

District of Columbia

REGISTER

HIGHLIGHTS

- D.C. Council enacts Act 23-556 to extend the report submission and sunset dates of the Police Reform Commission to April 30, 2021
- D.C. Council passes Resolution 24-1 to provide the rules of organization and procedure, code of official conduct, and sexual harassment policy for the Council of the District of Columbia during Council Period 24
- D.C. Council passes resolutions to appoint the Chairperson Pro Tempore, Committee Chairpersons, General Counsel, Budget Director, and Secretary to the Council of the District of Columbia
- Department of Employment Services solicits partners to develop in and out-of-school apprenticeship opportunities for minority youths
- Department of Health Care Finance announces intent to amend the District’s State Plan governing Medicaid Reimbursement of Outpatient and Emergency Services
- Department of Health Care Finance proposes establishment of a program that will allow District residents with intellectual and developmental disabilities who live in an independent environment to receive Medicaid Home and Community-Based services tailored to their specific needs
- D.C. Rental Housing Commission extends the comment period for the Proposed Rulemaking to amend the rules for implementing the Rent Stabilization Program

The Mayor of the District of Columbia establishes the Saving DC's Rental Housing Market Strike Force (Mayor’s Order 2020-129)

The Mayor of the District of Columbia declares a second public emergency effective January 6, 2021 (Mayor’s Order 2021-002) and extends the public emergency to 3:00 p.m. on Thursday, January 21, 2021 (Mayor’s Order 2021-003)

DISTRICT OF COLUMBIA REGISTER

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

MURIEL E. BOWSER
MAYOR

VICTOR L. REID, ESQ.
ADMINISTRATOR

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ENROLLED ORIGINAL

AN ACT

D.C. ACT 23-556

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 26, 2020

To amend, on an emergency basis, the Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020 to extend the report submission and sunset dates of the Police Reform Commission; and to amend the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2020 to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Police Reform Commission Extension Emergency Amendment Act of 2020".

Sec. 2. Section 122 of the Comprehensive Policing and Justice Reform Second Temporary Amendment Act of 2020, enacted on August 12, 2020 (D.C. Act 23-399; 67 DCR 9920), is amended as follows:

(a) Subsection (c)(1) is amended by striking the date "December 31, 2020" and inserting the date "April 30, 2021" in its place.

(b) Subsection (d) is amended by striking the date "December 31, 2020" and inserting the date "April 30, 2021" in its place.

Sec. 3. Section 122 of the Comprehensive Policing and Justice Reform Congressional Review Emergency Amendment Act of 2020, effective October 28, 2020 (D.C. Act 23-437; 67 DCR 12993), is amended as follows:

(a) Subsection (c)(1) is amended by striking the date "December 31, 2020" and inserting the date "April 30, 2021" in its place.

(b) Subsection (d) is amended by striking the date "December 31, 2020" and inserting the date "April 30, 2021" in its place.


Sec. 4. Fiscal impact statement.

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

ENROLLED ORIGINAL

Sec. 5. Effective date.

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



Chairman
Council of the District of Columbia

UNSIGNED

Mayor
District of Columbia
December 22, 2020

ENROLLED ORIGINAL

A RESOLUTION

24-1

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 4, 2021

To provide rules of organization and procedure for the Council of the District of Columbia, a Code of Official Conduct for the Council of the District of Columbia, and a Sexual Harassment Policy for the Council of the District of Columbia during Council Period 24.

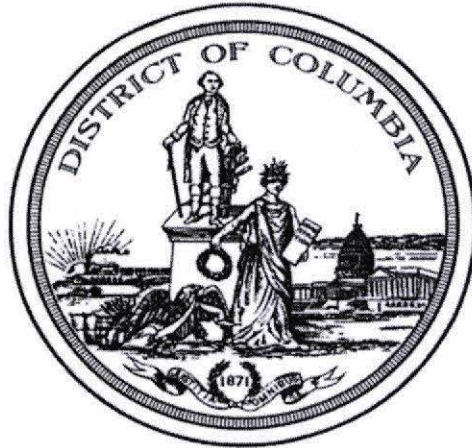
RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 24, Resolution of 2021".

Sec. 2. The document entitled "Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 24," attached and made a part of this resolution, shall be the rules of the Council of the District of Columbia.

Sec. 3. The document entitled "Council of the District of Columbia, Code of Official Conduct, Council Period 24," attached and made a part of this resolution shall be the Code of Official Conduct of the Council of the District of Columbia.

Sec. 4. The document entitled "Sexual Harassment Policy" attached and made a part of this resolution shall be the Sexual Harassment Policy of the Council of the District of Columbia.

Sec. 5. This resolution shall take effect immediately.



RULES OF ORGANIZATION AND PROCEDURE FOR THE COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD 24

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ARTICLE I—DEFINITIONS.

101. DEFINITIONS.

For the purposes of these Rules, the term:

(1) “Agency” includes any of the organizational units of the District, including a board, commission, department, division, instrumentality, or office, whether subordinate to or independent of the Mayor; provided, that the term “agency” does not include the Council or the District of Columbia courts.

(2) “Auditor” means the District of Columbia Auditor, established by section 455 of the Charter (D.C. Official Code § 1-204.55).

(3) “BEGA” means the Board of Ethics and Government Accountability, established by section 202 of the Government Ethics Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.02).

(4) “Bill” means a proposed act of the Council.

(5) “Budget” means the annual budget, including the Local Budget Act and the Federal Portion Budget Request Act, for all activities of all agencies and the Council, financed from all existing or proposed resources, including both operating and capital expenditures.

(6) “Budget of the Council” means the approved budget for the Council.

(7) “Ceremonial resolution” means an expression of appreciation, an honorarium of limited application, or a declaration of no legal effect, other than a sense of the Council resolution. A ceremonial resolution may be adopted only by unanimous consent.

(8) “Chairman” means the Chairman of the Council of the District of Columbia, established by section 401 of the Charter (D.C. Official Code § 1-204.01).

(9) “Charter” means Title IV of the Home Rule Act (D.C. Official Code § 1-204.01 *et seq.*).

(10) “Comprehensive Plan” means the comprehensive plan for the National Capital, including any elements of the plan, as provided for in section 423 of the Charter (D.C. Official Code § 1-204.23).

(11) “Council” means the Council of the District of Columbia, established by section 401 of the Charter (D.C. Official Code § 1-204.01).

(12) “Councilmember” or “Member” means a member of the Council, established by section 401 of the Charter (D.C. Official Code § 1-204.01), and includes the Chairman, unless the context clearly indicates otherwise.

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(13) "Council Period" means the legislative session of the Council beginning at noon on January 2nd of each odd-numbered year and ending at noon on January 2nd of the following odd-numbered year.

(14) "Council website" means the website with the domain name of dccouncil.us.

(15) "Emergency declaration resolution" means a resolution declaring the existence of emergency circumstances within the meaning of section 412(a) of the Charter (D.C. Official Code § 1-204.12(a)).

(16) "Engrossing" or "engrossment" means the process by which the text of a bill that has passed any reading prior to final reading is prepared for final reading.

(17) "Enrolling" or "enrollment" means the process by which the text of a measure that has passed final reading is finally prepared.

(18) "Fiscal impact statement" means a statement prepared by the Chief Financial Officer or the Budget Director that includes an estimate of the costs that may be incurred by the District as a result of the enactment of a measure in the current fiscal year and over the 4-year financial plan.

(19) "Grant budget modification request" means any grant budget modification request required to be submitted by the Mayor to the Council pursuant to section 446B of the Charter (D.C. Official Code § 1-204.46b).

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

(21) "Independent agency" means an agency of the District of Columbia government not subject to the administrative control of the Mayor.

(22) "Legal sufficiency determination" means a statement prepared by the General Counsel that shows that a measure has been reviewed by the Office of the General Counsel and determined to be legally sufficient.

(23) "Main motion" means a motion relating to the passing of a law or consideration of a legislative proposal.

(24) "Mayor" means the Mayor of the District of Columbia, established by section 421 of the Charter (D.C. Official Code § 1-204.21).

(25) "Measure" means a bill, resolution, or amendment to a bill or resolution, a main motion pending before the Council or before a committee of the Council, or a proposed reorganization plan, reprogramming request, grant budget modification request, proposed state plan, contract, or proposed municipal regulation transmitted by law to the Council for its approval.

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(26) "Meeting" means, except for the purposes of Rules 371 through 376, the formal convening of a committee or the Council, other than solely for the purpose of receiving testimony, held at a designated time and place for the purpose of transacting public business, including official action of any kind.

(27) "Normal business hours" means 9:00 a.m. through 5:30 p.m., Monday through Friday, except legal holidays.

