible for the implementation of services within the Comprehensive School Behavioral Health model. Cohort 3 is comprised of a total of 60 schools. Funding will support the non-billable services provided to those schools. Each CBO will be provided funding to support a 1:6 supervisor: clinician ratio.
Eligible Applicants:	<ol style="list-style-type: none"> <li>1. A community-based organization in the behavioral health sector located in the District of Columbia (DC);</li> <li>2. Eligible to participate in District-funded programs (not debarred) as evidenced by an exclusion verification;</li> </ol>

	<p>3. Have at least one service location within the District of Columbia;</p> <p>4. At least two years of experience (as of the date of the application) providing children and youth behavioral health services; and</p> <p>5. Organizations that do not have a current grant agreement with DBH to provide school-based behavioral health services in Cohort 1 or Cohort 2 schools.</p>
Anticipated Number of Awards:	Up to 60 awards (schools) (Organizations may apply for more than one award but may not exceed 25)
Anticipated Amount Available:	\$4,220,040.00
Floor Award Amount:	\$70,334.00/school
Ceiling Award Amount:	\$1,758,350.00/per 25 schools

**Funding Authorization:**

Legislative Authorization:	Local Appropriated Funds
Associated CFDA#:	N/A
Associated Federal Award ID#:	N/A
Cost Sharing/Match Required?	N/A
RFA Release Date:	Friday, February 21, 2020
Pre-Application Conference (Date):	Monday, March 2, 2020
Pre-Application Conference (Time):	2:00pm-3:00pm
Pre-Application Conference (Location/Conference Call Access):	64 New York Avenue, NE, 2 <sup>nd</sup> Floor Room 285 Washington, DC 20002 Pre-Registration required for conference call access. Contact Dr. Charneta Scott at <a href="mailto:charneta.scott@dc.gov">charneta.scott@dc.gov</a>
Letter of Intent Due Date:	Friday, February 28, 2020
Application Deadline Date:	Monday, March 23, 2020
Application Deadline Time:	4:45pm E.T.
Links to Additional Information about this Funding Opportunity:	DC Grants Clearinghouse <a href="https://opgs.dc.gov/page/opgs-district-grants-clearinghouse">https://opgs.dc.gov/page/opgs-district-grants-clearinghouse</a>

Notes:

- A. DBH reserves the right to issue addenda and/or amendments subsequent to the issuance of the NOFA or RFA, or to rescind the NOFA or RFA.
- B. Awards are contingent upon the availability of funds.
- C. Individuals are not eligible for DBH grant funding.
- D. Applicants must have a DUNS#, Tax ID#, and be registered in the federal Systems for Award Management (SAM).
- E. Contact the program manager assigned to this funding opportunity for additional information.

**CHILDREN'S GUILD DC PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Bus Transportation Services**

RFP # TCGDC-2020-001 – The Children's Guild DC PCS is seeking Bus Transportation Services from qualified vendors who are licensed to conduct operations in the District of Columbia. For more information on the RFP please contact Timothy Dixon or Thomas Rivard-Willis at [monarchprocurement@gmail.com](mailto:monarchprocurement@gmail.com) or [procurement@childrensguild.org](mailto:procurement@childrensguild.org). The RFP will close at 12:00 pm on Tuesday March 10, 2020. All submissions must be received by noon on March 10<sup>th</sup> at 2146 24<sup>th</sup> Place NE, Washington, DC 20018, Any submission received after the designated time will not be reviewed. Please contact Thomas Rivard-Willis at 443.707.9952 for information concerning the non-required Pre-Bid Meeting.

**DISTRICT OF COLUMBIA INTERNATIONAL PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER SOLE SOURCE CONTRACT****Teacher Resident Program**

District of Columbia International School (“DCI”) intends to enter into a sole source contract with NYU’s Teacher resident program, a highly effective Teacher Training Program for teacher residents to be placed at DC International School.

NYU fellows receive a master’s degree from the NYU School of Education, and become certified to teach in either elementary education, secondary English or secondary math, and, Social Studies, Science, or special education. The NYU Teacher Residency is built on the core beliefs that every child deserves an excellent education and that our diverse schools must have a teaching force that reflects local communities.

The decision to sole source is due to the fact that they provide excellent teacher training that is unmatched in DC and allows us to hire residents and have them support students while they are enrolled in school and getting their education. DCI wishes to enter into a contract with NYU Steinhardt for teacher fellows that we can place as full time teachers in our classrooms as our school continues to grow. The fee to provide these services will be contingent upon how many teacher fellows DCI secures for each school year, at \$5,000 for each teacher fellow paid to NYU.



**OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION****NOTICE OF ADMINISTRATIVE ISSUANCE****Temporary Suspension of Educator Preparation Program Approval  
and  
Announcement of an Intent to Suspend Approval of Educator Preparation Providers  
Pending Rulemaking****Effective Date: February 21, 2020**

The purpose of this notice is to announce that the Office of State Superintendent of Education (OSSE) intends to impose an 18-month discretionary suspension of educator preparation provider (EPP) approvals and renewals pending the promulgation of new regulations. The new regulations would outline procedures for EPP approval and renewal with the goal of ensuring fidelity of implementation and reducing administrative burden on applicants. Further, promulgating regulations for EPP approval will support the improvement of EPPs in the District by creating legally enforceable requirements that are based upon current research, stakeholder input, expert advice, and aligned to the most current state and national professional standards of practice for teachers and school administrators.

OSSE will continue to accept applications for approval from EPPs during the suspension period and will resume approvals in the order in which they were received once the new regulations have been promulgated. During the suspension period, OSSE will also hold in abeyance any actions related to the renewal of providers or programs currently operating in the District under a previous approval that has expired or is set to expire during the suspension period. Any provider or program that was duly approved by OSSE in the past and is scheduled for renewal in the next 18 months, will be held harmless and allowed to continue operating until such time as OSSE resumes renewals. All EPPs that are scheduled for renewal will be notified directly by OSSE regarding their status during the suspension period and will be notified again when OSSE resumes renewals following the promulgation of the new regulations.

**I. Background**

OSSE is responsible for the initial and continued state-level approval of educator preparation providers that lead to certification to teach in the District of Columbia Public Schools (DCPS)<sup>1</sup>. See D.C. Official Code § 38-2602<sup>2</sup>. Ensuring the preparation of high-quality teachers for the District of Columbia is fundamental to the mission of the Office of State Superintendent of Education to close the achievement gap and improve outcomes for all DC students.

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<sup>1</sup> 5-A District of Columbia Municipal Regulations § 1601.

<sup>2</sup> DC Code § 38-2602 (b) (11) provides OSSE with authority to “[f]ormulate and promulgate rules necessary to carry out its functions, including rules governing the process for review and approval of state-level policies by the State Board of Education under § 38-2652, pursuant to Chapter 5 of Title 2 [§ 2-501 et seq.]. In turn, DC Code § 38-2652 (a)(6) provides that the State Board of education shall: [a]pprove standards for accreditation and certification of teacher preparation programs of colleges and universities or teacher preparation academies.”

Research has found that the biggest in-school factor in strengthening student achievement is teacher quality. OSSE recognizes that high-quality teachers come from high-quality teacher preparation programs. The underlying assumption is that if EPPs are producing skilled, motivated, and well-trained teachers, then student learning and achievement will increase. Thus, OSSE is committed to increasing access to high quality educator preparation programs that prepare diverse educators who are uniquely equipped for long term success in the teaching profession. Further, as the state education agency, OSSE has an interest in ensuring that families have educational options staffed with highly effective teachers. To accomplish this aim, OSSE must ensure the programmatic excellence of all EPPs that it approves.

State approval of an educator preparation program means that OSSE has examined the quality of programs preparing teachers for District of Columbia P-12 schools and has determined that the programs meet state standards for preparing candidates to enter the profession. The goal of the state approval system is to ensure a steady flow of high-quality candidates for roles as teachers, administrators, and other school personnel in District of Columbia schools by allowing multiple routes for educator preparation.

The District of Columbia's system for EPP approval should be based on high standards and selectivity for teacher, administrator, and other school personnel candidates. These policies should be clearly set forth in regulations that can be implemented and enforced with fidelity. However, the current policies do not have the force of law; there are not yet regulations governing EPP approval. In the absence of legal authority stemming from duly promulgated regulations, OSSE's ability to ensure consistent quality and robust compliance with the established standards is jeopardized.

## **II. Authority**

D.C. Official Code §§ 38-2601.01, 38-2602(b)(11), (12), and (17); D.C. Official Code § 47-2853.04(a)(22) and (36).

## **III. Procedures**

As of the effective date of this notice, OSSE will suspend approval of EPP applicants pending forthcoming notice and comment rulemaking. OSSE will also hold in abeyance all pending renewals of programs or providers during this suspension period. This suspension will remain in effect until August 21, 2021 or until a final rule is published in the D.C. Register, whichever comes first. This notice will be published in the D.C. Register, posted on the OSSE website and provided to any EPP applicants while it remains in effect.

### ***SO ORDERED:***

Hanseul Kang  
State Superintendent  
Office of the State Superintendent of Education

## BOARD OF ELECTIONS

CERTIFICATION OF ANC/SMD VACANCY

The District of Columbia Board of Elections hereby gives notice that there are vacancies in seven (7) Advisory Neighborhood Commission offices, certified pursuant to D.C. Official Code § 1-309.06(d)(2); 2001 Ed; 2006 Repl. Vol.

VACANT: 1B07, 1C08, 2B03, 3F07, 4A05, 5A04, and 7F07

Petition Circulation Period: **Monday, February 24, 2020 thru Monday March 16, 2020**  
Petition Challenge Period: **Thursday, March 19, 2020 thru Wednesday, March 25, 2020**

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

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

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

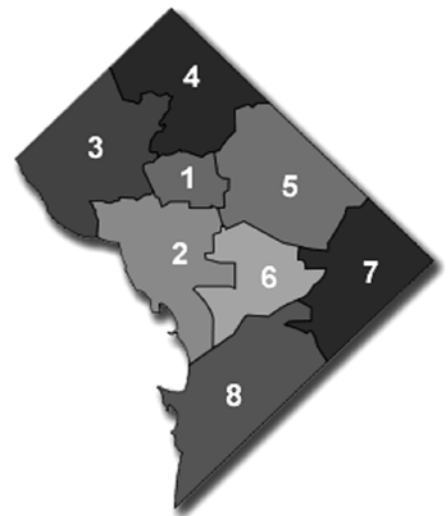
**D.C. BOARD OF ELECTIONS  
MONTHLY REPORT OF VOTER REGISTRATION STATISTICS  
CITYWIDE REGISTRATION SUMMARY  
As Of January 31, 2020**

WARD	DEM	REP	STG	LIB	OTH	N-P	TOTALS
<b>1</b>	46,941	2,781	582	250	163	11,593	<b>62,310</b>
<b>2</b>	31,341	5,181	233	250	133	10,857	<b>47,995</b>
<b>3</b>	38,751	5,564	343	243	120	11,134	<b>56,155</b>
<b>4</b>	49,343	2,119	518	149	149	9,352	<b>61,630</b>
<b>5</b>	53,864	2,435	568	238	229	10,290	<b>67,624</b>
<b>6</b>	57,712	7,488	485	384	208	14,767	<b>81,044</b>
<b>7</b>	49,110	1,367	450	113	192	7,883	<b>59,115</b>
<b>8</b>	47,420	1,510	477	128	185	8,725	<b>58,445</b>
<b>Totals</b>	374,482	28,445	3,656	1,755	1,379	84,601	<b>494,318</b>
<b>Percentage By Party</b>	<b>75.76%</b>	<b>5.75%</b>	<b>.74%</b>	<b>.36%</b>	<b>.28%</b>	<b>17.11%</b>	<b>100.00%</b>

**DISTRICT OF COLUMBIA BOARD OF ELECTIONS MONTHLY REPORT OF  
VOTER REGISTRATION STATISTICS AND REGISTRATION TRANSACTIONS  
AS OF THE END OF JANUARY 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 January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
20	1,730	35	12	9	8	306	2,100
22	3,865	394	23	19	10	1,032	5,343
23	2,989	201	39	19	12	775	4,035
24	2,693	238	29	31	6	778	3,775
25	3,933	384	45	19	10	1,040	5,431
35	3,770	184	56	19	12	831	4,872
36	4,411	229	43	18	15	1,047	5,763
37	3,774	184	32	20	22	889	4,921
38	3,022	142	37	14	12	770	3,997
39	4,183	166	66	18	11	974	5,418
40	3,842	178	71	17	10	986	5,104
41	3,846	188	77	20	20	1,063	5,214
42	1,853	90	26	10	6	487	2,472
43	1,894	72	20	8	5	372	2,371
137	1,136	96	6	9	4	243	1,494
<b>TOTALS</b>	<b>46,941</b>	<b>2,781</b>	<b>582</b>	<b>250</b>	<b>163</b>	<b>11,593</b>	<b>62,310</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 2 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

<b>PRECINCT</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTALS</b>
<b>2</b>	933	162	8	8	7	518	<b>1,636</b>
<b>3</b>	1,799	357	11	17	11	708	<b>2,903</b>
<b>4</b>	2,055	485	11	17	8	805	<b>3,381</b>
<b>5</b>	2,103	549	16	27	10	813	<b>3,518</b>
<b>6</b>	2,445	703	18	22	16	1,282	<b>4,486</b>
<b>13</b>	1,285	201	7	8	5	423	<b>1,929</b>
<b>14</b>	2,824	408	20	23	7	902	<b>4,184</b>
<b>15</b>	3,064	317	33	24	10	872	<b>4,320</b>
<b>16</b>	3,390	406	29	25	14	893	<b>4,757</b>
<b>17</b>	4,784	559	32	42	21	1,459	<b>6,897</b>
<b>129</b>	2,541	384	15	13	10	955	<b>3,918</b>
<b>141</b>	2,514	301	18	14	7	634	<b>3,488</b>
<b>143</b>	1,604	349	15	10	7	593	<b>2,578</b>
<b>TOTALS</b>	<b>31,341</b>	<b>5,181</b>	<b>233</b>	<b>250</b>	<b>133</b>	<b>10,857</b>	<b>47,995</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 3 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
7	1,296	376	9	11	3	539	2,234
8	2,460	566	21	12	9	842	3,910
9	1,271	453	10	11	7	526	2,278
10	1,895	350	19	16	7	686	2,973
11	3,515	684	41	45	17	1,239	5,541
12	516	163	1	3	2	221	906
26	3,002	329	24	16	8	867	4,246
27	2,430	228	22	9	2	560	3,251
28	2,501	382	29	18	13	779	3,722
29	1,307	153	14	8	5	391	1,878
30	1,274	174	12	4	4	307	1,775
31	2,458	288	20	12	11	578	3,367
32	2,817	266	29	12	10	604	3,738
33	2,880	248	21	10	3	659	3,821
34	3,924	342	32	15	6	1,048	5,367
50	2,207	273	17	15	6	539	3,057
136	866	62	8	4	1	253	1,194
138	2,132	227	14	22	6	496	2,897
<b>TOTALS</b>	<b>38,751</b>	<b>5,564</b>	<b>343</b>	<b>243</b>	<b>120</b>	<b>11,134</b>	<b>56,155</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 4 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
45	2,336	52	26	15	6	392	2,827
46	2,819	87	34	11	12	508	3,471
47	3,462	142	44	10	15	749	4,422
48	2,795	119	36	5	2	567	3,524
49	931	38	11	2	8	214	1,204
51	3,366	478	19	11	10	653	4,537
52	1,259	137	10	4	2	238	1,650
53	1,227	64	22	4	4	246	1,567
54	2,296	76	31	4	5	434	2,846
55	2,476	79	19	6	15	434	3,029
56	3,226	98	36	19	12	666	4,057
57	2,477	67	21	8	9	532	3,114
58	2,226	63	20	5	5	386	2,705
59	2,539	77	25	8	7	421	3,077
60	2,202	69	29	8	8	648	2,964
61	1,619	62	17	5	5	309	2,017
62	3,171	118	20	5	3	433	3,750
63	3,816	140	50	7	14	700	4,727
64	2,337	65	18	4	6	402	2,832
65	2,763	88	30	8	1	420	3,310
<b>Totals</b>	<b>49,343</b>	<b>2,119</b>	<b>518</b>	<b>149</b>	<b>149</b>	<b>9,352</b>	<b>61,630</b>



**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 5 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
19	4,676	223	66	32	21	1,059	6,077
44	2,779	196	27	14	12	660	3,688
66	4,643	117	39	17	15	710	5,541
67	2,812	100	21	6	8	467	3,414
68	1,938	167	20	11	13	411	2,560
69	2,092	72	19	6	8	299	2,496
70	1,513	62	23	3	4	262	1,867
71	2,462	68	28	12	11	409	2,990
72	4,427	148	36	17	25	767	5,420
73	1,928	95	21	11	9	379	2,443
74	4,903	282	63	23	22	1,056	6,349
75	4,146	228	40	27	16	839	5,296
76	1,663	120	18	10	11	406	2,228
77	2,970	119	27	10	12	568	3,706
78	2,987	105	43	11	13	535	3,694
79	2,147	90	20	5	11	441	2,714
135	3,081	161	37	16	12	631	3,938
139	2,697	82	20	7	6	391	3,203
<b>TOTALS</b>	<b>53,864</b>	<b>2,435</b>	<b>568</b>	<b>238</b>	<b>229</b>	<b>10,290</b>	<b>67,624</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 6 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
1	4,629	553	37	28	15	1,358	6,620
18	4,847	353	45	20	12	1,153	6,430
21	1,197	61	10	9	1	261	1,539
81	4,640	357	44	23	18	980	6,062
82	2,534	260	23	14	3	623	3,457
83	6,310	806	44	66	26	1,700	8,952
84	1,977	383	18	11	9	538	2,936
85	2,671	497	18	14	4	734	3,938
86	2,194	234	18	7	7	421	2,881
87	2,653	275	15	15	15	604	3,559
88	2,063	280	21	10	7	455	2,836
89	2,709	593	22	18	8	781	4,131
90	1,631	224	15	9	14	492	2,385
91	4,220	404	30	21	18	965	5,658
127	4,220	311	45	22	19	917	5,534
128	2,542	218	23	13	7	638	3,441
130	748	279	5	5	3	252	1,292
131	3,828	1,108	38	50	16	1,278	6,318
142	2,117	292	14	29	6	617	3,075
<b>TOTALS</b>	<b>57,712</b>	<b>7,488</b>	<b>485</b>	<b>384</b>	<b>208</b>	<b>14,767</b>	<b>81,044</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 7 REGISTRATION SUMMARY**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
80	1,420	86	18	6	8	293	1,831
92	1,541	39	14	2	5	250	1,851
93	1,638	48	21	0	9	272	1,988
94	2,024	57	21	6	6	321	2,435
95	1,650	54	14	2	4	284	2,008
96	2,425	72	16	1	11	384	2,909
97	1,427	52	16	3	6	263	1,767
98	1,993	52	23	7	15	324	2,414
99	1,649	52	15	10	14	342	2,082
100	2,599	39	20	6	5	377	3,046
101	1,536	45	17	8	5	214	1,825
102	2,532	64	20	3	15	381	3,015
103	3,574	82	37	9	12	564	4,278
104	3,288	89	36	3	18	558	3,992
105	2,526	79	19	8	11	456	3,099
106	2,855	68	24	5	11	438	3,401
107	1,739	54	14	3	6	268	2,084
108	1,061	29	3	0	2	141	1,236
109	946	33	3	3	1	124	1,110
110	3,826	101	23	7	11	491	4,459
111	2,532	62	35	10	5	450	3,094
113	2,239	54	22	5	7	314	2,641
132	2,090	56	19	6	5	374	2,550
<b>TOTALS</b>	<b>49,110</b>	<b>1,367</b>	<b>450</b>	<b>113</b>	<b>192</b>	<b>7,883</b>	<b>59,115</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**WARD 8 REGISTRATION SUMMAR**  
**As Of January 31, 2020**

PRECINCT	DEM	REP	STG	LIB	OTH	N-P	TOTALS
112	2,229	62	20	1	9	361	2,682
114	4,0778	167	52	21	24	898	5,240
115	2,791	89	28	7	12	652	3,579
116	4,152	101	42	11	14	719	5,039
117	2,241	57	21	8	7	430	2,764
118	2,882	83	40	7	17	498	3,527
119	2,618	96	28	8	16	492	3,258
120	2,191	47	13	6	4	357	2,618
121	3,486	87	28	12	6	568	4,187
122	1,834	59	21	3	8	329	2,254
123	2,458	195	29	15	14	489	3,200
124	2,594	71	19	5	10	403	3,102
125	4,495	102	44	8	16	833	5,498
126	3,975	133	51	10	14	838	5,021
133	1,312	42	6	1	0	199	1,560
134	2,214	56	24	2	3	341	2,640
140	1,870	63	11	3	11	318	2,276
<b>TOTALS</b>	<b>47,420</b>	<b>1,510</b>	<b>477</b>	<b>128</b>	<b>185</b>	<b>8,725</b>	<b>58,445</b>

**D.C. BOARD OF ELECTIONS**  
**MONTHLY REPORT OF VOTER REGISTRATION STATISTICS**  
**CITYWIDE REGISTRATION ACTIVITY**

*For voter registration activity between 12/31/2019 and 1/31/2020*

<b>NEW REGISTRATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
<b>Beginning Totals</b>	<b>382,294</b>	<b>29,555</b>	<b>3,751</b>	<b>1,781</b>	<b>1,442</b>	<b>86,642</b>	<b>505,465</b>
Board of Elections Over the Counter	32	2	1	1	0	6	<b>42</b>
Board of Elections by Mail	62	4	0	0	1	11	<b>78</b>
Board of Elections Online Registration	145	15	0	2	1	32	<b>195</b>
Department of Motor Vehicle	1,764	223	18	32	2	816	<b>2,855</b>
Department of Disability Services	3	0	0	0	0	0	<b>3</b>
Office of Aging	0	0	0	0	0	0	<b>0</b>
Federal Postcard Application	0	0	0	0	0	0	<b>0</b>
Department of Parks and Recreation	0	0	0	0	0	0	<b>0</b>
Nursing Home Program	0	0	0	0	0	0	<b>0</b>
Dept. of Youth Rehabilitative Services	2	0	0	0	0	0	<b>2</b>
Department of Corrections	4	1	0	0	0	0	<b>5</b>
Department of Human Services	1	1	0	0	0	0	<b>2</b>
Special / Provisional	0	0	0	0	0	0	<b>0</b>
All Other Sources	92	8	3	1	0	48	<b>152</b>
<b>+Total New Registrations</b>	<b>2,105</b>	<b>254</b>	<b>22</b>	<b>36</b>	<b>4</b>	<b>913</b>	<b>3,334</b>

<b>ACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Reinstated from Inactive Status	238	20	1	2	0	78	<b>339</b>
Administrative Corrections	5	0	0	0	3	0	<b>8</b>
<b>+TOTAL ACTIVATIONS</b>	<b>243</b>	<b>20</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>78</b>	<b>347</b>

<b>DEACTIVATIONS</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	<b>TOTAL</b>
Changed to Inactive Status	9,622	1,289	115	70	63	2,816	<b>13,975</b>
Moved Out of District (Deleted)	0	0	0	0	0	2	<b>2</b>
Felon (Deleted)	20	0	0	0	0	5	<b>25</b>
Deceased (Deleted)	366	19	2	0	0	60	<b>447</b>
Administrative Corrections	285	21	2	1	0	398	<b>707</b>
<b>-TOTAL DEACTIVATIONS</b>	<b>10,293</b>	<b>1,329</b>	<b>119</b>	<b>71</b>	<b>63</b>	<b>3,281</b>	<b>15,156</b>

<b>AFFILIATION CHANGES</b>	<b>DEM</b>	<b>REP</b>	<b>STG</b>	<b>LIB</b>	<b>OTH</b>	<b>N-P</b>	
+ Changed To Party	486	76	34	21	5	672	
- Changed From Party	-353	-131	-33	-14	-12	-423	
<b>ENDING TOTALS</b>	<b>374,482</b>	<b>28,445</b>	<b>3,656</b>	<b>1,755</b>	<b>1,379</b>	<b>84,601</b>	<b>494,318</b>

**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 March 12, 2020 from 3:00 p.m. to 5:00 p.m. The meeting will be held at One Judiciary Square at 441 4<sup>th</sup> Street, NW, Washington, DC 20001.

Below is the draft agenda for this meeting. For additional information, including updates on location and the final agenda please visit the Commission on Climate Change and Resiliency website at: <https://doee.dc.gov/publication/commission-climate-change-and-resiliency>.

For additional information, please contact: Sarah Barnes, Climate Green Fellow, at (202) 673-8979 or [sarah.barnes@dc.gov](mailto:sarah.barnes@dc.gov).

**Draft Meeting Agenda**

1. Call to Order
2. Announcement of a Quorum
3. Approval of the Agenda
4. Approval of Minutes
5. Comments from Community Groups
6. Commission Discussion
7. Adjournment

**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 June 11, 2020 from 3:00 p.m. to 5:00 p.m. The meeting will be held at One Judiciary Square at 441 4<sup>th</sup> Street, NW, Washington, DC 20001.

Below is the draft agenda for this meeting. For additional information, including updates on location and the final agenda please visit the Commission on Climate Change and Resiliency website at: <https://doee.dc.gov/publication/commission-climate-change-and-resiliency>.

For additional information, please contact: Sarah Barnes, Climate Green Fellow, at (202) 673-8979 or [sarah.barnes@dc.gov](mailto:sarah.barnes@dc.gov).

**Draft Meeting Agenda**

1. Call to Order
2. Announcement of a Quorum
3. Approval of the Agenda
4. Approval of Minutes
5. Comments from Community Groups
6. Commission Discussion
7. Adjournment

## DEPARTMENT OF ENERGY AND ENVIRONMENT

**NOTICE OF FILING OF AN APPLICATION  
TO PERFORM VOLUNTARY CLEANUP**

2133 9th Street, NW

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 § 8-36.01), 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 2133 9th Street, NW, Washington, DC 20001 is 9<sup>th</sup> and W Owner, LLC, c/o Vincent Tung, 3050 K Street, NW, Suite 125, Washington DC, 20007. The application identifies the presence of petroleum compounds related to VOCs and SVOCs, Chlorinated solvent VOCs, and Lead in surface soil. The Subject Property will be redeveloped to multi story residential building and below grade parking structure which will include mass excavation to depth of 24 feet below ground surface.

Pursuant to D.C. Official Code § 636.01(b), this notice will also be mailed to the Advisory Neighborhood Commission (ANC-1B) 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, 5<sup>th</sup> 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](mailto: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 twenty one (21) days from the date of this publication. DOEE is required to consider all relevant public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

Please refer to Case No. VCP2019--066 in any correspondence related to this application.



**DEPARTMENT OF ENERGY AND ENVIRONMENT  
NOTICE OF FUNDING AVAILABILITY**

**Fiscal Year 2021 Clean Water Construction Treatment Works Projects**

The Department of Energy and Environment (the Department) seeks to identify collaborative partners for the Department's fiscal year (FY) 2021 Clean Water Construction (CWC) grant application to the Environmental Protection Agency (EPA) (CFDA#66.418). Applications are requested for project partners in three categories of work: (1) sewage infrastructure projects, (2) stormwater grey infrastructure projects, and (3) stormwater green infrastructure projects. All projects must provide a water quality benefit to District waters.

DOEE may receive approximately \$7,000,000 in federal funding for Clean Water Construction (CWC) Projects. DOEE has made no determination regarding the number of projects that will be funded.

Beginning 02/21/2020, the full text of the Request for Applications (RFA) will be available on the Department's website. A person may obtain a copy of this RFA by any of the following means:

**Download** from the Department's website, [www.doe.dc.gov](http://www.doe.dc.gov). Select the *Resources* tab. Cursor over the pull-down list and select *Grants and Funding*. On the new page, cursor down to this RFA. Click on *Read More* and download this RFA and related information from the *Attachments* section.

**Email** a request to [2021CWCRFA.Grants@dc.gov](mailto:2021CWCRFA.Grants@dc.gov) with "Request copy of RFA 2021-2012-WQD" in the subject line.

**Pick up a copy in person** from the Department's reception desk, located at 1200 First Street NE, 5th Floor, Washington, DC 20002. To make an appointment, call Keren O'Brien Murphy at (202) 731-7262 and mention this RFA by name.

**Write** DOEE at 1200 First Street NE, 5th Floor, Washington, DC 20002, "Attn: Keren O'Brien Murphy RE: 2020-1917-WQD" on the outside of the envelope.

**The deadline for application submissions is 03/30/2020, at 4:30 p.m.** Five hard copies must be submitted to the above address and a complete electronic copy must be e-mailed to [2021CWCRFA.Grants@dc.gov](mailto:2021CWCRFA.Grants@dc.gov).

**A pre-proposal meeting will be held on Monday, March 9, 2020, at 1:00 p.m.** at 1200 First Street N.E. Please meet in the DOEE 5<sup>th</sup> floor reception area. Participants may call in toll-free at (866) 741-7514. Use participant code 2014667. Attendance is not mandatory.

**Eligibility:** All the checked institutions below may apply for these grants:

- Nonprofit organizations, including those with IRS 501(c)(3) or 501(c)(4) determinations;
- Faith-based organizations;
- Government agencies
- Universities/educational institutions; and
- Private Enterprises.

For additional information regarding this RFA, write to: [2021CWCRFA.Grants@dc.gov](mailto:2021CWCRFA.Grants@dc.gov).

**DISTRICT OF COLUMBIA  
HISTORIC PRESERVATION REVIEW BOARD**

**NOTICE OF HISTORIC LANDMARK AND HISTORIC DISTRICT DESIGNATIONS**

The D.C. Historic Preservation Review Board hereby provides public notice of its decision to designate the following properties as historic landmarks in the D.C. Inventory of Historic Sites. The properties are now subject to the D.C. Historic Landmark and Historic District Protection Act of 1978.

**Designation Case No. 11-19: The Recorder of Deeds Building**

515 D Street NW (Square 489, Lot 802)

Designated December 19, 2019

Affected Advisory Neighborhood Commission: 2C

**Designation Case No. 19-07: Barry Farm Dwellings**

1101-1115 Stevens Road SE; 1117-1131 Stevens Road SE; 1133-1147 Stevens

Road SE; and 1149-1163 Stevens Road SE (Square 5865, Lot 254 and Square 5866, Lots 133-136)

Designated January 30, 2020

Affected Advisory Neighborhood Commission: 8C

Listing in the D.C. Inventory of Historic Sites provides recognition of properties significant to the historic and aesthetic heritage of the nation's capital city, fosters civic pride in the accomplishments of the past, and assists in preserving important cultural assets for the education, pleasure and welfare of the people of the District of Columbia.

**D.C. HOMELAND SECURITY AND EMERGENCY MANAGEMENT AGENCY**

**NOTICE OF CLOSED MEETING**

**Homeland Security Commission**

February 26, 2020

2:00 p.m. to 4:00 p.m.

441 4<sup>th</sup> Street, NW

Washington, D.C. 20001

Room 1112 on Floor 11 South

On February 26, 2020 at 2:00 p.m., the Homeland Security Commission (HSC) will hold a closed meeting pursuant to D.C. Code § 2-575(b), D.C. Code § 7-2271.04, and D.C. Code § 7-2271.05, for the purpose of discussing the annual report.

The meeting will be held at 441 4<sup>th</sup> Street, NW, Washington, D.C. 20001 in room 1112 on floor 11, south tower.

For additional information, please contact Dion Black, General Counsel, by phone at 202-481-3011 or by email at [dion.black1@dc.gov](mailto:dion.black1@dc.gov).

**KIPP DC PUBLIC CHARTER SCHOOLS****REQUEST FOR PROPOSALS****AV Hardware/Software Installation**

KIPP DC is soliciting proposals from qualified vendors for the Acquisition and Installation of Audio/Video Hardware and Software. The RFP can be found on KIPP DC's website at [www.kippdc.org/procurement](http://www.kippdc.org/procurement). Proposals should be uploaded to the website no later than 5:00 PM ET on March 6, 2020. Questions should be addressed to [keyon.toyer@kippdc.org](mailto:keyon.toyer@kippdc.org).