(28) "Official action" shall have the same meaning as provided in section 742 of the Home Rule Act (D.C. Official Code § 1-207.42).

(29) "Person" means an individual, partnership, association, corporation, or any other organization.

(30) "Racial equity" shall have the same meaning as provided in section 101 of the Racial Equity Achieves Results (REACH) Amendment Act of 2020, enacted on December 7, 2020 (D.C. Act 23-503; 67 DCR 14390).

(31) "Racial Equity Impact Assessment" means a statement prepared by the Director of Racial Equity that includes an assessment of the potential impact on racial equity of enacting a bill or resolution.

(32) "Reading" means, within the meaning of section 412 of the Charter (D.C. Official Code § 1-204.12), an opportunity for the Members to debate and vote on proposed legislation at a regular or additional legislative meeting of the Council.

(33) "Recess of the Council" or "Council Recess" means periods of time during which regularly scheduled meetings of the Council are not held; i.e., July 15th through September 15th of each year, December 23rd through December 31st of each year, April 9th through April 16th, 2021, and April 8 through April 15th, 2022.

(34) "Register" means the *District of Columbia Register*.

(35) "Remuneration" means the rate or level of compensation to be paid an employee for the performance of the employee's duties up to and including, but no more than, the maximum authorized and appropriated by law.

(36) "Reprogramming Policy Act" means Subchapter IV of Chapter 3 of Title 47 of the District of Columbia Official Code (D.C. Official Code § 47-361 *et seq.*).

(37) "Reprogramming request" means any reprogramming request submitted to the Council pursuant to the Reprogramming Policy Act (D.C. Official Code § 47-363).

(38) "Resolution" shall have the same meaning as provided in section 412(a) of the Charter (D.C. Official Code § 1-204.12(a)).

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(39) "Sense of the Council resolution" means a resolution to express the Council's sentiment or opinion regarding a situation, practice, or event.

(40) "Short title" means the term by which an act or resolution may be cited.

(41) "Subpoena" means *subpoena ad testificandum* or *subpoena duces tecum*, or both.

(42) "Transcription" means a verbatim recodation, including a tape or video recording.

ARTICLE II—ORGANIZATION.**A. OATH OF OFFICE AND OFFICIAL CONDUCT.****201. OATH OF OFFICE.**

(a) On January 2nd of each odd-numbered year, a Councilmember whose term of office begins at that time shall take and subscribe an oath of office in accordance with subsection (c) of this section. The oath of office to a Councilmember shall be administered by a person of the Councilmember's choosing who is legally authorized to administer oaths. The Secretary shall supply printed copies of the oath that shall be subscribed by the Councilmembers, returned to the Secretary, and recorded in the Council records as conclusive proof of the fact that the signer took the oath in accordance with law.

(b) A Councilmember whose term of office does not begin at the beginning of a Council Period shall take and subscribe the oath of office as soon as practicable after the Councilmember has been duly certified as having been elected or selected for the position.

(c) The oath of office shall be as follows: "I, (Councilmember's name), do solemnly swear (or affirm) that I will faithfully execute the laws of the United States of America and of the District of Columbia, and will, to the best of my ability, preserve, protect, and defend the Constitution of the United States and the District of Columbia Home Rule Act, and will faithfully discharge the duties of the office on which I am about to enter."

202. CODE OF OFFICIAL CONDUCT AND COUNCIL POLICIES.

(a) Councilmembers and staff shall maintain a high level of ethical conduct in connection with the performance of their official duties and shall refrain from taking, ordering, or participating in any official action that would adversely affect the confidence of the public in the integrity of the District government. In connection with the performance of official duties, Councilmembers and staff shall strive to act solely in the public interest and not for any direct and tangible personal gain and shall not take

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an official action on a matter as to which they have a conflict of interest created by a personal, family, client, or business interest.

(b) Councilmembers and staff shall take full responsibility for understanding and complying with the letter and spirit of all laws and regulations governing standards of conduct for District public officials and employees, including those relating to conduct, conflicts of interest, gifts, disclosures, campaign finance, political activity, and freedom of information. Councilmembers and staff shall specifically adhere to the Code of Official Conduct of the Council of the District of Columbia.

(c)(1) The Council shall proactively review the District's overall ethics program, including structure, training, enforcement, and overall ethics culture, and work to comply with national standards for the creation of effective compliance and ethics programs.

(2) The Ethics Counselor for the Council shall periodically conduct training on the conflict of interest and ethics laws and regulations applicable to Councilmembers and staff. Ethics training materials, including summary guidelines to all applicable laws and regulations, shall be prepared by the Ethics Counselor for the Council and made readily available on the Council's website.

(d) Councilmembers and staff shall adhere to the Sexual Harassment Policy. A violation of the Sexual Harassment Policy shall constitute a violation of these rules.

(e) All Councilmembers and employees shall complete mandatory trainings as follows:

(1) Ethics training with the Office of the General Counsel within 2 months after beginning employment with the Council, and on an annual basis thereafter; and

(2) Equal employment opportunity training on an annual basis, which shall include training on sexual harassment and retaliation.

B. EXECUTIVE OFFICERS OF THE COUNCIL.

211. CHAIRMAN.

The Chairman shall be the presiding and chief executive officer of the Council.

212. CHAIRMAN PRO TEMPORE.

At the beginning of each Council Period or the next Legislative session after the position is vacated, the Chairman shall nominate one Councilmember as Chairman Pro Tempore who shall act in the place of the Chairman when the Chairman is absent or is recused. The Council shall, by resolution, act on the nomination.

213. VACANCY IN OFFICE OF CHAIRMAN.

Whenever a vacancy occurs in the Office of the Chairman or if the Chairman is serving as Acting Mayor, the Chairman Pro Tempore selected pursuant to Rule 212

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shall convene the Council. The Council shall, by resolution, elect one of its at-large members as Chairman and another at-large member as Chairman Pro Tempore until the vacancy in the Office of Chairman is filled or until the return of the regularly elected Chairman.

C. COMMITTEE MEMBERSHIP.**221. SELECTION.**

At the organizational meeting convened in accordance with Rule 301 at the beginning of the Council Period, the Chairman shall nominate the chairperson and members of each committee of the Council, and the Council shall, by resolution, act on the Chairman's nominations.

222. CHAIRMAN AS EX OFFICIO MEMBER.

The Chairman shall be an ex officio, voting member of all committees and subcommittees. The Chairman may be counted for purposes of a quorum but shall not increase the quorum requirement for the committee or subcommittee.

223. VACANCIES.

Whenever a vacancy occurs in the membership or chair of a committee, the Chairman may nominate a Councilmember to fill the vacancy, and the Council shall, by resolution, act on the Chairman's nomination.

224. DISTRIBUTION OF RESPONSIBILITY.

No individual Member may permanently chair more than one standing committee. The principle of seniority shall be respected in the assignment of committee chairs.

225. PARTICIPATION OF MEMBERS IN COMMITTEE MEETINGS.

(a) Any Councilmember may attend the meeting of any committee and may participate in committee discussions, but only a committee member may make a motion or cast a vote.

(b) Any Councilmember may participate fully in a hearing or roundtable of any committee.

226. RULES OF COMMITTEES.

(a) Each committee shall adopt written rules, at its first meeting, not inconsistent with these Rules or other applicable law, to govern its procedures. The committee rules shall incorporate the following requirements:

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(1) The scheduling of regular meeting days for conducting business, which shall not conflict with the time of other committees' regular meetings;

(2) A procedure for rescheduling or cancelling a regular meeting;

(3) A procedure for holding additional meetings to be called by the chairperson;

(4) A procedure for holding special meetings, which shall be called at the request of a majority of the members of the committee;

(5) Procedures to govern the chairing of a committee meeting in the absence of the chairperson;

(6) Procedures for keeping a complete record of all committee action, including roll-call votes;

(7) If, at the time of approval of a measure by a committee, a member of the committee gives notice of the intention to submit supplemental, minority, or additional views, that member shall be entitled to not less than 5 business days within which to file the views, which shall be included in the report of the committee on the measure;

(8) A procedure for amending the committee rules by a vote of a majority of the committee;

(9) A requirement that if an oral amendment is moved during a committee meeting, it shall, upon request by a member, be reduced to writing and read by the Committee Director or other Committee staff, and made available for public inspection as soon as practicable;

(10) A requirement for the circulation of notice of the date, hour, and place of all committee meetings to all Councilmembers at least 24 hours before the date of the meeting, along with a copy of the agenda of the meeting, a draft of any measures to be considered, and, if required pursuant to Rule 803(e)(5), a comparative print, unless at least 4 members of the committee agree, in a written record, to a shorter notice; and

(11) A procedure for providing at least 24 hours' notice of the cancellation of a meeting.

(b) The provisions of these Rules shall be considered rules of the committee.

(c) When these Rules are silent, a committee may adopt additional rules. Committee rules adopted under this section shall be consistent with these Rules and other applicable law and shall be filed with the Secretary and posted on the Council website.

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227. COMMITTEE-ACTIVITY REPORT.

Each committee shall file a committee-activity report before the end of each Council Period that details the committee's oversight and legislative activities during that Council Period. The format and content of the committee-activity report shall be determined by the Secretary.

D. STANDING COMMITTEES.**231. COMMITTEE OF THE WHOLE.**

(a) The Committee of the Whole is responsible for the annual budget, including amendments, additions, or supplements to the budget and any revised, supplemental, or deficiency budget; coordinating the Council's relationships with the Congress and the Federal executive branch; monitoring the progress of Council legislation through Congress; monitoring the status of original legislative proposals in Congress that may affect the District, the Council, or its legislation; amendments to the District Charter; Council appointments to boards and commissions; public space naming; street and alley acquisition and closing; reapportionment and realignment of the political subdivisions of the District; Council administration and personnel; the scheduling of all matters for consideration by the Council in the legislative meeting; legislative matters related to the District as a political entity, including self-determination and statehood; matters affecting the Freedom of Information Act; coordinating the Council's relationships with appropriate regional, state, and national associations and organizations; the Council's relationship with regional authorities and other regional bodies and organizations not specifically assigned to other committees; all matters related to public education, including matters exclusively concerning the University of the District of Columbia or the Community College of the District of Columbia; District employees' retirement; the development of the Comprehensive Plan and other matters pertaining to land use; revision and codification of Title 49 of the D.C. Official Code; international business and affairs; consumer and regulatory affairs; and other matters assigned to it by these Rules or by the Chairman.

(b) The Chairman is the chairperson of the Committee of the Whole, and its members include all members of the Council. The Committee of the Whole shall meet on the third Tuesday of each month, except during periods of Council Recess, in a work session to consider measures that have been reported and timely filed by committees pursuant to subsection (c) of this section. The Chairman shall prepare the agenda for each meeting of the Committee of the Whole. The Chairman may not withhold a measure duly reported and timely filed by another committee from the agenda of a regular Committee of the Whole meeting, and the Chairman may not hold a measure in the Committee of the Whole that has been properly reported by another committee unless the Committee of the Whole votes to table, postpone, or recommit the measure.

(c)(1) Except as provided in Rule 314, each measure reported by the committees of the Council identified in Rules 232 to 240 shall be referred to the Committee of the

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Whole for a review of its legal sufficiency and technical compliance with the drafting rules of the Council; for ascertaining completion of the record; for a determination of the sufficiency of the fiscal impact statement; and for scheduling for a legislative meeting.

(2) No measure may be reported by a committee for consideration at the Committee of the Whole unless the measure was accompanied by a fiscal impact statement and a legal sufficiency determination, as required by Rules 309 and 310, respectively, at the time of committee markup.

(3) A measure and accompanying committee report, reported by a committee for consideration at the Committee of the Whole, may be presented by the chairperson of the committee or by another member of the committee designated by the chairperson of the committee. In the absence of the chairperson of the committee and the designation of a member of the committee, the Chairman shall present the measure and committee report for consideration at the Committee of the Whole.

(4) If amendments have been made to a measure by a committee that are substantial and outside the legislative jurisdiction of the committee, the Chairman may refer the measure to the relevant committee before the legislation is scheduled for a legislative meeting.

(5) The Secretary shall prepare a log of committee reports that have been filed timely for review by the Committee of the Whole. The log may be updated to reflect additional filings as of noon on the third business day before the Committee of the Whole meeting.

(d) Notwithstanding any other provision of the Rules, the Committee of the Whole may hold a hearing or roundtable, or conduct an investigation, on any matter relating to District affairs.

(e) The following agencies come within the purview of the Committee of the Whole:

- Board for the Condemnation of Insanitary Buildings
- Board of Industrial Trades
- Board of Review of Anti-Deficiency Violations
- Board of Zoning Adjustment
- Commemorative Works Committee
- Commission and Office on Out of School Time Grants and Youth Outcomes
- Commission on the Arts and Humanities
- Common Lottery Board
- Community Schools Advisory Committee
- Construction Codes Coordinating Board
- Council of the District of Columbia
- Department of Consumer and Regulatory Affairs, or any successor agency
- District of Columbia Education Research Practice Partnership Review Panel

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District of Columbia Educational Opportunity for Military Children State Council
District of Columbia Public Charter School Board
District of Columbia Public Schools
District of Columbia Retirement Board, including the District of Columbia Police Officers and Fire Fighters' Retirement Fund and the Teachers' Retirement Fund
District of Columbia State Athletics Commission
District Retiree Health Contribution
Healthy Youth and Schools Commission
Higher Education Licensure Commission
Historic Preservation Review Board
Interagency Coordinating Council
Interstate Medical Licensure Compact Commission
Law Revision Commission
Metropolitan Washington Airports Authority
Metropolitan Washington Council of Governments
National Capital Planning Commission
New Columbia Statehood Commission
Office of Budget and Planning
Office of the District of Columbia Auditor
Office of Planning
Office of the Deputy Mayor for Education
Office of the Ombudsman for Public Education
Office of the State Superintendent of Education (including Advisory Panel on Special Education, Early Childhood Development Coordinating Council)
Office of the Statehood Delegation
Office of the Student Advocate
Office of Zoning
Other Post-Employment Benefits Fund Advisory Committee
Pay-As-You-Go Capital
Public Charter School Credit Enhancement Fund Committee
State Board of Education
Students in the Care of D.C. Coordinating Committee
Tax Revision Commission
Tobacco Settlement Financing Corporation
University of the District of Columbia
Washington Metropolitan Area Transit Authority
Washington Metrorail Safety Commission
Zoning Commission

(f)(1) The Subcommittee on Redistricting, as delegated by the Committee of the Whole, shall be responsible for developing a realignment and reapportionment of the District's political subdivisions based on the 2020 Census.

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(2) Any entity created to develop a redistricting proposal shall come within the purview of the Subcommittee on Redistricting.

232. COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT.

(a) The Committee on Business and Economic Development is responsible for matters concerning small and local business development policy; matters related to economic, industrial, and commercial development; the disposition of property for economic development purposes; joint jurisdiction with the Committee on Housing and Executive Administration for New Communities; the regulation of alcoholic beverages; public utilities; the establishment and oversight of business improvement districts ("BIDs"); matters relating to taxation and revenue for the operation of the government of the District of Columbia; industrial-revenue bonds; general-obligation bond acts and revenue anticipation notes; the regulation of banks and banking activities, securities, and insurance, including private health insurance, but not including the Health Benefit Exchange; and the regulation of for-hire vehicles.

(b) The following agencies come within the purview of the Committee on Business and Economic Development:

- Alcoholic Beverage Regulation Administration
- Board of Accountancy
- Board of Architecture, Interior Design, and Landscape Architecture
- Board of Barber and Cosmetology
- Board of Consumer Claims Arbitration for the District of Columbia
- Board of Funeral Directors
- Board of Professional Engineering
- Captive Insurance Agency
- Combat Sports Commission
- Commission on Nightlife and Culture
- Commission to Commemorate and Recognize Charles Hamilton Houston and for His Contributions to the American Civil Rights Movement, Education, and the Legal Profession
- Department of For-Hire Vehicles
- Department of Insurance, Securities and Banking
- Department of Small and Local Business Development
- Deputy Mayor for Planning and Economic Development
- Destination DC
- For-Hire Vehicle Advisory Council
- Innovation and Technology Inclusion Council
- Kennedy Street NW Economic Development and Small Business Revitalization Advisory Committee
- Multistate Tax Commission
- Office of Lottery and Gaming

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Office of Nightlife and Culture
Office of the Chief Financial Officer (not including the Office of Budget and Planning)
Office of the People's Counsel
Public Service Commission
St. Elizabeth's East Redevelopment Initiative Advisory Board
Walter Reed Army Medical Center Site Reuse Advisory Committee
Washington Convention and Sports Authority/Events DC

233. COMMITTEE ON GOVERNMENT OPERATIONS AND FACILITIES.

(a) The Committee on Government Operations and Facilities is responsible for matters relating to the general operation and service of government, including procurement; maintenance of public buildings and property management, including the declaration of government property as no longer required for public purposes; human rights; partnerships and grants management; matters relating to lesbian, gay bisexual, transgender, and questioning affairs; issues related to women; veterans affairs; matters affecting administrative law and procedure; matters regarding Advisory Neighborhood Commissions; and matters regarding returning citizens.