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****General Contractor Services**

Latin American Montessori Bilingual Public Charter School (LAMB) intends to enter into a sole source contract with MCN Build, Inc. (MCN Build) for general contractor services in school year 2019-20. LAMB anticipates that the services agreement will exceed \$25,000.00 during its fiscal year 2020.

LAMB acquired the subject property located at 5000 14<sup>th</sup> Street NW, Washington, DC. Efforts are underway to rehabilitate the property in time for the 2020-2021 school year.

The subject property had been intended to be developed and owned by Building Hope Fourteenth Street Inc, and then leased to LAMB with an option to purchase at a latter date. Ownership of the property was assigned by Building Hope Fourteenth Street Inc. to LAMB on January 13, 2020. As owner, LAMB needs to contract for general contractor services in order to complete the project.

The scope of work is considered Phase 1 of renovation of the subject property. This phase will include complete renovation of interior of each existing floor. Exterior work will include addition of plantings and minor re-grading for installation of new play areas.

MCN Build participated in pre-construction activities for the subject property with the project team to provide accurate and timely costing, constructability and value engineering information at the start of the conceptual phase and demolition permitting. MCN Build has been awarded two Early Start Construction Services sole source contracts in connection with the subject property for (1) demolition activities and (2) procurement of long lead time materials for trades, both in preparation for the general contractor services described herein.

MCN Build performs a wide range of services from delivering large educational campuses to mixed-use facilities, corporate offices, and community centers.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be sent via email to [accounting@lambpcs.org](mailto:accounting@lambpcs.org), no later than COB Friday, February 28, 2020.

**LATIN AMERICAN MONTESSORI BILINGUAL PUBLIC CHARTER SCHOOL****NOTICE OF INTENT TO ENTER A SOLE SOURCE CONTRACT****Project Management Services**

Latin American Montessori Bilingual Public Charter School (LAMB) intends to enter into a sole source contract with Building Hope Real Estate (BHRE) for project management services in school year 2019-20. LAMB anticipates that the services agreement will exceed \$25,000.00 during its fiscal year 2020.

LAMB acquired the subject property located at 5000 14<sup>th</sup> Street NW, Washington, DC. Efforts are underway to rehabilitate the property in time for the 2020-2021 school year.

The subject property had been intended to be developed and owned by the BHRE affiliate Building Hope Fourteenth Street Inc, and then leased to LAMB with an option to purchase at a latter date. Ownership of the property was assigned by Building Hope Fourteenth Street Inc. to LAMB on January 13, 2020. As owner, LAMB needs to contract with BHRE in order to manage the project to delivery.

BHRE will provide project management services for the pre-construction, design and construction phases of the project.

BHRE successfully provided similar services previously to LAMB at each of its three current facilities.

This is NOT a request for quotes or proposals.

Questions or comments to this Notice of Intent should be sent via email to [accounting@lambpcs.org](mailto:accounting@lambpcs.org), no later than COB Friday, February 21, 2020.

**MERIDIAN PUBLIC CHARTER SCHOOL****REQUEST FOR PROPOSALS****Plumbing, Painters, Electricians, Flooring and HVAC Contractors**

The Board of Trustees of Meridian Public Charter School located in Washington, DC, hereinafter referred to as the “LEA” invites proposals from the following certified contractors: plumbers, painters, electricians, flooring and HVAC.

Deadline of submission of pricing is March 6<sup>th</sup>, 2020 by 12:00pm Eastern Time.

To request full scope of school needs and/or seek any additional information, please email:

Michael L. Russell  
Director of Operations  
Meridian Public Charter School  
[mrussell@meridian-dc.org](mailto:mrussell@meridian-dc.org)



**DISTRIC OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD  
NOTIFICATION OF CHARTER AMENDMENT (REVISED)**

**SUMMARY:** The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a request submitted by Friendship Public Charter School (Friendship PCS) and Achievement Prep Public Charter School (Achievement Prep PCS) on February 3, 2020, for several amendments, including an asset acquisition of an Achievement Prep campus, a new location for Friendship PCS, and a decreased enrollment ceiling for Achievement Prep PCS. If approved, these amendments will take effect in SY 2020-21.

Effective July 1, 2020, Achievement Prep PCS will transfer the assets of its Wahler Place Middle School campus to Friendship PCS, and beginning in SY 2020-21, all rising 4<sup>th</sup>-7<sup>th</sup> grade students from Achievement Prep PCS will be enrolled at Friendship PCS Southeast Middle. To minimize disruption to students from Wahler Place Middle School, Friendship PCS will temporarily sublease the facility where Wahler Place Middle School currently operates at 904 Wahler Place SE, for a single school year in 2020-21, where it will only serve students in grades 4-8 who were previously enrolled at Achievement Prep PCS. In SY 2021-22, Friendship PCS will consolidate all of the students enrolled at its Southeast Middle campus to a single location at 645 Milwaukee Place SE, in Ward 8. Given Achievement Prep PCS will not serve grades 4-8 in SY 2020-21, DC PCSB will reduce the school's enrollment ceiling by 355 students, to a new maximum enrollment ceiling of 685 students for SY 2020-21 and beyond. Achievement Prep PCS will continue to serve grades PK3-3.

**DATES:**

- Comments must be submitted on or before March 16, 2020.
- Public hearing will be held on March 16, 2020, at 6:30 pm. For location, please check [www.dcpsb.org](http://www.dcpsb.org).
- Board vote will be held on April 20, 2020, at 6:30 pm. For location, please check [www.dcpsb.org](http://www.dcpsb.org)

**ADDRESSES:** You may submit comments, identified by "Achievement Prep and Friendship PCS - Notice of Petition for Asset Acquisition," by one of the following methods:

1. Submit a written comment via:
  - (a) E-mail\*: [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org)
  - (b) Postal mail\*: Attn: Public Comment, DC Public Charter School Board, 3333 14<sup>th</sup> ST. NW., Suite 210, Washington, DC 20010
  - (c) Hand Delivery/Courier\*: Same as postal address above
2. Sign up to testify in-person at the public hearing March 16, 2020 by emailing a request to [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org) by no later than 4 p.m. on Wednesday, March 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** Please call (202) 328-2660.

**DISTRIC OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD  
NOTIFICATION OF CHARTER AMENDMENT**

The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a request by Social Justice PCS Public Charter School (Social Justice PCS) to co-locate its facility with Rocketship PCS – Fort Totten at 5450 3rd St. NE in Ward 5.

Social Justice PCS received conditional approval on May 20, 2019 to establish a new public charter school. This approval is contingent on the school satisfying all of the Board’s conditions, which include securing a fully executed lease or title agreement for a facility. Pending its full charter approval, the school will begin operation in school year 2020-21, enrolling up to 75 students in grades 5 and 6. At capacity, it will serve a total of 300 students in grades 5-8.

**DATES:**

- Comments must be submitted on or before Monday, March 16.
- The public hearing will be held on Monday, March 16 at 6:30 p.m. For location, please check [www.dcpsb.org](http://www.dcpsb.org).
- The vote for full charter approval, including facility, is tentatively scheduled for Monday, May 18 at 6:30 p.m. For location, please check [www.dcpsb.org](http://www.dcpsb.org).

**ADDRESSES:** You may submit comments, identified by “Social Justice PCS – Notice of Public Hearing,” by one of the following methods:

1. Submit a written comment via:
  - (a) E-mail\*: [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org)
  - (b) Postal mail\*: Attn: Public Comment, DC Public Charter School Board, 3333 14<sup>th</sup> ST. NW., Suite 210, Washington, DC 20010
  - (c) Hand Delivery/Courier\*: Same as postal address above
2. Sign up to testify in-person at the public hearing on March 16 by emailing a request to [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org) by no later than 4 p.m. on Thursday, March 12.

**FOR FURTHER INFORMATION CONTACT:** Hannah Cousino; Senior Specialist, Equity, Audits, and Support; at (202) 328-2673 or [hcousino@dcpsb.org](mailto:hcousino@dcpsb.org).

**DISTRIC OF COLUMBIA PUBLIC CHARTER SCHOOL BOARD  
NOTIFICATION OF CHARTER AMENDMENT**

The District of Columbia Public Charter School Board (DC PCSB) announces an opportunity for the public to submit comment on a written request submitted by The Next Step Public Charter School/El Proximo Paso (Next Step PCS) on January 27, 2020 to operate at an additional facility, effective for school year (SY) 2020-21.

The Next Step PCS is currently in its twenty-fourth year of operation educating adult students ages 16-24. The school is a single campus local education agency that currently operates in Ward 1. The school's primary campus is located at 3047 15<sup>th</sup> Street NW, and effective for SY 2020-21, the school proposes to operate a second facility at 1420 Columbia Road NW.

Pursuant to the School Reform Act, D.C. Code 38-1802 et seq., a charter school must submit a petition to revise its charter, which includes its campus/facility locations.

**DATES:**

- Comments must be submitted on or before March 16, 2020.
- Public hearing will be held on April 20, 2020, at 6:30 pm. For location, please check [www.dcpsb.org](http://www.dcpsb.org).
- Vote will be held on April 20, 2020, at 6:30 pm. For location, please check [www.dcpsb.org](http://www.dcpsb.org).

**ADDRESSES:** You may submit comments, identified by "Next Step PCS - Notice of Petition to Amend Charter – Additional Facility," by one of the following methods:

1. Submit a written comment via:
  - (a) E-mail\*: [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org)
  - (b) Postal mail\*: Attn: Public Comment, DC Public Charter School Board, 3333 14<sup>th</sup> ST. NW., Suite 210, Washington, DC 20010
  - (c) Hand Delivery/Courier\*: Same as postal address above
2. Sign up to testify in-person at the public hearing on March 16, 2020, by emailing a request to [public.comment@dcpsb.org](mailto:public.comment@dcpsb.org) by no later than 4 p.m. on Thursday, March 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** Rashida Young, Chief School Performance Officer, at (202) 328-2660; email: [ryoung@dcpsb.org](mailto:ryoung@dcpsb.org).

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) will be holding a meeting on Thursday, March 5, 2020 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 120 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at [www.dewater.com](http://www.dewater.com).

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

DRAFT AGENDA

- |    |  |                         |
|----|--|-------------------------|
| 1. | Call to Order                                | Board Chairman          |
| 2. | Roll Call                                    | Board Secretary         |
| 3. | Approval of February 6, 2020 Meeting Minutes | Board Chairman          |
| 4. | Committee Reports                            | Committee Chairperson   |
| 5. | Chief Executive Officer’s Report             | Chief Executive Officer |
| 6. | Action Items<br>Joint-Use<br>Non Joint-Use   | Board Chairman          |
| 7. | Other Business                               | Board Chairman          |
| 8. | Adjournment                                  | Board Chairman          |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Strategic Planning Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Strategic Planning Committee will be holding a meeting on Thursday, March 5, 2020 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at [www.dewater.com](http://www.dewater.com).

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

DRAFT AGENDA

- |  |                       |
|--|-----------------------|
| 1. Call to Order                         | Committee Chairperson |
| 2. Emerging Issues                       | Committee Chairperson |
| 3. Agenda for Upcoming Committee Meeting | Committee Chairperson |
| 4. Executive Session                     | Committee Chairperson |
| 5. Adjournment                           | Committee Chairperson |

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

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

<b>HEARING DATES (17703-A):</b>	January 26, March 1, and March 29, 2016
<b>DECISION DATE (17703-A):</b>	March 29, 2016
<b>ORDER ISSUANCE DATE (17703-A):</b>	April 1, 2016
<b>MODIFICATION HEARING DATE:</b>	February 5, 2020
<b>MODIFICATON DECISION DATE:</b>	February 5, 2020

**SUMMARY ORDER ON REQUEST FOR MODIFICATION OF SIGNIFICANCE**

Original Application. In Application No. 17703-A, the Board of Zoning Adjustment (“Board” or “BZA”) approved the request by Sidwell Friends School (the “Applicant”) under the Zoning Regulations of 1958 for special exception from the private school requirements under § 206, to increase the size of an existing education campus and number of students and staff in the C-2-A/R-1-B District.<sup>1</sup> The Board issued Order No. 17703-A on April 1, 2016. (Exhibit 4.) The approval was subject to 10 conditions. In Application No. 17703-B, the Board approved the Applicant’s request for a two-year time extension of the validity of that order. (Exhibit 4.)

Proposed Modification. On November 4, 2019, the Applicant submitted a request for modification of significance to Order No. 17703-A. (Exhibits 1-12.) The proposed modifications would allow the Applicant to relocate the existing Upper School division to the Upton Campus, relocate the Lower School division to the Wisconsin Avenue Campus, and make other improvements to better unify the Campus. The Applicant submitted revised plans reflecting these modifications. (Exhibit 34D1-34D4.) The modifications also require revisions to the approved conditions, as well as revisions to the timeline of completion for the project and adoption of a more detailed phasing plan. Based on the proposed modifications to the approved plans, the Applicant requests special exception relief under the private school use permissions of Subtitle U § 203.1(m) and Subtitle X § 104. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 10.)

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<sup>1</sup> Prior to Application No. 17703-A, the Board approved relief for Sidwell Friends School in Applications No. 10460, 12945, 15769, 16139, 17149, and 17703.

Notice of the Request for Modification. Pursuant to Subtitle Y § 704.5, the Applicant served the request for modification of significance on the parties to the original application. (Exhibit 12.) The Board referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant, Advisory Neighborhood Commission ("ANC") 3F, and ANC 3C.

ANC Reports. ANC 3C submitted a report indicating that at a regularly scheduled, properly noticed public meeting on January 22, 2020, at which a quorum was present, the ANC voted to support the request, provided that the Applicant follows its Transportation Management Plan ("TMP"). (Exhibit 38.) ANC 3F submitted a resolution indicating that at a regularly scheduled, properly noticed public meeting on November 19, 2019, at which a quorum was present, the ANC voted to support the request, but recommended modified conditions. (Exhibit 40.) The modified conditions, including the proposed TMP measures, were adopted by the Board as part of this order.

OP Report. Office of Planning submitted a report recommending approval of the proposed modification of significance. (Exhibit 36.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the proposed modification of significance. (Exhibit 37.)

### **Request for Modification of Significance**

Pursuant to Subtitle Y § 704.1, any request for a modification that does not meet the criteria for a minor modification or modification of consequence<sup>2</sup> requires a public hearing and is a modification of significance. The Applicant's request complies with 11 DCMR Subtitle Y § 704, which provides the Board's procedures for considering requests for modifications of significance.

As directed by 11 DCMR Subtitle X § 901.2 and Subtitle Y § 704, the Board has required the Applicant to satisfy the burden of proving the elements that are necessary to establish the case for special exception and modification of significance. The only parties to the case were the ANCs and the Applicant. No parties appeared at the public hearing in opposition to the application. Accordingly, a decision by the Board to grant this application would not be adverse to any party.

### **"Great Weight" to the Recommendations of OP**

The Board is required to give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163;

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<sup>2</sup> See, Subtitle Y §§ 703.3 and 703.4.

D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8). The Board finds OP's recommendation that the Board approve the application persuasive and concurs in that judgment.

"Great Weight" to the Written Report of the ANC

The Board must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2) The Board finds the recommendation of both affected ANCs that the Board persuasive and has adopted conditions consistent with the ANCs' recommendations.

Pursuant to 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 for modification of significance of BZA Order No. 17703-A is hereby **GRANTED**, subject to the approved modified plans at Exhibit 34D of Application No. 17703-C, and the following conditions, which shall replace and supersede the conditions of BZA Order No. 17703-A:

General

1. The Project shall be constructed in accordance with the plans prepared by Perkins Eastman and marked in the record as Exhibit 34D.