(b) The following agencies come within the purview of the Committee on Government Operations and Facilities:

Advisory Board on Veterans Affairs for the District of Columbia
Advisory Committee on Street Harassment
Advisory Committee to the Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs
Advisory Neighborhood Commissions
Commission for Women
Commission on Fashion Arts and Events
Commission on Human Rights
Commission on Re-Entry and Returning Citizen Affairs
Contract Appeals Board
Department of General Services
Emancipation Commemoration Commission
Interfaith Council
Office of Administrative Hearings (including the Advisory Committee to the Office of Administrative Hearings and the Commission on Selection and Tenure of Administrative Law Judges)
Office of Advisory Neighborhood Commissions
Office of Community Affairs
Office of Contracting and Procurement
Office of Human Rights
Office of Lesbian, Gay, Bisexual, Transgender, and Questioning Affairs

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Office of Partnerships and Grants Services
Office of Risk Management
Office of the Chief Technology Officer
Office of the Inspector General
Office of Veterans Affairs
Office on Religious Affairs
Office on Returning Citizen Affairs
Office on Women's Policy and Initiatives

234. COMMITTEE ON HEALTH.

(a) The Committee on Health is responsible for matters concerning health, including environmental health; and the regulation of health occupations and professions, and health care inspectors.

(b) The following agencies come within the purview of the Committee on Health:

Advisory Committee on Acupuncture
Advisory Committee on Anesthesiologist Assistants
Advisory Committee on Clinical Laboratory Practitioners
Advisory Committee on Naturopathic Medicine
Advisory Committee on Physician Assistants
Advisory Committee on Polysomnography
Advisory Committee on Surgical Assistants
Board of Allied Health
Board of Audiology and Speech-Language Pathology
Board of Behavioral Health
Board of Chiropractic
Board of Dentistry
Board of Dietetics and Nutrition
Board of Long-Term Care Administration
Board of Marriage and Family Therapy
Board of Massage Therapy
Board of Medicine
Board of Nursing
Board of Occupational Therapy
Board of Optometry
Board of Pharmacy
Board of Physical Therapy
Board of Podiatry
Board of Professional Counseling
Board of Psychology
Board of Respiratory Care
Board of Social Work
Board of Veterinary Medicine

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Commission on Health Disparities
Commission on Health Equity
Commission on HIV/AIDS
Committee on Metabolic Disorders
Council on Physical Fitness, Health, and Nutrition
Department of Behavioral Health
Department of Health
Department of Health Care Finance
District of Columbia Health Benefit Exchange Authority
Health Information Exchange Policy Board
Health Literacy Council
Medicaid Reserve
Mental Health Planning Council
Metropolitan Washington Regional Ryan White Planning Council
Not-For-Profit Hospital Corporation
Office of the Deputy Mayor for Health and Human Services
Statewide Health Coordinating Council

235. COMMITTEE ON HOUSING AND EXECUTIVE ADMINISTRATION.

(a) The Committee on Housing and Executive Administration is responsible for matters relating to the development, maintenance, preservation, and regulation of housing stock, including rental housing and public housing; neighborhood revitalization, development, improvement, and stabilization; joint jurisdiction for the purpose of oversight (not legislation) with the Committee on Business and Economic Development for New Communities; urban affairs; matters related to the Executive Office of the Mayor; and matters related to seniors.

(b) The following agencies come within the purview of the Committee on Housing and Executive Administration:

Advisory Committee on Community Use of Public Space
Age-Friendly DC Task Force
Board of Real Estate Appraisers
Condominium Association Advisory Council
Commission on Aging
Commission on the Martin Luther King, Jr. Holiday
Department of Aging and Community Living
Department of Housing and Community Development
District of Columbia Housing Authority
Executive Office of the Mayor
Financial Literacy Council
Housing and Community Development Reform Commission
Housing Finance Agency
Housing Production Trust Fund

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Mayor's Office of Legal Counsel
 Office of the City Administrator
 Office of the Secretary of the District of Columbia
 Office of the Senior Advisor
 Office of the Tenant Advocate
 Office-to-Affordable-Housing Task Force
 Real Estate Commission
 Real Property Tax Appeals Commission for the District of Columbia
 Rental Housing Commission

236. COMMITTEE ON HUMAN SERVICES

(a) The Committee on Human Services is responsible for matters concerning welfare; social services; homelessness; housing voucher and Department of Human Services programs administered by the District of Columbia Housing Authority in coordination with the Department of Human Services that are targeted for the homeless (jointly for oversight purposes only with the Committee on Housing and Executive Administration); disability services; and government ethics.

(b) The following agencies come within the purview of the Committee on Human Services:

Advisory Committee on Child Abuse and Neglect
 Board of Ethics and Government Accountability
 Child and Family Services Agency
 Citizen Review Panel on Child Abuse and Neglect
 Commission on Persons with Disabilities
 Department of Human Services
 Department on Disability Services
 Developmental Disabilities State Planning Council
 Interagency Council on Homelessness
 Office for the Deaf, Deafblind, and Hard of Hearing
 Office of Disability Rights
 Office of the Ombudsperson for Children
 State Rehabilitation Council
 Statewide Independent Living Council

237. COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY.

(a) The Committee on the Judiciary and Public Safety is responsible for matters affecting the judiciary and judicial procedure that are within the authority of the Council; matters affecting decedents' estates and fiduciary affairs; matters affecting criminal law and procedure; juvenile justice; elections; campaign finance; matters arising from or pertaining to the police and fire regulations of the District of Columbia; and other matters related to police protection, correctional institutions (including youth

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corrections), fire prevention, emergency medical services, homeland security, criminal justice, and public safety. The Committee shall also serve as the Council's liaison to federal partners in the justice system, including the United States Attorney for the District of Columbia, the Public Defender Service for the District of Columbia, the District of Columbia Courts, the Court Services and Offender Supervision Agency, the Pretrial Services Agency, the Federal Bureau of Prisons, and the United States Parole Commission.

(b) The following agencies come within the purview of the Committee on the Judiciary and Public Safety:

- Access to Justice Initiative
- Child Fatality Review Committee
- Child Support Guideline Commission
- Clemency Board
- Commission on Judicial Disabilities and Tenure
- Comprehensive Homicide Elimination Strategy Task Force
- Concealed Pistol Licensing Review Board
- Corrections Information Council
- Criminal Code Reform Commission
- Criminal Justice Coordinating Council
- Department of Corrections
- Department of Forensic Sciences
- Developmental Disabilities Fatality Review Committee
- District of Columbia Board of Elections
- District of Columbia Judicial Nomination Commission
- District of Columbia National Guard
- District of Columbia Sentencing Commission
- Domestic Violence Fatality Review Board
- Fire and Emergency Medical Services Department
- Homeland Security and Emergency Management Agency
- Homeland Security Commission
- Juvenile Justice Advisory Group
- Maternal Mortality Review Committee
- Metropolitan Police Department
- Motor Vehicle Theft Prevention Commission
- Office of Campaign Finance
- Office of Neighborhood Safety and Engagement
- Office of Police Complaints
- Office of the Attorney General for the District of Columbia
- Office of the Chief Medical Examiner
- Office of the Deputy Mayor for Public Safety and Justice
- Office of Unified Communications
- Office of Victim Services and Justice Grants
- Police Complaints Board

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Police Officers Standards and Training Board
Science Advisory Board
Uniform Law Commission
Use of Force Review Board
Violence Fatality Review Committee

238. COMMITTEE ON LABOR AND WORKFORCE DEVELOPMENT.

(a) The Committee on Labor and Workforce Development is responsible for labor relations; matters related to workforce development; and employment.

(b) The following agencies come within the purview of the Committee on Labor and Workforce Development:

Adult Career Pathways Task Force
Apprenticeship Council
Department of Employment Services
Department of Human Resources
Employees' Compensation Fund
Labor/Management Partnership Council
Occupational Safety and Health Board
Office of Employee Appeals
Office of Labor Relations and Collective Bargaining
Public Employee Relations Board
Unemployment Compensation Fund
Unemployment Insurance Trust Fund
Universal Paid Leave Fund
Workforce Investment Council
Workforce Investment Fund
Youth Apprenticeship Advisory Committee

239. COMMITTEE ON RECREATION, LIBRARIES, AND YOUTH AFFAIRS.

(a) The Committee on Recreation, Libraries, and Youth Affairs is responsible for public libraries; public parks and recreation; cable television and entertainment; matters relating to Caribbean, Latino, African, African American, and Asian and Pacific Islander affairs; and youth affairs (other than juvenile justice).

(b) The following agencies come within the purview of the Committee on Recreation, Libraries, and Youth Affairs:

Advisory Commission on Caribbean Community Affairs
Board of Library Trustees
Commission on African Affairs

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Commission on African American Affairs
Commission on Asian and Pacific Islander Affairs
Commission on Fathers, Men, and Boys
Commission on Latino Community Development
Department of Parks and Recreation
Department of Youth Rehabilitation Services
District of Columbia Public Library System
District of Columbia Public Library Trust Fund
Juvenile Abscondence Review Committee
Office of Cable Television, Film, Music and Entertainment
Office of East of the River Services
Office on African Affairs
Office on African American Affairs
Office on Asian and Pacific Islanders Affairs
Office on Caribbean Affairs
Office on Fathers, Men, and Boys
Office on Latino Affairs
Public Access Corporation
Serve DC

240. COMMITTEE ON TRANSPORTATION AND THE ENVIRONMENT.

(a) The Committee on Transportation and the Environment is responsible for matters relating to environmental protection; highways, bridges, traffic, vehicles, and other transportation issues; maintenance of public spaces; recycling; waste management; and water supply and wastewater treatment.

(b) The following agencies come within the purview of the Committee on Transportation and the Environment:

Commission on Climate Change and Resiliency
Department of Energy and Environment
Department of Motor Vehicles
Department of Public Works
District Department of Transportation
District of Columbia Bicycle Advisory Council
District of Columbia Water and Sewer Authority
Food Policy Council
Gas Station Advisory Board
Green Buildings Advisory Council
Green Finance Authority
Leadership Council for a Cleaner Anacostia River
Major Crash Review Task Force
Multimodal Accessibility Advisory Council
Office of the Deputy Mayor for Operations and Infrastructure

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Pedestrian Advisory Council
Public Space Committee
Recreational Trails Advisory Committee
Soil and Water Conservation District
Streetcar Financing and Governance Task Force
Sustainable Energy Utility Advisory Board
Transit Rider Advisory Council
Urban Forestry Advisory Council
Washington Aqueduct

241. SPECIAL COMMITTEE ON COVID-19 PANDEMIC RECOVERY.

(a) The Special Committee on COVID-19 Pandemic Recovery is responsible for coordinating the legislative response and conducting oversight of matters related to the District's COVID-19 pandemic recovery initiatives; and making recommendations to the Council to support the District's recovery from the COVID-19 pandemic.

(b) The responsibilities of the Special Committee shall be to investigate and study, in coordination with other standing committees when feasible:

(1) Proposals to ensure that the recovery from and continued response to the adverse health, education, transportation, and economic impacts of the COVID-19 pandemic ensures equitable outcomes for populations disproportionately affected by the pandemic, including workers, families, small businesses, and direct service providers;

(2) How additional infrastructure investments can address inequities exposed by the COVID-19 pandemic, including equitable access to high-speed broadband internet access, high quality early childcare, reliable transit options, and a continuum of healthcare services;

(3) The implementation or effectiveness of any law applied, enacted, or under consideration to address the pandemic and prepare for future pandemics;

(4) Policy proposals to ensure the recovery of large systems that were closed or operating at diminished capacity for long periods during the COVID-19 pandemic, including the court system and public transportation;

(5) How federal pandemic recovery funds can be directed to address inequitable impacts of the COVID-19 pandemic; and

(6) Any other issues related to the COVID-19 pandemic recovery efforts.

(c) The special committee is authorized to hold hearings, including joint hearings with any other standing committee, on any matters related to its purpose as described in this section. Hearings shall be coordinated by the co-chairs of the special committee pursuant to these Rules.

(d) The special committee shall not mark-up any legislation.

(e) The special committee shall conclude its business and expire on January 1, 2022, or the date the special committee issues its final report, whichever occurs first.

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E. CREATION OF SUBCOMMITTEES.**245. SUBCOMMITTEES.**

The Chairman shall nominate the chairperson and members of each subcommittee of the Council. The Council shall, by resolution, act on the Chairman's nominations. A subcommittee may use subpoenas to obtain testimony or documents only if the standing committee of which it is a subcommittee authorizes the issuance of subpoenas. Each bill or resolution reported by a subcommittee shall be referred to its standing committee for a vote and scheduling for the Committee of the Whole. Subcommittees shall comply with the requirements of these Rules and those of the standing committee of which it is a subcommittee.

F. SPECIAL COMMITTEES AND SPECIAL PROJECTS.**251. SPECIAL COMMITTEES.**

The Council may, by resolution, establish a special committee to consider investigations, ethics, or other matters. The resolution shall set forth the jurisdiction, size, duration, subpoena authority pursuant to Rules 601(a) and 611, and date for final action of the special committee.

252. SPECIAL PROJECTS.

The Council may, by resolution, establish a special project related to policy development or oversight. The resolution shall set forth the timetable, budget, goals, and deliverables of the special project, and specify whether the project will be undertaken by a standing or special committee, or another method of organization.

G. APPOINTED OFFICERS OF THE COUNCIL.**261. APPOINTMENT OF OFFICERS.**

The appointed officers of the Council are the Secretary, General Counsel, and Budget Director. The Chairman shall recommend the assignment and removal of these officers, and the Council shall, by resolution, act on the Chairman's recommendation.

262. SECRETARY.

(a) The Secretary is the chief administrative officer of the Council and is responsible for maintaining records of Council actions including the filing of bills and proposed resolutions, amendments to bills and resolutions, requests for hearings, committee reports, and other records and reports assigned by these Rules, the Council, or the Chairman, and for proposing and administering the fiscal year budget of the Council. The Secretary shall only disburse funds for the direct operating expenses in the office of a Member or Officer.

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(b) There is established a Council Office of Racial Equity under the Secretary to the Council, which shall be managed by a Director of Racial Equity. The Council Office of Racial Equity shall:

(1) Produce racial equity training materials and provide ongoing racial equity training for Councilmembers and staff;

(2) Issue Racial Equity Impact Assessments pursuant to Rule 311;

(3) Coordinate and collaborate with the Judicial and Executive branches, including the Office of Racial Equity within the Office of the City Administrator and the Racial Equity Advisory Board, on matters of advancing racial equity; and

(4) Accept public comment on any aspect of its duties or on matters related to racial equity before the Council.

263. GENERAL COUNSEL.

(a) The General Counsel is responsible for providing legal advice as provided in subsection (b) of this section; providing representation for the Council in any pending legal action to which the Council is a party or in which the Chairman determines that the Council has a significant interest; initiating lawsuits on behalf of the Council upon authorization by resolution of the Council; providing legal representation for a Member or employee consistent with subsection (c) of this section for actions taken within the scope of the Member or employee's official duties and in which the Chairman determines that the Council has a significant interest; retaining and supervising outside counsel as appropriate to conduct investigations and provide legal advice or representation to the Council, its Members, or employees; apprising the Council of developments in the law relating to Council legislation; supervising the publication of the District of Columbia Official Code; preparing technical-amendment and enactment bills; providing legislative-drafting assistance to all Members and staff; engrossing and enrolling measures, including making necessary technical and conforming changes; ascertaining the legal sufficiency of legislation and preparing legal sufficiency determinations pursuant to Rule 310; identifying legislative concerns and providing Members with alternative policy options to solve those concerns; advising the Council on matters of parliamentary procedure; compiling and, from time to time, publishing the parliamentary precedents of the Council; and providing support to the Law Revision Commission. The General Counsel, following consultation with the Chairman, may make a request of the Office of the Attorney General for legal representation for a Member or employee for actions taken within the scope of the Member or employee's official duties or for matters in which the Council has a significant interest.

(b) The General Counsel and the attorneys within the Office of the General Counsel ("OGC") shall, as a general matter, maintain confidentiality with respect to their discussions with Members and Council employees regarding legislation, legal advice on issues related to Council business, and ethics guidance. However, an

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attorney-client relationship exists only between the General Counsel/OGC and the Council as a body, and not between the General Counsel/OGC and any individual Member or Council employee. Accordingly, the Council, by resolution, may direct the General Counsel to reveal otherwise confidentially held discussions or information, including ethics advice, shared between the General Counsel or any OGC attorney and any individual Member or Council employee, if the Council finds that the discussions or information are integral to an investigation of or allegation against a Councilmember or Council employee.

(c) The General Counsel shall not represent a Member or Council employee whenever the alleged conduct with regard to which the Member or employee desires representation does not reasonably appear to have been performed within the scope of his or her official duties, such as conduct that is the subject of criminal proceedings or proceedings before the Board of Ethics and Accountability or the Office of the Inspector General.

(d) The General Counsel shall serve as Ethics Counselor for the Council.