Traffic

2. The Applicant shall fully implement and comply with the Transportation Management Plan ("TMP") including the Transportation Demand Management, Operations Management and Monitoring Subparts of the Plan contained in the Applicant's Transportation Statement Submission, dated December 20, 2019, marked as Exhibit 25A of the record.
3. The provisions of the TMP that the Applicant implements shall include, but not be limited to:
  - a. Relocation of Middle School drop-off and pick-up from its existing location on 37th Street, N.W. to locations on campus as soon as practicable but no later than the beginning of construction of the Lower School;
  - b. The site plan of the Upper School be configured to allow a queuing capacity of 55 cars as shown on the plans marked as Exhibit 34D of the record;
  - c. A reduction of all vehicular traffic to the School by 30%;
  - d. A requirement that no more than 220 morning peak hour trips (which is equivalent to 110 vehicles entering and exiting the site during AM peak hour or during any sixty-minute morning period), and no more than 180 afternoon peak hour trips (which is equivalent to 90 vehicles entering and exiting the site during the PM school peak hour or during any sixty-minute afternoon period) be generated by the proposed Upper School facility (as determined based on inbound

**BZA APPLICATION NO. 17703-C**

**PAGE NO. 3**



plus outbound traffic counts) as verified by traffic monitoring conducted on representative school days at the 37th Street and Upton Street driveways to the Upton Campus at the Applicant's expense;

- e. The Applicant commits to continue to work with the neighborhood through periodic meetings to ensure any traffic concerns by either party can be addressed in a timely manner;
- f. The hiring of a Traffic Control Officer consistent with the Metropolitan Police Department and/or District Department of Transportation regulations to control traffic at the intersection of 37th and Upton Streets during the School's pick-up and drop-off periods;
- g. The Applicant will work to secure approval from the District Department of Transportation ("DDOT"), as soon as practicable after the Middle School pickup-drop-off is relocated to Wisconsin Avenue, to change the signage along the west side of 37th Street between Quebec and Tilden Streets to read "No Stopping, Standing or Parking, 8:00 AM to 4:00 PM School Days."

#### Student/Faculty Caps

4. The maximum enrollment for the entire school upon the issuance of a Certificate of Occupancy of the new Lower School building shall be 1150 students. Provided that the Applicant meets the standards and requirements of the Monitoring Subpart of the TMP for two consecutive school years, it may increase student enrollment to 1200 students. Provided that, after increasing enrollment to 1200 students, the Applicant meets the standards and requirements of the Monitoring Subpart of the TMP for two additional consecutive years, it may increase student enrollment to 1250 students.
5. The maximum number of faculty and staff for the entire school upon the issuance of a Certificate of Occupancy for the new Upper School building shall be 250. The maximum number of faculty and staff may be increased to 310 if after successfully meeting the standards and requirements of the Monitoring Subpart of the TMP for two consecutive years after initial occupancy of the new Upper School building.

#### DDOT Condition

6. Within 15 months after the effective date of the BZA Order, subject to DDOT design review and approval and no delays outside the Applicant's reasonable control, the Applicant shall design and construct the following improvements (in order of priority), with final inspection and sign-off by DDOT after completion, up to a maximum monetary value of \$75,000:
  - a. Raised crosswalks at 37th and Upton (4 crosswalks), 38th and Upton (3 crosswalks), and 37th and Quebec (4 crosswalks); and

- b. New sidewalk where it is missing along 37th Street north of the school (from Upton Street past the alley, on the west side of the street) if there is money remaining after construction of the crosswalks.

#### Landscaping

7. As shown on the plans marked as Exhibit 34D of the record, the Applicant shall maintain the existing vegetation and green buffer at the corners of the site at 37th and Upton Street, N.W.; the Project's fencing shall be consistent with the design and locations as shown on the plans marked as Exhibit 34D of the Record; and the community will have access to the green space, on hours/days that School is not in session.

#### Construction

8. The Applicant shall abide by the following construction constraints:
  - a. Exterior construction shall be limited to the hours of 7:00 AM - 5:00 PM on weekdays; and 8:00 AM - 5:00 PM on Saturdays. Interior work that does not create noticeable noise or traffic may continue until 10pm on weekdays. Nothing in this order shall restrict work on the Wisconsin Avenue Campus, provided that this work does not entail construction related traffic on 37th or Upton Streets;
  - b. At the Upton Campus, there shall be a limit on Saturday exterior construction and demolition work to no more than 24 Saturdays during the initial construction period of renovating the building and 10 Saturdays during the future construction of an addition to the east side of the building. If the future addition is constructed concurrently with the initial construction period, then the maximum number of permitted Saturdays is 24. Interior construction work on Saturdays shall be permitted during the entire construction period provided that there shall not be deliveries of material or equipment to the site on Saturdays beyond the aforementioned. Notice shall be given to the ANC and neighborhood representatives at least two days in advance of exterior Saturday work;
  - c. Vehicles belonging to construction personnel and construction vehicles will not be permitted to park or idle on neighborhood streets;
  - d. The staging and queuing of construction vehicles such as dump trucks and tractor trailers will be avoided to the maximum extent possible; however, it shall not be permitted on neighborhood streets before 7:00 AM weekdays and 8:00 AM Saturdays. Staging and queuing is further prohibited during the "drop-off" and "pick-up" periods of Hearst Elementary School, defined as the period of 40 minutes before and 20 minutes after the start and end times of the school day as published by DCPS;
  - e. All truck traffic will use an approved circulation pattern from and to Wisconsin Avenue utilizing Quebec Street, 37th Street, and Upton Street to minimize the impact on the adjacent neighborhood streets provided that such plan is approved by DDOT. This circulation pattern is restricted as follows: 1) Truck access to the

site from Wisconsin Avenue will only be via Quebec Street and not Upton Street. 2) Truck egress from the site to Wisconsin Avenue will be via Quebec Street or Upton Street. 3) The primary entrance to the Upton Campus property will be on 37th Street, unless the entrance is obstructed, in which case the secondary entrance on Upton Street will be utilized;

- f. At the completion of each work day, the construction site will be cleared of litter and debris and all construction materials and machinery will be left in an organized manner;
- g. Sidewalk around the perimeter of the site shall be kept clear and clean throughout the period of construction;
- h. Sidwell Friends School shall install video monitoring and recording equipment on and around the Upton Campus site to verify compliance with the above conditions (a) & (d). Sidwell will share video documentation as requested by neighbors. Based on complaints to the ANC, for each verifiable violation of above conditions in excess of one (1) per month, Sidwell Friends School shall lose one (1) instance of Saturday work permitted under condition (b) above, up to an overall maximum loss of 14 Saturdays from the 24 Saturdays permitted.

Parking

9. All faculty, staff and students who drive to the School shall park on campus.

Phasing

10. The Applicant may construct the Project in multiple phases consisting of the five blocks (Blocks A-E) identified in Exhibit 34D. The first phase (Phase I) will involve any one or multiple blocks, a building permit application for which shall be filed within two years of the effective date of this Order. Within two years after completion of the Phase I, the Applicant must apply for a building permit for another block (Phase II), and the Applicant must continue to apply for a building permit within two years upon completion of Phase II or any subsequent phase for at least one remaining block as long as there are blocks remaining; provided, however, that all building permits for construction consistent with this Order must have been filed within 15 years of the effective date of this Order to be vested.

In all other respects, Order No. 17703-A remains unchanged.

**VOTE: 4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Peter G. May to APPROVE; no other Board members participating.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 11, 2020

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

**BZA APPLICATION NO. 17703-C  
PAGE NO. 7**

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

**Application No. 19572 of SIM Development, LLC**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle C § 703.2 from the parking requirements of Subtitle C § 701.5, to add two stories containing 16 units to an existing two-story, nine-unit mixed use building in the MU-4 zone at premises 1916 15th Street, S.E. (Square 5766, Lot 845).

**HEARING DATES:** November 15 and December 20, 2017,<sup>2</sup> and January 17, 2018  
**MEETING DATE:** September 11, 2019  
**DECISION DATES:** January 24, 2018, and November 13, 2019<sup>3</sup>

**DECISION AND ORDER**

On June 29, 2017, SIM Development LLC (the “**Applicant**”), the owner of a lot improved with a two-story building at 1916 15<sup>th</sup> Street, S.E. (the “**Property**”), submitted an application (the “**Application**”) requesting the following relief under 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):

- special exception relief from the parking requirements of Subtitle C § 701.5, and
- area variance relief from the nonconforming structure requirements of Subtitle C § 202 (subsequently withdrawn)

to allow the construction of a two-story addition on top of an existing mixed-use building on the Property. For the reasons explained below, the Board of Zoning Adjustment (the “**Board**”) voted to **APPROVE** the Application as amended to include only the special exception relief from the requirements of Subtitle C § 701.5.

**FINDINGS OF FACT**

**Notice**

1. Pursuant to Subtitle Y § 402.1, on August 24, 2017, the Office of Zoning (“**OZ**”) sent notice of the Application and public hearing<sup>4</sup> to

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<sup>1</sup> The Application’s original self-certification incorrectly listed the parking relief as a variance, but the Applicant’s pre-hearing statement (Exhibit [“**Ex.**”] 45) corrected the parking relief to a special exception. The Applicant originally requested relief from Subtitle X, Chapter 10, for a variance from the non-conforming structure requirements of Subtitle C § 202, but subsequently withdrew the request for this relief in September 2019.

<sup>2</sup> On December 20, 2017, the Board granted the ANC’s motion to postpone the hearing to January 17, 2018.

<sup>3</sup> As fully explained later in this Order, the Board reopened the January 24, 2018 decision on September 11, 2019.

<sup>4</sup> The Public Hearing was originally scheduled and advertised for October 11, 2017. It was subsequently postponed at the Applicant’s request to October 25, 2017. (Ex. 28 and 30.) ANC 8A requested a subsequent postponement to November 15, 2017, which received the Applicant’s consent. (Ex. 31-33.)

- the Applicant;
  - Advisory Neighborhood Commission (“ANC”) 8A, the ANC for the area within which the Property is located and therefore the “affected ANC” per Subtitle Y § 101.8;
  - the Single Member District (“SMD”) Commissioner for ANC 8A05;
  - the Office of the ANCs;
  - the Office of Planning (“OP”);
  - the District Department of Transportation (“DDOT”);
  - the Councilmember for Ward 8;
  - the Chairman of the Council;
  - the At-Large Councilmembers; and
  - the owners of all property within 200 feet of the subject property. (Exhibit [“Ex”] 15-26.)
2. OZ published notice of the public hearing in the *D.C. Register* on August 25, 2017 (64 DCR 8414), as well as through the calendar on the OZ website.

### Parties

3. The Applicant and ANC 8A were automatic parties to this Application per Subtitle Y § 403.5. The Board received no requests for party status.

### The Property

4. The Property is bounded by Good Hope Road, S.E. to the north; 15<sup>th</sup> Street, S.E. to the west; a 16-foot, an improved public alley to the south; and an existing mixed-use building on the lot to the east. (Ex. 35.)
5. The Property is a corner lot, rectangular in shape, containing approximately 8,784 square feet of land area. (Ex. 45.)
6. The Property is improved with a two-story building (the “Existing Building”) that is currently vacant but was previously used for a mix of residential and commercial uses. (Ex. 45.)
7. The Existing Building pre-dates the 1958 Zoning Regulations and has a nonconforming 91% lot occupancy, which exceeds the maximum 60% (75% for Inclusionary Zoning (“IZ” developments) lot occupancy permitted for residential uses in the MU-4 zone. (Ex. 45.) The Existing Building is conforming for the commercial uses, as there is no lot occupancy limit on non-residential uses in the MU-4 zone. (Subtitle G § 404.1.)
8. There are no existing parking spaces on the Property. (Ex. 45.)
9. The surrounding area is generally residential with a mix of semi-detached and row dwellings. The Good Hope Road commercial corridor features mixed-use and other institutional buildings. Ketcham Elementary School is located directly across 15<sup>th</sup> Street, S.E. from the Property. (Ex. 35.)

**BZA APPLICATION NO. 19572**

**PAGE NO. 2**

10. There are Metrobus lines on both Good Hope Road and Minnesota Avenue. The Property is approximately one mile from the Anacostia Metrorail station. (Ex. 35.)
11. The Property has a Walk Score of 84, a Transit Score of 70, and a Bike Score of 53. (Ex. 35.)
12. The Property is located within the MU-4 Zone District. (Ex. 45.)
13. The purpose and intent of the MU-4 zone is to permit moderate density mixed-use development, including housing, with access to main roadways or rapid transit stops. (Subtitle G § 400.3.)

### **The Application**

14. The Application proposed to renovate the Existing Building to maintain the existing ground floor commercial and residential uses and to construct a two-story and penthouse addition (the “**Addition**”), with 25 residential units over the four floors and habitable penthouse (the “**Project**”). (Ex. 38, 45.)
15. The Application stated that the renovations to the Existing Building’s first and second floors will maintain the existing 91% lot occupancy, while the Addition will be at approximately 63% lot occupancy on the third and fourth floors (the penthouse will be less). (Ex. 38, 45.)
16. The Applicant agreed that since the Project proposes more than 10 residential units, it is subject to Inclusionary Zoning (“**IZ**”) requirements, which will require at least three units with the final number of IZ units determined at permit issuance. (Subtitle C § 1001.2(b) and Ex. 40, 45.)
17. Ordinary repairs and alterations (including structural alterations) to nonconforming structures are permissible by right. (Subtitle C § 202.1.)
18. Additions to nonconforming structures, provided the addition meets the applicable development standards and doesn’t extend or enlarge the nonconforming aspect, or create a new nonconformity are permissible by right. (Subtitle C § 202.2.)
19. The Application proposed to provide no on-site vehicular parking spaces on the Property and so required relief. (Ex. 45.)
20. The Project is required to provide one parking space per every three units in excess of four. (Subtitle C § 701.5) The Project is also permitted a 50% reduction for being within one-quarter mile of the Priority Corridor Network Metrobus Route #92, netting a total of three required spaces for the proposed new 16 units. (Subtitle C § 702.1(c)(6).)

21. At the request of the ANC, and as included in the Applicant's proffered Community Benefits Package (Ex. 40), the Applicant prepared a parking study dated November 6, 2017 (the "**Parking Study**") which analyzed the Project's parking related impacts on the surrounding area. (Ex. 39.)
22. The Parking Study concluded that during a typical weekday or weekend day, there are at least 432 parking spaces available within three blocks of the subject site. The Parking Study concluded that the supply of on-street parking options would be adequate to serve the needs of the Project. (Ex. 39.)
23. The Application stated that the Project will otherwise comply with the MU-4 development standards in terms of floor area ratio ("FAR"), building height, and penthouse height. (Ex. 35, 45.)
24. The Applicant submitted additional elevations and renderings, on December 6, 2017, that did not revise the plans but provided more detail in response to requests from the Board at the November 15, 2017 hearing. (Ex. 60.)

#### **Relief Requested**

25. The MU-4 zone permits maximum lot occupancy of 60%, or 75% for IZ. (Subtitle G § 404; Subtitle C § 1002.4.)
26. The Application requested:
  - a) A special exception pursuant to Subtitle C § 703 from the minimum parking requirements of Subtitle C § 701.5 because the Applicant is unable to provide the required three spaces.
  - b) A variance from the nonconforming structure requirements of Subtitle C § 202.2 to expand the existing nonconforming lot occupancy of 91% to the proposed addition.
27. The Application cited the presence of the nonconforming Existing Building, as well as the Property's proximity to alternative means of transportation, and walkability as the basis of its request for parking relief. (Ex. 45; Subtitle C § 703.2(a)-(c).)
28. The Application noted that the Applicant agreed to all Traffic Demand Management ("**TDM**") Plan conditions suggested by DDOT. (Ex. 45.)

#### **OP Report**

29. OP submitted a report dated October 27, 2017 recommending approval of the Application. (the "**OP Report**", Ex. 35.)
30. The OP Report noted that the Project would be subject to IZ and the Applicant would be required to provide additional affordable units on-site or contribute to the Housing



Production Trust Fund for the proposed penthouse habitable space and the 75% lot occupancy permitted under the IZ requirements of Subtitle C § 1002.4. (Ex. 35.)