264. BUDGET DIRECTOR.

The Budget Director is responsible for advising Councilmembers on budget-related matters; coordinating the development of the annual budget and financial plans, and related legislation, including any proposed revised, supplemental, or deficiency budget; certifying committee budget reports pursuant to Rule 703(b)(2); and issuing fiscal impact statements pursuant to Rule 309. The Budget Director also is responsible for issuing policy and economic impact analyses pursuant to Rule 308 and conducting research on matters of interest to the Council. The Budget Director serves as a resource for all Councilmembers and committees.

H. COUNCIL PERSONNEL AND APPOINTMENTS.

271. SUBORDINATE STAFF OF APPOINTED OFFICERS.

The appointed officers may assign, remove, and determine the remuneration for their respective professional and clerical staffs, subject to appropriations and positions allocated by the Council.

272. COMMITTEE STAFF.

(a) The chairperson of each committee shall appoint and shall present for the approval by resolution of the committee at the first committee meeting of the Council Period the names and titles of each committee staff person. Subsequent appointments shall be presented for approval of committee members at the meeting of the committee following the appointment. Staff appointments shall be filed with the Secretary.

(b) The chairperson shall determine the remuneration for the staff of the committee, subject to appropriations and positions allocated by the Council.

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(c) The chairperson of each committee may remove staff and shall notify the members of the committee of such action within 3 business days.

(d) In the case of a vacancy in the Office of a Councilmember who chairs a committee, the committee staff may be transferred to the supervision of the Chairman.

273. COUNCILMEMBERS' PERSONAL STAFF.

(a) Each Councilmember may assign, remove, and determine the remuneration for the Councilmember's personal staff, subject to appropriations and positions allocated by the Council.

(b) In the case of a vacancy in the Office of a Councilmember, the employees of the Councilmember's personal office may be transferred to the supervision of the Chairman.

274. SEPARATION PAY AND BUDGET ACCOUNTING.

(a) Notwithstanding Rules 271, 272, and 273, when an employee is separated for non-disciplinary reasons, a Councilmember may authorize severance pay as provided by law.

(b) If it is known that a Councilmember will be in office for a time period that is less than the remaining fiscal year, the Councilmember's budget shall be adjusted to account for the time to be served, unless the Council otherwise authorizes, by resolution, a different amount.

275. COUNCIL APPOINTMENT TO OTHER BODIES.

When the law provides for the Council to appoint an individual to another body, the Chairman shall nominate an individual and the Council shall act, by resolution, on the nomination. Unless the General Counsel advises against doing so to maintain the separation of powers under the District Charter, a Council appointee shall report to the Council on a periodic basis and the Council may instruct, by resolution, its representative as to the position to take on a particular matter.

276. APPOINTMENT BY COMMITTEES AND MEMBERS.

(a) When the law provides for a committee to appoint an individual to another body, the committee shall, by resolution, act on the appointment.

(b) When the law provides for a Councilmember to appoint or designate an individual to a board or commission, the Councilmember shall make the appointment or designation by filing a memorandum with the Secretary that states:

(1) The legal capacity in which the Councilmember is acting, e.g., as a Councilmember or as a chairperson or member of a particular committee;

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- (2) The date of appointment;
 - (3) The official name of the board or commission to which the person is being appointed;
 - (4) The name, complete mailing address, and ward designation of the person appointed; provided, that such personal information is not required in the resolution;
 - (5) The law under which the appointment or designation is being made;
- and
- (6) The term of the appointment or designation.

277. RESIDENCY REQUIREMENT FOR APPOINTMENTS.

Each member of a District board or commission who is appointed under Rule 275 or 276, if not already a resident of the District, shall become one within 180 days after the effective date of the appointment and shall remain a District resident for the duration of the appointment, unless the law or order that established the board or commission specifically authorizes the appointment of a nonresident as a member of the board or commission or if a majority of the Council present and voting waives the residency requirement.

I. COMPUTING TIME, CIRCULATION, AND FILING REQUIREMENTS.**281. COMPUTING TIME.**

(a) Unless a law or rule specifically provides otherwise, when counting a time period:

- (1) Stated in days or a longer unit of time:
 - (A) Exclude the day of the event that triggers the period;
 - (B) Count every day, including Saturdays, Sundays, and legal holidays;
 - (C) Exclude days of recess; and
 - (D) Include the last day of the time period, but if the last day is a Saturday, Sunday, legal holiday, or day of recess, the period continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or day of recess.
- (2) Stated in hours:
 - (A) Begin counting immediately on the first business hour after the occurrence of the event that triggers the period;

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(B) Count each hour, including hours during intermediate Saturdays, Sundays, and legal holidays;

(C) Exclude hours during days of recess; and

(D) If the period would end on a Saturday, Sunday, legal holiday, or day of recess, the period continues to run until the same time on the next day that is not a Saturday, Sunday, legal holiday, or day of recess.

(b) For the purposes of these Rules, when counting a time period stated in “business days”:

(1) Exclude the day of the event that triggers the period;

(2) Exclude intermediate Saturdays, Sundays, legal holidays, and days of recess; and

(3) Include the last day of the time period, but if the last day is a Saturday, Sunday, legal holiday, or day of recess the period continues to run until the end of the next day that is not a Saturday, Sunday, legal holiday, or day of recess.

(c) For the purposes of these Rules, when counting a time period for a notice requirement under these Rules, include days of recess.

282. FILING WITH THE SECRETARY.

(a) Unless a law or rule specifically provides otherwise, when a Councilmember is required to file a document with or provide notice to the Secretary, the Councilmember shall deliver a hard copy of the document or the notice to the Secretary.

(b)(1) A Councilmember shall also file an electronic copy in Word format of the following documents with the Secretary by uploading to the Council’s intranet in a file under the name of the Councilmember:

(A) A measure introduced pursuant to Rules 401 and 402;

(B) A committee print and report;

(C) Amendments; and

(D) Any other document required to be electronically filed by rule or law or that the Secretary determines should be filed electronically.

(2) The text of any committee report uploaded to the Council’s intranet in pdf format must be made text-readable prior to its upload.

(c) When an electronic copy is required under subsection (b) of this section, the document shall not be considered as filed pursuant to subsections (a) and (b) of this section until the electronic copy is filed. No measure may be noticed for a hearing or

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roundtable or added to the agenda of the Committee of the Whole unless an electronic copy, in Word format, of the measure has been uploaded to the Council's intranet.

(d) Notwithstanding subsection (a) of this section, the Secretary may elect to receive a document electronically or establish a system or method for the electronic filing of any document.

283. CIRCULATION TO MEMBERS AND COMMITTEES.

(a) The Secretary shall distribute, upon introduction or referral, an electronic copy of each measure to each Councilmember. The Secretary shall also distribute to each Councilmember, upon introduction or filing, a notice of investigation by subpoena, and a Mayoral disapproval of a Council act.

(b) Any document that is required to be circulated by a rule or law shall be distributed electronically to all Members and staff and posted on the Council's website.

(c) A Councilmember may elect to receive a hard copy of any document that is required to be circulated by the Secretary or a Member.

ARTICLE III—PROCEDURES FOR MEETINGS.**A. LEGISLATIVE MEETINGS.****301. ORGANIZATIONAL MEETING.**

On the first day of each Council Period that is not a Saturday, Sunday, or legal holiday, the Council shall convene an organizational meeting for the purpose of considering the adoption of Rules of Organization and Procedure and Code of Official Conduct, selecting a Chairman Pro Tempore pursuant to Rule 212, appointing committee chairs and memberships, appointing Councilmembers to regional bodies, and appointing Council officers. If a quorum is not present, the Chairman shall convene an organizational meeting as soon as feasible.

302. REGULAR MEETINGS.

(a) The Council shall hold a regular legislative meeting on the first Tuesday of every month except during a Council Recess or an election year. When the day for a regular legislative meeting falls on a legal holiday, the meeting shall be held at the same time on the next day. Regular legislative meetings shall begin at 10:00 a.m.

(b) Regular meetings of the Council shall be held in the Council Chamber, Room 500 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W.

(c) The Chairman may designate another time, day, or place for a legislative meeting at a prior legislative meeting or meeting of the Committee of the Whole or by circulating and filing notice with the Secretary at least 48 hours before the meeting.

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(d) The Chairman may cancel a future regularly scheduled meeting. The Secretary shall circulate notice to each Councilmember and the public of a meeting cancellation.

303. ADDITIONAL AND SPECIAL MEETINGS.

(a) The Chairman may call additional legislative meetings of the Council.

(b) Any 2 Councilmembers may request that the Chairman call a special legislative meeting. The request in hard-copy shall be filed with the Secretary. Immediately upon the filing of the request, the Secretary shall notify the Chairman and other Councilmembers of the filing of the request. If, within 3 business days after the request is filed, the Chairman does not call the requested special meeting, a majority of the Councilmembers may file in hard-copy with the Secretary a written notice that a special legislative meeting shall be held, specifying the date, hour, place, and agenda of the special legislative meeting; provided, that the meeting shall not occur less than 48 hours after the notice. Immediately upon the filing of the notice, the Secretary shall circulate notice to each Councilmember as provided in subsection (c) of this section.

(c) Whenever an additional or special legislative meeting is called, the Secretary shall circulate notice to each Councilmember not less than 48 hours before the additional or special meeting. An additional legislative meeting to consider an emergency and temporary matter may be called upon shorter notice, if a majority of the Members agree in writing to the shorter notice. The Secretary shall provide prompt notice of the meeting to the public, including on the Council website. The notice shall state the date, hour, place, and agenda of the meeting and may state whether items are to be considered on a consent or non-consent agenda.

(d) No matter shall be considered at an additional or special legislative meeting except those stated in the request and notification.

(e) The Chairman may add to the agenda of an additional legislative meeting that has been noticed, with the written agreement of a majority of the Councilmembers, an emergency or temporary measure or, without objection, a permanent measure.

304. QUORUM.

(a) A majority of the Councilmembers shall constitute a quorum for the lawful convening of a meeting and for the transaction of business, except as provided in Rule 502.

(b) A meeting may not begin until a quorum is ascertained by the Chairman.

(c) Once a quorum has been ascertained, the meeting shall proceed, unless a Councilmember raises the absence of a quorum, whereupon the Chairman shall direct the calling of the roll and shall announce the result.

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(d) In the absence of a quorum, the Chairman may order a Call of the House, during which no debate or motion shall be in order except a motion to adjourn.

(e) During a Call of the House, the Council shall stand in recess for no more than 20 minutes to find absent Members. After the recess, the roll shall be called again. If a quorum is present, the meeting shall proceed. If a quorum is not present, the meeting shall be recessed or adjourned.

305. HEARING THE MAYOR.

The Mayor has the right to be heard by the Council upon request and at reasonable times set by the Council.

306. RECESS.

(a) Except as set forth in subsection (b) of this section, no measure, other than an emergency declaration resolution, emergency measure, and accompanying temporary bill, a veto override, or a resolution to approve or disapprove a contract, to be considered at a special or additional meeting called pursuant to these Rules, may be introduced during a recess of the Council, and no committee may take official action during a recess of the Council; provided, that when specifically authorized to do so by a vote of a majority of the Council, a committee may hold a public hearing or roundtable. A notice of future committee action may be filed during a recess of the Council.

(b)(1) A resolution approving or disapproving a contract in excess of \$1 million or a multiyear contract may be introduced during any recess period.

(2) A proposed contract that is required to be submitted to the Council pursuant to section 451 of the Charter (D.C. Official Code § 1-204.51) may be transmitted to the Secretary during the 30-day period before the end of the summer recess of the Council, and a committee may hold a public hearing and take official action on the proposed contract.

(3) A proposed federal-aid highway contract in excess of \$1 million during a 12-month period that is required to be submitted to the Council for its review pursuant to section 451 of the Charter (D.C. Official Code § 1-204.51) may be transmitted to the Secretary during a recess of the Council. A committee may hold a public hearing and take official action on the proposed federal-aid highway contract during the recess, and a resolution approving or disapproving the proposed federal-aid highway contract may be introduced during the recess and during the 10-day period following submission of the proposed federal-aid highway contract to the Council.

(4) The Committee of the Whole may hold a hearing or roundtable on any matter relating to the affairs of the District during the recess; except, that this paragraph shall not be used to comply with the requirement of Rule 501(a)(2).

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(c) During any period of recess, the Secretary is authorized to receive measures returned by the Mayor.

307. COUNCIL REVIEW OF CONTRACTS.

(a) There is a 4.00 p.m. filing deadline for all proposed contracts required to be submitted to the Council pursuant to section 451 of the Charter (D.C. Official Code § 1-204.51). The Secretary shall ensure that a copy of the proposed contract or contract modification is designated as urgent and circulated electronically or otherwise to the office of each member of the Council, the General Counsel, and the Budget Director within 24 hours (excluding Saturdays, Sundays, and holidays) following its receipt by the Secretary.

(b) Notwithstanding Rule 402(b), the time period for Council review of a proposed contract or contract modification pursuant to section 451 of the Charter (D.C. Official Code § 1-204.51) shall begin on the first day (excluding Saturdays, Sundays, and legal holidays) following receipt by the Secretary of the proposed contract or contract modification.

(c) Notwithstanding Rules 401 and 402, no proposed contract or contract modification that is required to be submitted to the Council pursuant to section 451 of the Charter (D.C. Official Code § 1-204.51) may be submitted between July 5, 2021, and July 15, 2021, or between July 5, 2022, and July 15, 2022.

(d) Notwithstanding Rules 401 and 402, a resolution approving or disapproving a proposed contract shall be introduced by at least 3 Councilmembers.

(e) Review and approval by the Council of the annual capital program of federal-aid highway projects shall constitute Council review and approval of the individual contracts that make up the annual program.

(f) The Secretary shall place an electronic copy of the summary of a proposed contract on the Legislative Information Management System so that it may be accessed through the Council website within 24 hours (excluding Saturdays, Sundays, and legal holidays) following its receipt.

308. POLICY AND ECONOMIC IMPACT ANALYSES.

(a) The Budget Director may prepare a policy and economic impact analysis of a permanent bill.

(b) The purpose of a policy and economic impact analysis is to offer Councilmembers an independent, data and evidence-based resource for weighing the policy implications and economic costs and benefits of legislation. The analysis may include research on the District's existing legal framework, policy choices made by other jurisdictions, a review of the academic literature on the subject, consideration of demographic data, and the estimated costs or benefits to the District's economy.

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(c) If the Budget Director prepares a policy and economic impact analysis for a permanent bill, it shall be circulated no later than noon on the business day before the legislative meeting at which the permanent bill is to be considered.

(d) A Councilmember may request that the Budget Director develop a policy and economic impact analysis outside of the legislative process.

(e) The findings and conclusions of an economic-impact analysis, if any, are not binding on the Council, and the findings and conclusions shall not prevent the Council from considering the bill.

309. FISCAL IMPACT STATEMENTS.

(a)(1) Except as provided in paragraph (2) of this subsection, a fiscal impact statement is required for each measure, as provided in subsections (b) and (c) of this section.

(2) A fiscal impact statement is not required for an emergency declaration, a ceremonial, a confirmation, or a sense of the Council resolution, or for a proposed amendment to those measures.

(b)(1) Pursuant to subsection (a) of this section, a fiscal impact statement issued by the Chief Financial Officer is required at the time of consideration of a bill or resolution being marked up by a committee, except as provided in subsection (c)(6) of this section.

(2) A committee shall not mark up a bill or resolution unless a fiscal impact statement has been circulated to all Councilmembers before the measure is considered at markup.

(3) Notwithstanding paragraphs (1) and (2) of this subsection, a fiscal impact statement shall not be required at the Committee of the Whole markup of the Local Budget Act or the Budget Support Act; except, that the Chief Financial Officer shall issue a fiscal impact statement for the Local Budget Act, Federal Portion Budget Request Act, and Budget Support Act by second reading of those measures.

(c) A fiscal impact statement provided by the Budget Director or the Chief Financial Officer is required at the time of consideration of:

(1) A proposed amendment to a resolution or a bill being marked up by a committee;

(2) A proposed amendment to a resolution or a bill that is moved at first, second, or any subsequent reading of the Council;

(3) An emergency resolution or bill;

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(4) A temporary bill;

(5) A revenue bond resolution; and

(6) If a bill or resolution has been sequentially referred pursuant to Rule 404(c), a bill or resolution being marked up by the first committee in a sequential referral.

(d) A Councilmember requesting a fiscal impact statement from the Budget Director shall endeavor to make the request:

(1) For a measure listed in subsection (c)(1) through (5) of this section, at least 48 hours prior to the time of consideration, unless the request is for an amendment to a measure that was circulated less than 48 hours before a scheduled vote; and

(2) For a measure listed in subsection (c)(6) of this section, at least 10 days before the markup. Notwithstanding the term "endeavor", the Councilmember shall notify the Budget Director at least 10 days before a markup of the intent to mark up the measure and shall provide a draft of the measure.

310. LEGAL SUFFICIENCY DETERMINATIONS.

(a) Except as provided in subsection (c) of this section, a legal sufficiency determination is required at the time of consideration of:

(1) A resolution or bill being marked up by a committee;

(2) A resolution retained by the Council;

(3) An emergency resolution or bill;

(4) A temporary bill; and

(5) An amendment to a resolution or a bill that is moved at mark-up, first, second, or any subsequent reading of the Council.