### **DDOT Report**

31. DDOT submitted a report dated October 13, 2017. (the “**DDOT Report**”, Ex. 34.) The DDOT Report concluded that the Application would have no adverse impacts on the travel conditions of the District’s transportation network and only minor impacts on vehicular, transit, pedestrian, and bike trips and on-street parking in the surrounding area. (Ex. 34.)
32. The DDOT Report noted that the Property is not subject to the Residential Permit Parking (“**RPP**”) Program, and as a result, residents and visitors to the Property would be able to park freely on the 1900 block of 15<sup>th</sup> Street, S.E. (Ex. 34.)
33. The DDOT Report also noted that the Application was not proposing to provide any long or short-term bicycle parking for the Project. The DDOT Report advised that the Project would need to comply with the bicycle parking requirements of the Zoning Regulations. (Ex. 34.)
34. The DDOT Report concluded that DDOT had no objection to the Application, on the condition that the Applicant implement the recommended TDM Plan conditions:
  - a) Identifying a staff member to be the TDM Coordinator to work with goDCgo on implementation;
  - b) Providing TDM materials to new residents in the Residential Welcome Package;
  - c) Providing two additional short-term bicycle parking spaces in the “furniture zone” in public space or on private property; and
  - d) Providing website links to CommuterConnections.com and goDCgo.com on developer and property management websites.
35. DDOT submitted a supplemental report dated December 6, 2017 (the “**Supplemental DDOT Report**”), which reviewed the Parking Study that had not been considered in the DDOT Report. (Ex. 57.) The Supplemental DDOT Report noted that it did not initially require a parking study, as the requested relief for three spaces did not meet DDOT’s threshold of four spaces typically required to trigger a study. (Ex. 57.)
36. The Supplemental DDOT Report noted that it had requested that the Applicant’s transportation consultant narrow the subject radius for additional analysis. After the radius was reduced to two blocks, the Applicant’s consultant provided data to DDOT demonstrating that approximately 293 parking spaces were available during the period of highest demand.<sup>5</sup> The Supplemental DDOT Report concluded that this amount of parking was sufficient to support both the residential and commercial elements of the Project. (Ex. 57.)

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<sup>5</sup> The Applicant’s transportation consultant did not submit a separate report with these findings, they are contained solely in the Supplemental DDOT Report.

37. The Supplemental DDOT Report also noted that the Applicant had submitted revised architectural plans on November 11, 2019 in response to the DDOT Report's comments regarding bicycle parking. The revised plans now show 11 long-term bicycle parking spaces, and four U-racks (eight spaces) on Good Hope Road, S.E. The Supplemental DDOT Report found this amount of bicycle parking to be sufficient but noted that it still expected the Applicant to provide an additional two, short-term spaces as part of the TDM Plan conditions. (Ex. 57.)
38. The Supplemental DDOT Report noted that the Applicant had verbally agreed to the four proposed TDM Plan conditions, including the two additional short-term bicycle parking spaces. (Ex. 57.)

#### **ANC Report**

39. ANC 8A submitted a written report stating that at its properly noticed public meeting on November 7, 2017, at which a quorum was present, the ANC voted to support the Application. (the "**First ANC Report**", Ex. 53.) The First ANC Report noted that the Applicant had provided a parking and traffic assessment at the request of the ANC. (Ex. 53.)
40. ANC 8A subsequently submitted a report dated December 6, 2017 (the "**Second ANC Report**", Ex. 62) stating that at a properly noticed public meeting on December 5, 2018 at which a quorum was present, the ANC voted to rescind its support for the Application. The Second ANC Report noted that the original ANC vote had only considered the special exception from the parking requirements and not the variance relief, which was not included in the First ANC Report due to a clerical error. The Second ANC Report also noted the following issues and concerns:
  - a) The proposed height, and scale of the Addition;
  - b) The aesthetics and choice of building materials for the Project; and
  - c) The comprehensiveness of the Parking Study.
41. The ANC submitted a written report dated January 10, 2018 (the "**Third ANC Report**", Ex. 100) stating that at its properly noticed public meeting on January 9, 2018, at which a quorum was present, ANC 8A voted to oppose the Application. The Third ANC Report stated that the ANC's main concern was the impact the project would have on parking in the surrounding area. The Third ANC Report rejected the findings of the Applicant's Parking Study because the ANC believed the Parking Study had failed to properly consider the impacts of Ketcham Elementary or the nearby commercial uses on parking demands. The Third ANC Report also designated Commissioner Fuller to testify on behalf of the Commission. (Ex. 100.)

#### **Persons in Support**

42. There were no submissions from persons in support the proposal, and no members of the public testified at the hearing in support of the proposal.

**Persons in Opposition**

43. The Board received approximately 13 letters in opposition to the proposal. (Ex. 41 – 44A2, 47 – 49, 52, 63, 67, 91, and 96.) The Board also received two petitions in opposition. (Ex. 85, 98.)

**Public Hearing of November 15, 2017**

44. At the Public Hearing of November 15, 2017, the Applicant presented testimony from its Architect, Neil Cruickshank of Architectural Solutions, LLC, and of its traffic consultant, Erwin Andres of Gorove/Slade.
45. In response to questions from members of the community and the Board, the Applicant clarified that the Parking Study had not been required by DDOT but rather, was the Applicant’s response to questions from ANC 8A. (BZA Public Hearing Transcript of November 15, 2017 Hearing [“Nov. 15 Tr.”] at 288.)
46. OP testified in support of the Application and noted that the Existing Building was constructed prior to the 1958 Zoning Regulations and as a result, did not comply with the lot occupancy standards. OP confirmed that the Addition, as proposed by the Application, would meet the lot occupancy requirements for the MU-4 zone by being below 75%. (Nov. 15 Tr. at 302.)
47. OP further explained that the Applicant’s inability to provide onsite parking was a direct result of the nonconforming Existing Building which did not allow space for the required three spaces. OP also noted the site’s proximity to MetroBus and MetroRail as mitigating factors. (Nov. 15 Tr. at 302.)
48. Six persons<sup>6</sup> testified in opposition to the project. (Ex. 56; Nov. 15 Tr. at 304-336.) They raised concerns regarding the Application including:
- a) The scale and appearance of the Project;
  - b) The potential impacts on the nearby Anacostia Historic District;
  - c) The conclusions of the Parking Study;
  - d) The ANC’s process of reviewing and voting on the Application; and
  - e) The cumulative effects of construction in the area around the Project.
49. At the conclusion of the hearing, in response to concerns from the ANC and community regarding the Parking Study, the Board continued the hearing for a limited scope hearing focused on the parking issues to allow the ANC and DDOT additional time to review the Parking Study. (Nov. 15 Tr. at 289 and 340.) The Applicant was also asked to provide:
- a) Plans and elevations showing the scale of the Project in relation to the surrounding buildings. (Nov. 15 Tr. at 338.)
  - b) Comments from DDOT on the Parking Study. (Nov. 15 Tr. at 343.)

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<sup>6</sup> Ms. Greta Fuller, ANC 8A06, testified as a community member because she did not believe she was authorized to represent the ANC before the Board. (Nov. 15 Tr. at 303.)

**Public Hearing of December 20, 2017**

50. At the December 20, 2017, public hearing, Troy Donté Prestwood, Chair of ANC 8A testified that the ANC and community continued to have concerns about the Project's scale and the conclusions of the Parking Study. (BZA Public Hearing Transcript of December 20, 2017 ["Dec. 20 Tr."] at 7-10.)
51. OP also testified and reiterated the basis for OP's support of the Application. (Dec. 20 Tr. at 44-45.)

**Public Hearing of January 17, 2018**

52. At the January 17, 2018, public hearing, the Applicant again presented testimony from its architect, Neil Cruickshank of Architectural Solutions, LLC, and of its traffic consultant, Erwin Andres of Gorove/Slade.
53. Mr. Andres provided an overview of the methodology and findings of the Parking Study and noted that the scope of the study had been reduced to a two-block radius of the Property at the request of DDOT. (BZA Public Hearing Transcript of January 17, 2018 ["Jan. 17 Tr."] at 9-11.) Mr. Andres noted that even when the scope of the study was reduced, there were still approximately 293 spaces available and that DDOT concurred with this finding as noted in the Supplemental DDOT Report. (Jan. 17 Tr. at 11.)
54. In response to issues raised by the ANC regarding other construction projects in the area near the project and the "pipeline" of proposed projects, Mr. Andres testified that none of those projects had come before the ANC nor the Board for relief, as would be required if those projects also needed parking relief. (Jan. 17 Tr. at 13-14.)
55. The Applicant testified as to its ongoing communications with the ANC and noted that the parties had been unable to come to a resolution regarding the façade or the proposed scale of the Project. The Applicant confirmed that it was not willing to reduce the height of the Project and reiterated that, aside from the relief requested in the Application, the Project otherwise complied with the development standards of the MU-4 zone. (Jan. 17 Tr. at 7-8, 16-17.)
56. As designated by the Third ANC Report, Commissioner Fuller testified as ANC 8A's representative. (Ex. 100.) Commissioner Fuller noted that the ANC still had concerns about the findings of the Parking Study, which it felt did not address the impacts of the loss of a DC Circulator Route, the neighboring Ketcham Elementary, and general safety and crime concerns in the surrounding area. Commissioner Fuller noted that the ANC was still requesting that the Applicant reduce the size of the Addition to a single story. Finally, Commissioner Fuller raised concerns about the Project's proximity to the nearby historic district. (Jan. 17 Tr. at 18-25.)

57. In response to the ANC testimony, OP testified that historic concerns did not have any relevance to the requested relief and that the property is not located in a historic district. Therefore, no historic analysis by either OP or the Historic Preservation Review Board was required. (Jan. 17 Tr. at 31.)
58. OP testified that the Addition was within the permitted height for the MU-4 zone and the new floors would comply with the lot occupancy and FAR standards. With regard to the parking relief, OP again noted that the configuration of the nonconforming existing building made it impossible for the Applicant to provide onsite parking without demolishing a portion of the building. (Jan. 17 Tr. at 34-37.)
59. The Applicant offered additional testimony confirming OP's testimony, that providing parking on-site would require partial demolition of the Existing Building. The Applicant explained that this demolition would probably necessitate a reconfiguration of the proposed design resulting in additional zoning relief being required. The Applicant also noted, in response to a question posed by the Board, that providing underground parking would be cost prohibitive and unfeasible from an engineering standpoint. (Jan. 17 Tr. at 43-44.)

#### **Public Meeting of January 24, 2018**

60. At its January 24, 2018, public meeting, the Board approved the Application.

#### **Public Meeting of September 11, 2019**

61. In response to concerns raised by the Office of Attorney General ("OAG") that the requested variance relief from Subtitle C § 202.2 was not required, the Board reconsidered its January 24<sup>th</sup> decision at its September 11, 2019 public meeting and voted to rescind the prior approval of the Application and reopen the record for responses from the parties on this issue. (BZA Public Meeting Transcript of September 11, 2019 at 9.) The Board articulated the basis for its rescission of its original approval in a September 12, 2019 procedural order and requested that the Applicant, the ANC, and OP file responses addressing the necessity of a variance under Subtitle C § 202.2. (Ex. 102.)
62. The Applicant submitted a supplemental statement addressing the Board's concerns as well as revised self-certification forms, formally withdrawing the request for variance relief from Subtitle C § 202.2. (Ex. 106-108.)

#### **Supplemental OP Report**

63. In response to the Board's request, OP submitted a supplemental report to the record. (Ex. 104, the "**Supplemental OP Report**".) The Supplemental OP Report noted that the Existing Building pre-dated the 1958 Zoning Regulations and was nonconforming with respect to residential lot occupancy. However, the Supplemental OP Report noted that the Addition would comply with the MU-4 zone lot occupancy limits and so would not expand the existing nonconforming aspect. The Supplemental OP report therefore concluded that as such, variance relief from Subtitle C § 202 was not necessary. The

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Supplemental OP Report reiterated OP's recommendation that the Commission approve the Application.

## CONCLUSIONS OF LAW

### Special Exception Relief

1. Section 8 of the Zoning Act of 1938 (D.C. Official Code § 6-641.07(g)(2) (2018 Repl.); *see also* Subtitle X § 901.2) authorizes the Board to grant special exceptions, as provided in the Zoning Regulations, where, in the judgement of the Board, the special exception:
  - a. *will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Map,*
  - b. *will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Map, and*
  - c. *complies with the special conditions specified in the Zoning Regulations.*
2. For the relief requested by the Application, the "specific conditions" are those of Subtitle C § 703.
3. Relief granted by the Board through a special exception is presumed appropriate, reasonable, and compatible with other uses in the same zoning classification, provided the specific regulatory requirements for the relief requested are met. In reviewing an application for special exception relief, the Board's discretion is limited to determining whether the proposed exception satisfies the requirements of the regulations and "if the applicant meets its burden, the Board ordinarily must grant the application." *First Washington Baptist Church v. D.C. Bd. of Zoning Adjustment*, 423 A.2d 695, 701 (D.C. 1981) (quoting *Stewart v. D.C. Bd. of Zoning Adjustment*, 305 A.2d 516, 518 (D.C. 1973)).

### Relief from the Minimum Parking Requirements of Subtitle C § 701.5 - Subtitle C § 703

4. Per Subtitle C § 703, the Board may grant a full or partial reduction in number of required parking spaces, subject to the applicant's demonstration of at least one of the ten possible criteria of Subtitle C § 703.2, and satisfaction of the additional standards of Subtitle C §§ 703.3 and 703.4. As explained below, the Board concludes that the Applicant has met its burden of proof by demonstrating compliance with multiple criteria of Subtitle C § 703.2.
5. The Board concludes that the Application meets the criteria of both Subtitle C § 703.2 (b) and (c), satisfaction of any one of which is sufficient, as follows:
  - (b) *The use or structure is particularly well served by mass transit, shared vehicle, or bicycle facilities;*  
The Board concludes that the Property is located close to existing Metrorail and Metrobus routes and that the Application proposes to include 11 spaces for long-term

bicycle parking and a total of 10 short-term bicycle parking spaces, as recommended by DDOT which found that the Project would have no adverse impacts on the District's transportation network. (Finding of Fact ["FF"] 10-11, 31, 35-38, 53.)

*(c) Land use or transportation characteristics of the neighborhood minimize the need for required parking spaces;*

The Board concludes that the Property is considered highly walkable, accessible by bike and close to mass transit options. (FF 10-11, 53.) The Board also concurs with the findings of the Parking Study, as supported by OP and DDOT, that the approximately 293 available street parking spaces in the surrounding area are sufficient to support the needs of the Project. (FF 21-22, 36, 53.)

6. The Board concludes that the Application almost met the criteria of Subtitle C § 703.2 (a), as the nonconforming nature of the Existing Building makes it impossible for the Applicant to provide on-site parking without demolishing a portion of the Existing Building. (FF 8, 19, 47, 58-59.) However, neither the Application, nor any of the testimony at the public hearings addressed the availability of providing the required parking within 600 feet of the Property.
7. Subtitle C § 703.3 - *Any reduction in the required number of parking spaces shall be only for the amount that the applicant is physically unable to provide and shall be proportionate to the reduction in parking demand demonstrated by the applicant.*  
The Board concludes that the Application is only requesting relief from the required three parking spaces on the basis of the lack of space on the Property and the availability of sufficient transportation alternatives. (FF 19-22.)
8. Subtitle C § 703.4 - *Any request for a reduction in the minimum required parking shall include a transportation demand management plan approved by the District Department of Transportation, the implementation of which shall be a condition of the Board of Zoning Adjustment's approval.*  
The Board concludes that the Applicant's agreement to the TDM Plan conditions, both in its pre-hearing statement (FF 28), and orally as noted in, and approved by the Supplemental DDOT Report (FF 34, 38) is sufficient to satisfy the requirements of Subtitle C § 703.4. (Jan. 20 Tr. at 13.)

#### **General Special Exception Relief – Subtitle X § 901**

9. The Board concludes that the Application, in addition to meeting the specific conditions of the special exceptions from the minimum parking requirements, also meets the general special exception standards in Subtitle X § 901.2 to be in harmony with the purpose and intent of the Zoning Regulations and Zoning Maps and to not adversely affect the surrounding properties as follows.
10. The Board concludes that granting the requested special exception will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps because

the Project complies with the intent and purpose of the MU-4 zone district to provide moderate density development in areas that close to transit hubs and major roadways. (Jan. 20 Tr. at 13.) The Board notes that the Application and Applicant stated that the Project complies with the development standards of the MU-4 zone apart from the requested parking relief. (FF 23, 55; Jan. 20 Tr. at 13.) The Board concludes that requiring the Applicant to provide the on-site parking would necessitate demolition of a portion of the Existing Building, which might require additional zoning relief in order for the Applicant to achieve the same number of units and usable commercial space. (FF 58-59.) Further, as explained above, the Board concludes that the Application also met the specific special exception criteria for parking relief as supported by OP and DDOT. (Jan. 20 Tr. at 13.)

11. The Board concludes that granting the requested special exception will not tend to adversely affect the use of neighboring properties because the Board concluded that the conditions of the Applicant's TDM Plan would mitigate any traffic and parking impacts resulting from the requested relief as confirmed by the DDOT Report. (FF 31, 34, 36-38; Jan. 20 Tr. at 13, 15.) The Board concurred with the findings of both the OP and DDOT Reports, which did not raise any concerns about any additional adverse impacts resulting from the Project. (Jan. 20 Tr. at 13-15.) The Board concludes that in addition to the site's walkability and proximity to public transit options, there is also sufficient off-site parking available to accommodate the needs of the project. (FF 21-22, 31-32, 36.) The Board credits the findings of the Applicant's Parking Study, as contained in the DDOT Supplemental Report, which concluded that there was an average of 293 available parking spaces within a two-block radius of the property. (FF 36.) The Board concludes that since the Applicant was only required to supply three-onsite parking spaces, this appears sufficient to absorb the additional traffic generated by the new units and retail use. (FF 36.)

#### **“Great Weight” to the Recommendations of OP**

12. The Board is required to give “great weight” to the recommendation of the Office of Planning. (D.C. Official Code § 6-623.04 (2018 Repl.) and Subtitle Y § 405.8.)
13. The Board concludes that the OP Report and the Supplemental OP Report, which provide in-depth analysis of how the Application met each of the requirements for the requested special exception relief, are persuasive and concurs with OP's recommendation that the Application be approved, as discussed above.

#### **“Great Weight” to the Written Report of the ANC**

14. The Board must give “great weight” to the issues and concerns raised in the written report of the affected ANC, which in this case is ANC 5D. (§ 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.) and Subtitle Y § 406.2.) To satisfy this



great weight requirement, District agencies must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. 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).

15. The Board finds the issues and concerns raised by ANC 8A to be unpersuasive. The Application provided a Parking Study, accepted by DDOT, which concluded that there is sufficient street parking in the area to support the needs of the Project. (FF 36, 53.) The DDOT reports concluded that the Project would not result in any significant adverse impacts, and that any minor impacts would be mitigated by the TDM Plan conditions agreed to by the Applicant. (FF 31, 34, 36-38.) The Board concludes that the ANC did not provide any counter evidence to rebut the Parking Study’s and DDOT’s conclusions regarding the parking relief.
16. The other concerns raised by the ANC, regarding the building height and general appearance are no longer legally relevant, as the Application is not requesting zoning relief from those specific development standards. (Jan. 20 Tr. at 12-13.) As such, the Board concludes that the issues raised by the ANC have either been sufficiently addressed by the Application or are no longer legally relevant and as such do not constitute “legally relevant issues and concerns.”

## DECISION

Based on the case record and the Findings of Fact and Conclusions of Law, the Board concludes that the Applicant has met its burden of proof for the requested special exception relief from the parking requirements of Subtitle C § 701.5, and therefore **ORDERS** that the Application is **GRANTED**, subject to the following **CONDITIONS**:

1. Development of the Property that uses the relief granted in this Order shall comply with the approved plans at Exhibit 38<sup>7</sup> as required by Subtitle Y §§ 604.9 and 604.10.
2. The Applicant shall implement the Transportation Demand Management (“TDM”) Package with the following elements (Ex. 57):
  - a. Identify a staff member on-site to be the TDM Coordinator to work with goDCgo on implementation;

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<sup>7</sup> Self-Certification. This is a self-certified application pursuant to Subtitle Y §300.5. (Ex. 108.) In granting the certified relief, the Board of Zoning Adjustment (“Board” or “BZA”) 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.

- b. Provide TDM materials to new residents in the Residential Welcome Package to notify them of non-automotive options for travel;
- c. Provide two additional short-term bicycle parking spaces (one inverted U-rack) in the “furniture zone” in public space or in private property; and
- d. Provide website links to CommuterConnections.com and goDCgo.com on developer and property management websites.

**VOTE (Nov. 13, 2019): 3-0-2** (Frederick L. Hill, Carlton E. Hart, and Anthony J. Hood to **APPROVE**; no other Board members participating.)

**BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 7, 2020

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

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

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

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PURSUANT TO SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITION 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 CONDITION 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. 20117 of Naomi Glassman and Kopano Majara**, as amended<sup>1</sup>, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1, the pervious surface requirements of Subtitle D § 308.3, and the alley centerline setback requirements of Subtitle D § 5004.1, to construct an accessory garage structure with a roof deck in the R-3 Zone at premises 4614 4th Street, N.W. (Square 3249, Lot 111).

**HEARING DATES:** October 2, 2019 and February 5, 2020  
**DECISION DATE:** February 5, 2020

**SUMMARY ORDER**

Relief Requested. The application was initially accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibits 7 (Original), 19 (Updated), 47 (Revised).) Ultimately the relief was revised by the Applicant, as reflected in the caption above.

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

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

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on November 13, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application with a condition. (Exhibit 51.) The ANC's recommendation was conditioned on the Applicant's agreement to "offset the lack of pervious surface with installations at the front of the property, including the stairs and walkway." The Board did not adopt the proposed condition, finding that it does not have jurisdiction over changes in the public space; however, the Board expects that the ANC and the Applicant will continue to work to resolve the issue.

OP Reports. The Office of Planning ("OP") submitted a report dated September 20, 2019, stating that it could not provide a recommendation on the proposal due to inconsistencies with the ZA's memorandum. (Exhibit 38.) OP submitted another report dated October 18, 2019, noting its

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<sup>1</sup> At the hearing of February 5, 2020, the Applicant amended the application by withdrawing the special exception to Subtitle C § 1502.1 to allow a guard rail that does not meet the minimum required setback from the walls of the garage deck roof and by revising the plans to reduce the lot occupancy, such that the variance relief from Subtitle D § 304.1 became a special exception under Subtitle D § 5201, as recommended by the Office of Planning.

inability to provide an analysis due to a lack of documentation in the record from the Applicant. (Exhibit 42.) OP submitted a third report dated January 3, 2020 recommending denial of the area variance for lot occupancy, and approval of special exception relief related to the accessory building rear yard and pervious surface, under certain circumstances. (Exhibit 52.) Finally, OP submitted a report dated January 24, 2020 in support of the application, as revised. (Exhibit 65.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 37.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle D § 5201 from the lot occupancy requirements of Subtitle D § 304.1, the pervious surface requirements of Subtitle D § 308.3, and the alley centerline setback requirements of Subtitle D § 5004.1, to construct an accessory garage structure with a roof deck in the R-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 APPROVED PLANS<sup>2</sup> AT EXHIBITS 66-71A – UPDATED ZONING SHEET - SHEETS 1 THROUGH 4, UPDATED DC SURVEYOR’S PLAT, UPDATED ARCHITECTURAL PLANS AND ELEVATIONS (PARTS 1 & 2).**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; no other Board members participating).

### **BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>2</sup> Self-certification. In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**FINAL DATE OF ORDER:** February 11, 2020

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 20117

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

**Application No. 20172 of Sunvest LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under Subtitle U § 320.2, to construct a third-story addition and a two-story rear addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house in the RF-1 Zone at premises 4315 New Hampshire Avenue, N.W. (Square 3244, Lot 34).

**HEARING DATE:** February 5, 2020  
**DECISION DATE:** February 5, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 4.)

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

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

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 11, 2019, at which a quorum was present, the ANC voted 6-2-0 to oppose the application. (Exhibit 33.) However, after the Applicant agreed to certain revisions and conditions raised by the ANC, the ANC met again on January 8, 2020, and voted 10-0-0 to rescind the resolution of opposition and voted 9-0-1 to support the application. (Exhibit 40, 41.) The ANC's support was conditioned on the Applicant's agreement to construct the addition with certain dimensions; provide contact information for the adjacent neighbor; pay for and fix damages to neighbors' property; refrain from blocking the public alley or constructing during certain hours; to limit sound of construction to certain days/hours; to locate dumpsters at the rear; provide notice related to planned electrical, water shut-offs, or road accessibility or parking; and to close and lock all entrances and windows. Further conditions addressed environmental, safety, and financial contributions to affordable housing.

The Board did not adopt the proposed conditions, finding that the conditions were either unenforceable as written or outside the Board's jurisdiction. The Board notes that the Applicant has nonetheless agreed to abide by these conditions. At the hearing, the ANC Representative testified that the ANC remained in support even if the Board did not adopt the conditions as part of the Order.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 26.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 27.)

Persons in Opposition. Two letters were submitted in opposition to the application from residents of 4321 New Hampshire Avenue, N.W. (Exhibits 35, 36.)

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under Subtitle U § 320.2, to construct a third-story addition and a two-story rear addition to an existing semi-detached principal dwelling unit, and to convert it into a three-unit apartment house 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<sup>1</sup> AT EXHIBIT 39A – REVISED ARCHITECTURAL PLANS AND ELEVATIONS, EXHIBIT 43A – SHADOW STUDY, AND EXHIBIT 46 – UPDATED SIDE ELEVATION PLAN .**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May to APPROVE; no other Board members participating).

### **BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT**

A majority of the Board members approved the issuance of this order.

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<sup>1</sup> 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.



**FINAL DATE OF ORDER:** February 11, 2020

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

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

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

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

BZA APPLICATION NO. 20172

PAGE NO. 3

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

**Application No. 20189 of Ihab Mogassbi - Diamond Ridge LLC**, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the general penthouse requirements of Subtitle C § 1500.4, under Subtitle C §1504 from the penthouse enclosure requirements of Subtitle C § 1500.9 and from the penthouse setback requirements of Subtitle C § 1502.1, under Subtitle E § 5201 for the rear addition requirements of Subtitle E § 205.4, under Subtitle E § 5203 from the rooftop architectural element requirements of Subtitle E § 206.1(a), and from residential conversion requirements of Subtitle U § 320.2, to convert a currently vacant attached building to a three-unit apartment house in the RF-1 Zone at premises 1422 Shepherd Street N.W. (Square 2693, Lot 18).

**HEARING DATE:** February 5, 2020

**DECISION DATE:** February 12, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 58, p. 10 (Final Revised)<sup>1</sup>; Exhibit 46 (Revised); Exhibit 11 (Corrected); Exhibit 7 (Original).)

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

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

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 11, 2019, at which a quorum was present, the ANC voted 8-0-0 to support the application, subject to the Applicant's agreement to certain conditions pertaining to construction, environmental issues, and safety. (Exhibit 49.) The Board declined to adopt the agreement as conditions of this order, as they pertained to issues outside the Board's jurisdiction; however, the Board expects the Applicant to uphold its agreement with the ANC.

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<sup>1</sup> The Applicant amended the original application to request additional special exception relief from the general penthouse requirements of Subtitle C § 1500.4, the penthouse enclosure requirements of Subtitle C § 1500.9, the penthouse setback requirements of Subtitle C § 1502.1, the rear addition requirements of Subtitle E § 205.4, and the rooftop architectural element requirements of Subtitle E § 206.1(a).

OP Report. The Office of Planning submitted a report recommending approval of the application but noting that additional relief may be required. (Exhibit 34.) After the Applicant revised the application to add additional areas of relief, OP submitted a supplemental report to recommend approval of the amended application. (Exhibit 61.)

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

Persons in Support. The ANC Commissioner for 4C04 submitted two letters in support of the application. (Exhibits 48, 52.) The Board also received a letter in support from the adjacent neighbors. (Exhibit 51.) An adjacent neighbor also testified in support of that application at the public hearing.

### **Special Exception Relief**

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under the general penthouse requirements of Subtitle C § 1500.4, under Subtitle C § 1504 from the penthouse enclosure requirements of Subtitle C § 1500.9 and from the penthouse setback requirements of Subtitle C § 1502.1, under Subtitle E § 5201 for the rear addition requirements of Subtitle E § 205.4, under Subtitle E § 5203 from the rooftop architectural element requirements of Subtitle E § 206.1(a), and from residential conversion requirements of Subtitle U § 320.2, to convert a currently vacant attached building to a three-unit apartment house in the RF-1 Zone.

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<sup>2</sup> AT EXHIBIT 58.**

**VOTE: 4-0-1** (Frederick L. Hill, Carlton E. Hart, Lorna L. John, and Peter G. May (by absentee vote) to APPROVE.)

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<sup>2</sup> Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

**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:** February 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 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.

**BZA APPLICATION NO. 20189**

**PAGE NO. 3**

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

**Application No. 20193 of Ideal Child Care Development Center LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 203.1(h), to expand a child development center from 16 children to 40 children and 8 staff in the RF-1 Zone at premises 805 Rock Creek Church Road N.W. (Square 3030, Lot 15).

**HEARING DATE:** February 12, 2020

**DECISION DATE:** February 12, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 35 (Final Revised); Exhibits 13 and 32 (Revised); Exhibit 9 (Original.))

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 4C, and ANC 1A.

ANC Report. ANC 4C submitted a report indicating that at a regularly scheduled, properly noticed public meeting on November 13, 2019, at which a quorum was present, the ANC voted 9-0-0 to support the application. (Exhibit 42.) ANC 1A did not submit a written report.

OP Report. The Office of Planning submitted a report recommending approval of the application, subject to four conditions. (Exhibit 37.) The Board adopted the proposed conditions.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 38.)

Persons in Support. The Board received nine letters in support from neighbors and customers of the child development center. (Exhibit 12.) The Board heard testimony in support of the application from six individuals at the public hearing.

### Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exception under the use provisions of Subtitle U § 203.1(h), to expand a child development center from 16 children to 40 children and 8 staff 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<sup>1</sup> AT EXHIBIT 34, AND WITH THE FOLLOWING CONDITIONS:**

1. The maximum number of children shall be 40. The final number of children allowed will be determined by the Office of the State Superintendent of Education at the time of permitting and licensing.
2. The maximum number of staff persons shall be 8.
3. Hours of operation shall be from 7:00 a.m. to 6:00 p.m., Monday through Friday.
4. The Applicant shall comply with any additional recommendations from the District Department of Transportation.

**VOTE: 4-0-1** (Frederick L. Hill, Lorna L. John, Carlton E. Hart, and Michael G. Turnbull to APPROVE; no other Board members participating.)

### BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 13, 2020

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<sup>1</sup> Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 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

**BZA APPLICATION NO. 20193**

**PAGE NO. 3**

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. 20200 of 1369 Parkwood PI LLC**, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the residential conversion requirements of Subtitle U § 320.2, including a waiver from the rear addition requirement of Subtitle U § 320.2(e), to convert an existing one-family dwelling into a three-unit apartment house with a new three-story rear addition in the RF-1 Zone at premises 1369 Parkwood Place, N.W. (Square 2827S, Lot 136).

**HEARING DATE:** February 12, 2020

**DECISION DATE:** February 12, 2020

**SUMMARY ORDER**

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 38A (Revised); Exhibit 10 (Original).)

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

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 1A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on January 8, 2020, at which a quorum was present, the ANC voted 7-0-0 to support the application. (Exhibit 31.)

OP Report. The Office of Planning submitted a report, dated January 30, 2020, recommending approval of the application. (Exhibit 34.)

DDOT Report. The District Department of Transportation submitted a report, dated January 24, 2020, indicating that it had no objection to the application on the condition that the Applicant meet with the Urban Forestry Division to determine if the large tree on site is a Heritage or Special tree, and if so, take appropriate mitigation measures to protect the tree during construction. (Exhibit 33.) The Board did not adopt this as a condition of this order.

Persons in Support. The Board received a letter of support for the application from the abutting neighbors residing at 1367 Parkwood Place, NW. The Applicant agreed to a list of requests from these neighbors, including a construction management agreement. (Exhibit 30.)

### Special Exception

The Applicant seeks relief under Subtitle X § 901.2, for a special exception from the residential conversion requirements of Subtitle U § 320.2, including a waiver from the rear addition requirement of Subtitle U § 320.2(e), to convert an existing one-family dwelling into a three-unit apartment house with a new three-story rear addition 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<sup>1</sup> AT EXHIBIT 28A.**

**VOTE: 3-0-2** (Carlton E. Hart, Lorna L. John, and Michael G. Turnbull to APPROVE; no other Board members participating.)

### BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

**FINAL DATE OF ORDER:** February 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 SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY

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<sup>1</sup>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.

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.

**BOARD OF ZONING ADJUSTMENT  
PUBLIC MEETING NOTICE  
WEDNESDAY, APRIL 15, 2020  
441 4<sup>TH</sup> STREET, N.W.  
JERRILY R. KRESS MEMORIAL HEARING ROOM, SUITE 220-SOUTH  
WASHINGTON, D.C. 20001**

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

**TIME: 9:30 A.M.**

**FOR EXPEDITED REVIEW**

**WARD TWO**

20049      **Application of Martha Blalock and Christine Delucchi**, pursuant to 11  
ANC 2F      DCMR Subtitle X, Chapter 9, for a special exception under Subtitle E §  
5201 from the nonconforming structure requirements of Subtitle C § 202.2,  
to construct a third and a fourth story rear addition to an existing non-  
conforming flat in the RF-1 Zone at premises 1311 Corcoran Street N.W.  
(Square 240, Lot 27).

**PLEASE NOTE:**

Failure of an applicant to supply a complete application to the Board, and address the required standards of proof for the application, may subject the application or appeal to postponement, dismissal or denial. The public meeting in these cases will be conducted in accordance with the provisions of Subtitles X and Y of the District of Columbia Municipal Regulations, Title 11. Individuals and organizations interested in any application may submit written comments to the Board.

An applicant is not required to attend for the decision, but it is recommended so that they may offer clarifications should the Board have questions about the case.

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

BZA PUBLIC MEETING NOTICE

APRIL 15, 2020

PAGE NO. 2

The application will remain on the Expedited Review Calendar unless a request for party status is filed in opposition, or if a request to remove the application from the agenda is made by: (1) a Board member; (2) OP; (3) an affected ANC or affected Single Member District; (4) the Councilmember representing the area in which the property is located, or representing an area located within two-hundred feet of the property; or (5) an owner or occupant of any property located within 200 feet of the property.

The removal of the application from the Expedited Review Calendar will be announced as a preliminary matter on the scheduled decision date and then rescheduled for a public hearing on a later date. Notice of the rescheduled hearing will be posted on the Office of Zoning website calendar at <http://dcoz.dc.gov/bza/calendar.shtm> and on a revised public hearing notice in the OZ office. If an applicant fails to appear at the public hearing, this application may be dismissed.

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

**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 በኢሜል [Zelalem.Hill@dc.gov](mailto:Zelalem.Hill@dc.gov) ይገናኙ። እነኚህ አገልግሎቶች የሚሰጡት በነጻ ነው።

Chinese

您需要有人帮助参加活动吗?

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

French

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

Korean

참여하시는데 도움이 필요하세요?

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

## BZA PUBLIC MEETING NOTICE

APRIL 15, 2020

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*Spanish*

¿Necesita ayuda para participar?

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

*Vietnamese*

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

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

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

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

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA  
ZONING COMMISSION ORDER NO. 15-27D**

**Z.C. Case No. 15-27D**

**CP Market Terminal, LLC**

**(Modification of Consequence to Approved Consolidated PUD @ Square 3587, Lot 833)  
November 18, 2019**

On November 18, 2019, at its properly noticed meeting, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of CP Market Terminal, LLC (the “Applicant”) for a modification of consequence of the consolidated planned unit development (“PUD”) approved by Z.C. Order No. 15-27 (the “Order”) for Lots 805, 814, and 817 in Square 3587 (the “PUD Site”<sup>1</sup>). The Application specifically sought to modify the penthouse structure of Building C1, as shown in the plans with which Condition A.1 of the Order requires development of the PUD Site comply. The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z of Title 11 of the District of Columbia Municipal Regulations (Zoning Regulations of 2016 [the “Zoning Regulations”]) to which all subsequent citations refer unless otherwise specified). For the reasons stated below, the Commission **APPROVES** the Application.

**FINDINGS OF FACT**

**The Order**

1. Pursuant to the Order, the Commission approved a consolidated PUD (the “Consolidated PUD”) and a first-stage PUD (the “First-Stage PUD”), together with a related Zoning Map amendment from the C-M-1 Zone District to the C-3-C Zone District,<sup>2</sup> for the PUD Site.
2. The Order approved development of the PUD Site with four buildings known as Buildings A through D and containing a mix of residential, retail, office, and optional hotel uses (the “Overall Project”).
3. The Order approved the Overall Project to be constructed in two phases:
  - a. Phase I/Consolidated PUD - the southern portion of Building A (Building A1), Building B, and the southern portion of Building C (Building C1); and
  - b. Phase II/First-Stage PUD - the northern portion of Building A (Building A2), the northern portion of Building C (Building C2), and Building D.
4. Condition A.1 of the Order requires that development under the Consolidated PUD must comply with the plans approved by the Order, which authorized Building C1 to have a

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<sup>1</sup> Following approval of the Order, new Assessment & Taxation lots were created for the PUD Site, such that the PUD Site is now known as Lots 819, 833-835, and 838-840. A new survey was also prepared and confirmed that the PUD Site area is 215,250 square feet.

<sup>2</sup> The C-M-1 and C-3-C Zone Districts were designations of the 1958 Zoning Regulations, under which the Commission approved the Order. Under the 2016 Zoning Regulations, which repealed and replaced the 1958 Zoning Regulations on September 6, 2016, the C-M-1 Zone District was designated as the PDR-1 zone and the C-3-C Zone District was designated as the MU-9 zone.

maximum height of 130 feet with ground-floor retail and office use above, with a penthouse limited to 15 feet in height for habitable space devoted to office use and to 20 feet in height for mechanical space.

### Parties

5. The parties to the Z.C. Case No. 15-27, other than the Applicant, were Advisory Neighborhood Commission (“ANC”) 5D, the “affected” ANC pursuant to Subtitle Z § 101.8 and 1250 4<sup>th</sup> St Edens, LLC and Union Market Apartments, LLC.

### Background

6. On September 17, 2018, the Zoning Administrator (the “ZA”) submitted a letter to the Commission in Z.C. Case No. 15-27 for review of his proposed approval of structural modifications to Building C1, as approved by the Order, including changes to the penthouse. (Exhibit [“Ex.”] 83 to Z.C. Case No. 15-27.) As the ZA’s submission failed to attach the associated architectural drawings showing the approved structural modification, the Applicant submitted these penthouse drawings as approved by the ZA on September 28, 2018 (the “ZA Modified Plans”). (Ex. 84 to Z.C. Case No. 15-27<sup>3</sup>.) The Applicant also submitted a certification showing that the modification request and the ZA’s approval thereof were sent to ANC 5D.
7. At its October 15, 2018 public meeting, the Commission reviewed the ZA’s approved structural modifications and voted to “concur with the Zoning Administrator’s Notice of Granted Flexibility.” (October 15, 2018 Public Hearing Transcript, at 3-4.)
8. On December 20, 2018, the Commission received an application (Z.C. Case No. 15-27A) for a modification of the first-stage PUD for Building C2 and for a second-stage PUD for Buildings A2, C2, and D, which was subsequently revised to only request a second-stage PUD for Building A2. The Commission voted to approve the revised application on July 17, 2019.
9. On March 22, 2019, the Commission received an application (Z.C. Case No. 15-27B) for a modification of the consolidated PUD for Building C1 and a modification of the first-stage PUD and second-stage PUD for Building C2. This case is currently pending before the Commission.
10. On August 9, 2019, the Commission received an application (Z.C. Case No. 15-27C) for a modification of consequence of the consolidated PUD for Building C1 to revise the design and use of the penthouse. On September 23, 2019, the Commission determined that the requested modification did not qualify as a modification of consequence due to the additional relief requested and the change in use of the penthouse and it directed the Applicant to file a new application for a modification of significance.

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<sup>3</sup> Ex. 1D in Z.C. Case No. 15-27D includes a copy of three of the four sheets of the ZA Modified Plans that depicted the proposed modifications to the penthouse (pages seven to nine, but not page six).



**The Application**

11. On September 30, 2019, the Applicant filed the Application requesting a modification of consequence to authorize the following modifications to the design and massing of Building C1's penthouse, as approved by the Order and as modified by the Zoning Administrator:
  - a. To expand a small portion of the existing 20-foot-tall screen wall, expand a small portion of the existing 20-foot-tall enclosed mechanical penthouse, and add louvers for equipment ventilation. These modifications were requested to accommodate the final mechanical design that was finalized after the consolidated PUD was approved. The screen wall and enclosed mechanical space will match and connect to the approved 20-foot-tall portion of the penthouse, and will meet all penthouse height and setback requirements;
  - b. To add solar panels to the top of the 15-foot-tall portion of the penthouse. The solar panels are approximately 2 feet, 8 inches tall, and will therefore have a height above the main roof of 17 feet, 8 inches. The solar panels meet all height and setback requirements; and
  - c. To add new doors to provide additional egress between the roof deck and the interior habitable and mechanical penthouse spaces.
12. The Application included a Certification of Service demonstrating that the Applicant served the Application on ANC 5D, 1250 4<sup>th</sup> St Edens, LLC and Union Market Apartments, LLC, and the Office of Planning ("OP") on September 30, 2019. (Ex. 1 at 5.)

**Responses to the Application**OP Report

13. OP submitted a report dated October 11, 2019, stating no objection to the Application being considered as a Modification of Consequence and recommending approval of the Application (the "OP Report"). (Ex. 4.)
14. The OP Report noted that the modified penthouse continued to meet the setback and other requirements of the Zoning Regulations, and that the "increased setbacks should minimize the visibility of the enclosing walls." OP also stated that the penthouse would "feature metal panels and glass aluminum storefronts, consistent with the approved design and with materials used elsewhere on the building." (Ex. 4.)

ANC Report

15. ANC 5D submitted a written report (the "ANC Report") stating that at its duly noticed public meeting of June 11, 2019, at which a quorum was present, it voted to support the Application. ( Ex. 1F.) The ANC Report stated that it "took no issue with the proposed physical modifications to the penthouse on C1, including the changes to accommodate the

building's mechanical equipment and the new solar panels. The ANC is also pleased that generation of the penthouse habitable spaces will result in contributions to the Housing Production Trust Fund.” (Ex. 1F.)

16. The ANC submitted a letter dated October 2, 2019 (the “ANC Supplemental Report”) noting that the ANC Report relied on its review of Z.C. Case No. 15-27C, not Z.C. Case No. 15-27D. (Ex. 3.) The ANC Supplemental Report therefore stated that “[t]he ANC has reviewed the drawings filed in Z.C. Case No. 15-27D, which are substantively the same as the drawings previously submitted (Exhibits 1E and 6 in Z.C. Case No. 15-27C), and continues to be in support of the request. The ANC also agrees that the application is properly filed as a Modification of Consequence and does not need a hearing to decide.” (Ex. 3.)

### CONCLUSIONS OF LAW

1. Subtitle Z § 703.1 authorizes the Commission, in the interest of efficiency, to make modifications of consequence to final orders and plans without a public hearing.
2. Subtitle Z § 703.3 defines a modification of consequence as “a modification to a contested case order or the approved plans that is neither a minor modification nor a modification of significance.”
3. Subtitle Z § 703.4 includes “a proposed change to a condition in the final order” and “a redesign or relocation of architectural elements” as examples of modifications of consequence.
4. The Commission concludes that the Applicant satisfied the requirement of Subtitle Z § 703.13 to serve the Application on all parties to the original proceeding, in this case ANC 5D and 1250 4<sup>th</sup> St Edens, LLC and Union Market Apartments, LLC.
5. The Commission concludes that the Application qualifies as a modification of consequence within the meaning of Subtitle Z §§ 703.3 and 703.4, as a request to modify the architectural elements depicted in the architectural plans with which development of the consolidated PUD must comply per Condition A.1 of the Order, and therefore can be granted without a public hearing pursuant to Subtitle Z § 703.17(c)(2).
6. The Commission provided ANC 5D and 1250 4<sup>th</sup> St Edens, LLC and Union Market Apartments, LLC, the parties to Z.C. Case No. 15-27, with an opportunity to respond to the request as required by Subtitle Z § 703.17(c)(2). Only ANC 5D submitted a response.
7. The Commission finds that the Application is consistent with the consolidated PUD, as authorized by the Order, because the modifications are minor in nature, do not substantially change the exterior configuration or appearance of Building C1, utilize materials that are used elsewhere in the base building, and comply with all of the penthouse height, bulk, and setback requirements set forth in the Zoning Regulations.

**“Great Weight” to the Recommendations of OP**

8. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
9. The Commission notes OP’s lack of objection to the Application being considered as a modification of consequence. The Commission finds persuasive OP’s recommendation that the Commission approve the Application and therefore concurs in that judgment.

**“Great Weight” to the Written Reports of the ANC**

10. The Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976. (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.); see 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).)
11. The Commission finds the issues and concerns of the ANC’s reports persuasive because the ANC found that the physical modifications to Building C1’s penthouse, including the changes to accommodate Building C1’s mechanical equipment and the new solar panels, would create no adverse impacts, and that the generation of the penthouse habitable space would result in contributions to the Housing Production Trust Fund. The Commission concurs in the ANC’s support of the Application. (Ex. 1F, 3.)

**DECISION**

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Applicant’s request for a modification of consequence to modify Z.C. Order No. 15-27. The conditions in Z.C. Order No. 15-27 remain unchanged and in effect, except that Decision No. A.1 is hereby revised to read as follows (deletions shown in **bold** and ~~strikethrough~~ text; additions in **bold** and underlined text):

A.1. The Project shall be developed in accordance with:

- (a)        The Architectural Plans and Elevations dated December 23, 2016 (Ex. 61A1-61A15), as supplemented by the revised sheets dated January 26, 2017 (Ex.

72A1-72A3), and as revised and supplemented by the sheets dated March 13, 2017 (Ex. 75A1-75A2), and as revised by the sheets dated April 7, 2017 (Ex. 76A) (“Plans”), **all in the record of Z.C. Case No. 15-27;**

**(b) As modified for the penthouse of Building C1, which shall be developed in accordance with the architectural drawings at Exhibit 1E of Z.C. Case No. 15-27D, dated October 1, 2019;**

and as modified by the guidelines, conditions, and standards of this Order, **as may be furthered modified by the Commission.**

**VOTE (Nov. 18, 2019): 5-0-0**

(Peter A. Shapiro, Robert E. Miller, Anthony J. Hood, Peter G. May, and Michael G. Turnbull to **APPROVE**).

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 15-27D shall become final and effective upon publication in the *D.C Register*; that is, on February 21, 2020.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**  
**ZONING COMMISSION ORDER NO. 18-19**  
**Z.C. CASE NO. 18-19**

**Poplar Point RBBR LLC d/b/a Columbian Quarter Holdings**  
**(Map Amendment @ Squares 5860 and 5861)**  
**September 23, 2019**

The Zoning Commission for the District of Columbia (the “Commission”) held a properly noticed public hearing on July 31, 2019 to consider an application for a map amendment (the “Application”) submitted by Poplar Point RBBR LLC, d/b/a Columbian Quarter Holdings, (the “Applicant”) pursuant to Subtitle X, Chapter 4 of Title 11 of the District of Columbia Municipal Regulations (“DCMR”) (Zoning Regulations of 2016 [the “Zoning Regulations] to which all references are made unless otherwise specified to amend the Zone Map from the MU-14 zone to the NHR zone for Lots 97, 1025-1031, and 1036-1037 in Square 5860 and Lots 89 and 991 in Square 5861 (the “Property”). For the reasons set forth below, the Commission hereby **APPROVES** the application.

**FINDINGS OF FACT**

**Northern Howard Road Zone Text Amendment (Z.C. Case No. 18-18)**

1. On October 5, 2018, the Office of Planning (“OP”) filed a petition proposing that the Commission adopt a text amendment creating a new Northern Howard Road Zone, initially designated the NHR-1 zone, but subsequently renamed the NHR zone,<sup>1</sup> for properties along Howard Road in Z.C. Case No. 18-18 (the “NHR Text Amendment”).
2. The Commission voted to set down the NHR Text Amendment on October 22, 2018; took proposed action to adopt the NHR Text Amendment, as modified, on June 6, 2019; and took final action to adopt the NHR Text Amendment, as modified, on September 23, 2019. The NHR Text Amendment became effective on December 6, 2019.

**Notice of Rulemaking**

3. On October 10, 2018, the Applicant filed the Application as a petition for approval of an amendment to the Zoning Map to the proposed NHR zone as a rulemaking pursuant to Subtitle Z § 201.7(b)(1). (Exhibit [“Ex.”] 1, 2.)
4. At its November 19, 2018, public meeting, the Commission voted to set down the Application as a rulemaking and scheduled it for a hearing on March 14, 2019. (Ex. 4.)
5. Pursuant to the rulemaking notice requirements of Subtitle Z § 502, the Office of Zoning (“OZ”) sent notice of the public hearing to all property owners within 200 feet of the Property as well as to Advisory Neighborhood Commissions (“ANC”) 8A and 8C (the “affected” ANCs pursuant to Subtitle Z § 101.8) on January 3, 2019. OZ published a notice

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<sup>1</sup> As the designation changed from the NHR-1 zone to the NHR zone over the pendency of this case, the submissions to the record vary in which term is used. All references herein use the final NHR zone, even if the referenced exhibit used the NHR-1 zone designation.

of the public hearing in the *D.C. Register* on January 18, 2019 as well as on the calendar on OZ's website. (Ex. 16, 17.)

6. The Commission subsequently postponed the public hearing from March 14, 2019 to May 2, 2019 and then to June 6, 2019, to allow the Applicant additional time to work with the community.

#### **Notice of Contested Case**

7. At its June 6, 2019 public hearing, the Commission reconsidered its initial determination that the Application should be set down as a rulemaking and concluded that the Application should instead be classified as a contested case and therefore required re-noticing for the new hearing date of July 31, 2019. The Commission also took action to incorporate the proposed text amendment applicable to the Property that initially had been proposed as part of the Application, into the NHR Text Amendment in Z.C. Case No. 18-18. (June 6, 2019 Public Meeting Transcript at 20-21.)
8. Pursuant to the contested case notice requirements of Subtitle Z § 402, OZ sent notice of the new contested case public hearing to all property owners within 200 feet of the Property as well as to ANCs 8A and 8C, on June 13, 2019. OZ published notice of the public hearing in the *D.C. Register* on June 21, 2019 as well as on the calendar on OZ's website. (Ex. 52, 53, 54).

#### **Parties**

9. The only parties other than the Applicant were ANCs 8A and 8C.

#### **The Property**

10. The Property is located near the Anacostia River waterfront and consists of approximately 348,737 square feet of land area. (Ex. 2.)
11. The Property is located on either side of Howard Road, S.E., in between Interstate 295 and South Capitol Street, S.E.
12. Lot 89 in Square 5861 is currently improved with a three-story school building. The rest of the Property is either improved with small buildings or unimproved. (Ex. 2.)

#### **Current Zoning**

13. The Property is currently located in the MU-14 zone, which is intended to permit high-density mixed-use development generally in the vicinity of the waterfront. (Subtitle G § 500.5.)
14. As a matter of right, the MU-14 zone permits:
  - a) A maximum density of 6.0 floor area ratio ("FAR"), or 7.2 FAR for developments subject to Inclusionary Zoning ("IZ"), of which no more than 5.0 FAR can be devoted to nonresidential uses; (Subtitle G § 502.1.)

- b) A maximum height of 90 feet, or 100 feet for IZ developments; and (Subtitle G § 503.1.)
- c) A maximum residential lot occupancy of 75%, or 80% for IZ developments. (Subtitle G § 504.1.)

### **Comprehensive Plan**

15. The Future Land Use Map (the “FLUM”) of the Comprehensive Plan (Title 10A of the DCMR, the “CP”) designates the Property for Mixed Use: High-Density Residential/High-Density Commercial and Institutional uses in the Central Employment Area (the “CEA”). (Ex. 2, 2C, 2D, 2E.)
16. The CP’s Framework Element (§ 225.18) establishes that a “Mixed-Use” designation on the FLUM is assigned to areas where the mixing of two or more land uses is encouraged and is generally applied to:
  - a) Established, pedestrian-oriented commercial areas that also include substantial amounts of housing;
  - b) Commercial corridors or districts which may not currently contain substantial amounts of housing but where more housing is desired; and
  - c) Large sites where opportunities for multiple uses exist but a plan dictating the precise location of these uses has yet to be prepared.
17. The CP’s Framework Element establishes that for areas with a Mixed-Use designation, the general density and intensity of development is determined by the specific mix of uses shown on the FLUM. (CP § 225.19.) If the desired outcome is to emphasize one use over the other, the FLUM may note the dominant use by showing it at a slightly higher density than other uses in the mix. The CP’s Area Elements may also provide detail on the specific mix of uses envisioned.
18. The CP’s Framework Element defines High-Density Residential as “neighborhoods and corridors where high-rise (8 stories or more) apartment buildings are the predominant use” and High-Density Commercial as “the central employment district of the city and other major office employment centers on the downtown perimeter ... characterized by office and mixed office/retail buildings greater than eight stories in height.” (CP §§ 225.6, 225.11.)
19. The CP’s General Policy Map (“GPM”) designates the Property as a Land Use Change Area. (Ex. 23.)
20. The CP’s Framework Element states that the “guiding philosophy in the Land Use Change Areas is to encourage and facilitate new development” pursuant to the CP’s Area Elements that are to “guide development and redevelopment within the Land Use Change Areas, including the desired mix of uses in each area.” (CP §§ 223.11-223.12.)

21. The Property is subject to the CP's Lower Anacostia Waterfront/Near Southwest Area Element (the "Lower Anacostia Element"), which encourages mixed-use development on vacant or underutilized waterfront lands that incorporate significant commercial and affordable housing elements. (Ex. 2.)
22. The CP's Framework Element also notes that the Lower Anacostia Waterfront/Near Southwest Area is predicted to house 16.5% of the District's household growth and 20.3% of its job growth. (CP § 215.19.)

### **The Application**

23. The Application requests to rezone the Property from the MU-14 zone to the NHR zone to make it consistent with the Comprehensive Plan. The NHR zone is intended to permit high-density mixed-use development generally in the vicinity of the Anacostia Metrorail Station along Howard Road, S.E.; encourage a variety of support and visitor-related uses, such as retail, service, and entertainment uses; provide for increased height and bulk of buildings with increased affordable housing; and provide for development of Howard Road, S.E. as an active, pedestrian-oriented street with active ground-floor uses. (Subtitle K § 1001.1.)
24. As a matter of right, the NHR zone permits:
  - a) A maximum overall density of 9.0 FAR; (Subtitle K § 1001.2.)
  - b) A maximum height of 130 feet (dependent on street right-of-way width); and (Subtitle K § 1001.3.)
  - c) A maximum lot occupancy of 100%. (Subtitle K § 1001.7.)
25. New developments in the NHR zone are subject to design standards for building façades on designated streets and require the Commission's design review approval. Developments are also subject to enhanced IZ, LEED-Gold, and renewable energy requirements. (Ex. 2.)

### **Responses to the Application**

#### **Office of Planning Report**

26. OP submitted a report dated October 15, 2018, recommending that the Commission set down the case for a public hearing because the proposed NHR zone would allow for a higher-density development consistent with most other areas in the CEA than the current MU-14 zoning for the Property (the "OP Setdown Report"). (Ex. 4.) The OP Setdown Report concluded that the proposed NHR zone would not be inconsistent with the CP. OP reiterated this recommendation in its testimony at the November 19, 2018 public meeting.
27. On March 4, 2019, OP submitted a report recommending approval of the Application restating that the proposed NHR zone would not be inconsistent with the CP (the "OP Final Report"). (Ex. 23.)



District Department of Transportation Report

28. On March 4, 2019, the District Department of Transportation (“DDOT”) submitted a report expressing no objection to the Application (the “DDOT Report”). (Ex. 24.)<sup>2</sup>
29. The DDOT Report noted that the additional vehicular trips generated from the full build-out in the NHR zone would result in significant impacts to the District transportation network. The DDOT Report noted that Comprehensive Transportation Reviews, including proposed mitigations, would be expected for each development parcel.

ANC Report

30. On June 6, 2019, ANCs 8A and 8C submitted a joint resolution in support of the proposed NHR zone (the “Joint ANC Report”). (Ex. 51.) The Joint ANC Report indicated that both ANCs held properly noticed meetings, and with quorums present, both ANCs voted in support of the Applicant’s request to rezone the Property from the MU-14 zone to the NHR zone based on the ANCs’ conclusion that the Application was not inconsistent to the CP and in harmony with the FLUM’s spirit to foster high-density mixed use near the Anacostia Metro Station.

Persons in Support

31. Fifteen letters in support were filed in the record from individuals and entities recommending the Commission approve the proposed NHR zone. (Ex. 25-33, 35-37, 43, 46-47.)

Persons in Opposition

32. Letters in opposition from Current Area Residents EastOfTheRiver (“CARE”) and Aiyi’nah Ford and Aristotle Theresa, both individuals associated with CARE, were filed in the record raising concerns about the petition. However, CARE subsequently withdrew all opposition. (Ex. 40-41, 45, 48-49.)

Public Hearing

33. At its July 31, 2019 public hearing, the Commission heard testimony from OP in support of the Application, while the Applicant rested on the record.

CONCLUSIONS OF LAW

1. The Zoning Act of 1938, effective June 20, 1938 (52 Stat. 797, ch. 534; D.C. Official Code § 6-641.01, *et seq.*) (“Zoning Act”) authorizes the Commission to create zones within which the Commission may regulate the construction and use of property in order to “promote the health, safety, morals, convenience, order, prosperity, or general welfare of the District of Columbia and its planning and orderly development as the national capital.” (§ 1 of the Zoning Act; D.C. Official Code § 6-641.01.)
2. Section 2 of the Zoning Act (D.C. Official Code § 6-641.02) further provides that the:

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<sup>2</sup> The DDOT Report based its conclusions on analyses done for a similar development project on the Property approved as a PUD in Z.C. Case No. 16-29 that the Commission extinguished pursuant to the Applicant’s request. (Ex. 50.)

...zoning regulations shall be designed to lessen congestion on the street, to secure safety from fire, panic, and other dangers to promote health and general welfare, to provide adequate light and air, to prevent the undue concentration and the overcrowding of land, and to promote such distribution of population and of the uses of land as would tend to create conditions favorable to health, safety, transportation, prosperity, protection of property, civic activity, and recreational, educational, and cultural opportunities, and as would tend to further economy and efficiency in the supply of public services. Such regulations shall be made with reasonable consideration, among other things, of the character of the respective districts and their suitability for the uses provided in the regulations, and with a view to encouraging stability for the uses provided in the regulations, and with a view to encouraging stability of districts and of land values therein.

**Subtitle X § 500.3 - Not Inconsistent with the Comprehensive Plan**

3. The Commission must ensure that the Zoning Map, and all amendments to it, are “not inconsistent” with the CP pursuant to § 492(b)(1) of the District of Columbia Home Rule Act (§ 2 of the Zoning Act; D.C. Official Code § 6-641.02.) Subtitle X § 500.3 incorporates this intent to the Zoning Regulations by requiring that map amendments be “not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site.”
4. Based upon the case record, including the Applicant’s exhibits, the reports and testimony of OP and DDOT, the Joint ANC Report, and for the reasons below, the Commission concludes that the Application’s proposed NHR zone for the Property furthers the goals of the CP and promotes orderly development in conformity with the Zone Plan as embodied in the Zoning Regulations and Zoning Map. The Commission further concludes that the Application will benefit the community in which the Property is located and is in the best interest of the District of Columbia. The Commission therefore concludes that the Application is not inconsistent with the CP and its policies and maps and so complies with the Zoning Act and Subtitle X § 500.3.

**Consistent with the FLUM**

5. The Commission concludes that the proposed NHR zone would remain consistent with the FLUM’s designation of the Property for high-density mixed use (High-Density Residential/High-Density Commercial, and Institutional uses). The Commission notes that the Property is located in an existing commercial corridor in which the FLUM encourages the development of additional housing stock to support the mix of commercial and retail uses. The Commission credits the statements of the Applicant, the OP Reports, and the Joint ANC Report that the increased height and density allowed by the NHR zone would better encourage the development of this mix of uses than the Property’s current MU-14 zone.

**Consistent with the GPM and Lower Anacostia Element**

6. The Commission concludes that the proposed NHR zoning furthers the GPM because it will allow for a greater mixture of residential, retail, office, and other uses along a

mixed-use corridor and designated Great Street as called for in the Lower Anacostia Element.

7. The Commission finds that the Property is currently underutilized relative to its location along one of the District's Great Streets and its proximity to Metrorail. The proposed NHR zone will allow for greater overall density, particularly greater residential density which the Commission concludes will support the existing and potential non-residential uses in the surrounding area.

#### Land Use Element

8. The Commission concludes that the proposed NHR zone furthers this element because it will encourage higher-density mixed-use development, including housing, proximate to a Metrorail station, thereby revitalizing and enhancing the surrounding neighborhood while remaining consistent with the scale and density of much of the surrounding development.

#### Transportation Element

9. The Commission concludes that the proposed NHR zone furthers this element because it will facilitate the development of housing and retail uses in close proximity to Metrorail and Metrobus lines and other transportation options along the Martin Luther King, Jr. Avenue, S.E. corridor.

#### Housing Element

10. The Commission concludes that the proposed NHR zone furthers this element because it will help address the need for more housing and affordable housing in the District and more neighborhood-serving amenities in Anacostia.

#### Economic Development Element

11. The Commission concludes that the proposed NHR zone furthers this element because it would allow for new neighborhood serving retail and other commercial uses which will serve residents of and visitors to the surrounding area. The Commission finds that this will serve to generate tax revenue and aid in job creation for District residents.

#### National Capital Planning Commission ("NCPC") Review

12. Pursuant to the District of Columbia Home Rule Act of 1973, as amended (87 Stat. 790, Pub. L. No. 93-198, D.C. Code § 1-201 *et seq.*), the Commission referred the Application to NCPC for review and comment on August 5, 2019. (Ex. 58.)
13. By a letter dated September 5, 2019, NCPC concluded that the Application was not inconsistent with the Comprehensive Plan for the National Capital and would not adversely impact any other identified federal interests. (Ex. 59.)

**“Great Weight” to the Recommendations of OP**

- 14. Pursuant to § 13(d) 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 (2001)) and Subtitle Z § 405.8, the Commission must give “great weight” to the recommendations of OP.
- 15. The Commission concludes that OP’s reports, which provided an-depth analysis of the proposed NHR zone, are persuasive and concurs with OP’s recommendation that the Property be rezoned, as discussed above

**“Great Weight” to the ANC Report**

- 16. Pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975 (effective March 26, 1976, D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Y § 406.2, the Commission must give “great weight” to the issues and concerns raised in a written report of the affected ANC that was approved by the full ANC at a properly noticed meeting that was open to the public. 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).)
- 17. The Commission finds the issues raised by the Joint ANC Report persuasive and concurs in its recommendation of support for the Application.

**DECISION**

In consideration of the record and the Findings of Fact and Conclusions of Law contained in this Order, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application to amend the Zoning Map as follows:

SQUARE	LOT	Map Amendment
5860	97, 1025-1031, 1036-1037	MU-14 to NHR
5861	89, 991	MU-14 to NHR

**Proposed Action**

**Vote (July 31, 2019):** **5-0-0** (Robert E. Miller, Peter A. Shapiro, Anthony J. Hood, Peter G. May and Michael G. Turnbull to **APPROVE**)

**Final Action**

**Vote (Sept. 23, 2019):** **5-0-0** (Anthony J. Hood, Robert E. Miller, Peter A. Shapiro, Peter G. May, and Michael G. Turnbull to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 18-19 shall become final and effective upon publication in the *D.C. Register*; that is on February 21, 2020.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 *ET SEQ.* (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

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