(b) A Councilmember requesting a legal sufficiency determination from the General Counsel pursuant to subsection (a) of this section shall endeavor to make the request:

(1) For a measure listed in subsection (a)(1) of this section, at least 10 days before the markup. Notwithstanding the term "endeavor", the Councilmember shall notify the General Counsel at least 10 days before a markup of the intent to mark up the measure and shall provide a draft of the measure.

(2) For a measure listed in subsection (a)(2) through (5) of this section, at least 48 hours prior to the time of consideration, unless the request is for an

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amendment to a measure that was circulated less than 48 hours before a scheduled vote.

(c) A legal sufficiency determination is not required for:

- (1) An emergency declaration resolution;
- (2) A ceremonial resolution;
- (3) A sense of the Council resolution;
- (4) A resolution adopting Council Rules, appointing Council officers and committee chairpersons and members, or otherwise pertaining to the internal operation or organization of the Council;
- (5) A resolution listed in this subsection that is moved on an emergency basis;
- (6) An amendment to a resolution listed in this subsection; or
- (7) An amendment to a budget measure that contains only adjustments to a dollar amount or other budget numbers.

311. RACIAL EQUITY IMPACT ASSESSMENTS.

(a) Beginning on the day the framework for the Racial Equity Impact Assessment is published pursuant to subsection (f) of this section, except as provided in subsection (b) of this Rule, a Racial Equity Impact Assessment is required at the time of consideration of a resolution or bill being marked up by a committee.

(b) This rule shall not apply to:

- (1) Symbolic public space designations;
- (2) Street or Alley closures, or highway plan amendments;
- (3) Confirmation or appointment resolutions;
- (4) Sense of the Council resolutions;
- (5) General-obligation bond acts and revenue anticipation notes acts;
- (6) Revenue bond resolutions;
- (7) Interstate compacts;
- (8) Transfers of jurisdiction;
- (9) Resolutions approving or disapproving proposed rules;

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(10) The Local Budget Act, the Budget Support Act, or the Federal Portion Budget Request Act; or

(11) Enactment legislation or technical-amendment legislation.

(c)(1) Each Racial Equity Impact Assessment shall include a statement of the bases for the estimated impact and shall describe the sources, assumptions, and methodologies used in arriving at the assessment.

(2) Where a Racial Equity Impact Assessment identifies a negative impact on racial equity, the Council Office of Racial Equity may recommend policy proposals to mitigate such negative impact.

(3) The findings of a Racial Equity Impact Assessment shall not be binding and shall not prevent the Council or committee from considering the resolution or bill.

(d) A Councilmember requesting a Racial Equity Impact Assessment from the Director of Racial Equity shall endeavor to make the request at least 10 days before the markup. Notwithstanding the term "endeavor", the Councilmember shall notify the Director of Racial Equity at least 10 days before a markup of the intent to mark up the measure and shall provide a draft of the measure.

(e) The Council Office of Racial Equity may, at the request of a committee chair, conduct a Racial Equity Impact Assessment on any matter under the requesting committee's jurisdiction; provided, that such assessment does not inhibit the issuance of Racial Equity Impact Assessments under subsection (a) of this Rule.

(f) The framework for the Racial Equity Impact Assessment shall be developed by the Director of Racial Equity, or the Director's designee, in close consultation with individuals and organizations with expertise in racial equity analysis, and published on the Council website.

312. PRESENTATION OF LEGISLATION TO THE COUNCIL.

A measure reported by a committee may be presented by the chairperson of the committee or by another member of the committee designated by the chairperson of the committee. In the absence of the chairperson of the committee and the designation of a member of the committee, the Chairman may present the measure for consideration by the Council.

313. PRESENTATION OF CEREMONIAL RESOLUTIONS.

(a)(1) A ceremonial resolution that has been adopted by the Council at a previous legislative meeting may be presented from the well of the Chamber during a legislative meeting by the Councilmember who introduced the resolution or by another Councilmember designated by the Councilmember who introduced the resolution.

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(2) Without objection, adopted ceremonial resolutions scheduled for presentation at a legislative meeting may be presented at a Committee of the Whole meeting scheduled for the same day.

(b) During a Council Period, a Councilmember may present for no more than 30 minutes cumulatively, and not more than 8 ceremonial resolutions, except that a Councilmember may yield the Councilmember's right to present a ceremonial resolution under this section to another Councilmember.

(c) No recipient of a ceremonial resolution may present a display or performance during the presentation of the ceremonial resolution.

(d) No more than one recipient for each ceremonial resolution shall be permitted to speak during the presentation of the ceremonial resolution.

314. EXPEDITED OPTIONAL PROCEDURE FOR REVENUE BONDS AND REVIEW RESOLUTIONS.

(a) This section shall apply to:

(1) Revenue bonds resolutions; and

(2) Resolutions regarding agency rules, confirmations, and other actions

that:

(A) Are proposed by the Mayor or an independent agency for promulgation or adoption; and

(B) Take effect after a set period of time by operation of law.

(b) A resolution covered by this section may, at the option of the committee chairperson, be placed on the non-consent agenda of the next regular legislative meeting following approval by a committee, without referral to the Committee of the Whole.

(c) If notice of intent to move the resolution and the committee report for the resolution are not filed before noon on the third business day before the legislative meeting, a resolution may not be placed on the legislative agenda pursuant to this section.

(d) If a reported resolution is considered at a legislative meeting under this section, the legal sufficiency, technical compliance with the drafting rules of the Council, completion of the record of the reported resolution, and the sufficiency of the fiscal impact statement, if required by Rule 309, shall be reviewed at the legislative meeting at which it is considered.

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B. ORDER OF BUSINESS FOR MEETINGS.**315. ORDER OF BUSINESS FOR REGULAR MEETINGS.**

During a regular legislative meeting, the Council shall take up business in the following order, unless a different order has been set for a particular meeting by action of the Committee of the Whole:

- (1) Call to order at the time and place set forth pursuant to Rule 302;
- (2) Moment of silence;
- (3) Determination by the Chairman of the presence of a quorum;
- (4) Presentation of adopted ceremonial resolutions;
- (5) Secretary's report on the filing of reports by committees, unless the formal reading of the report is waived by the Council;
- (6) Secretary's report on the introduction of new measures filed with that office, unless the formal reading of the report is waived;
- (7) Approval of the consent agenda without objection;
- (8) Final reading by short title and final vote on bills that have been pending at least 13 days since they were previously read, except as provided in paragraph (7) of this section;
- (9) Reading by short title and vote on reported and discharged bills, except as provided in paragraph (7) of this section;
- (10) Reading by short title and vote on proposed resolutions, except as provided in paragraph (7) of this section;
- (11) Reading by short title and vote on resolutions declaring the existence of emergencies and accompanying emergency measures, except for contracts placed on the consent agenda;
- (12) Reading by short title and vote on temporary legislation;
- (13) Official communications received from the Mayor or an agency; and
- (14) Other business.

316. ORDER OF BUSINESS FOR ADDITIONAL AND SPECIAL MEETINGS.

During an additional or special meeting, the Council shall take up business in the following order:

- (1) Call to order at the time and place set forth in the meeting notice;

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- (2) Moment of silence;
- (3) Determination by the Chairman of the presence of a quorum; and
- (4) Such items in the order set forth in the meeting notice.

317. PROCEEDING OUT OF ORDER.

The Chairman, without objection, or upon the vote of a majority of the Councilmembers present and voting, may proceed on any item of business out of order.

C. RULES OF DECORUM.**321. DECORUM OF MEMBERS.**

(a) Councilmembers shall refrain from private discourse or other acts tending to distract the attention of the Council from the business before it.

(b) In debate, a Councilmember shall confine remarks to the pending question and avoid the use of personalities.

(c) A Councilmember, in referring to another Councilmember, should avoid using the Councilmember's name, rather identifying that Member by ward or at-large status, as the Councilmember who last spoke, or by describing the Councilmember in some other manner.

(d) It is not the person but the measure that is the subject of debate, and it is not allowable to question or impugn the motives of a Councilmember, but the nature or consequences of a measure may be condemned in strong terms.

322. DECORUM OF MEMBERS OF THE PUBLIC.

(a)(1) No person may commit any act tending to distract the attention of the Council from the business before it.

(2) No person may engage in loud, threatening, or abusive language, or disruptive conduct in the John A. Wilson Building or on any virtual platform with the intent or effect of impeding or disrupting the orderly conduct of business.

(b) The Chairman shall maintain order during a meeting. If the Chairman determines that the removal of a person other than a Councilmember is necessary to maintain order, after warning the person, the Chairman may order the removal of the person.

(c) Unless permitted by the Chairman, no person, other than Council staff may enter the area designated as the well or the dais of the Chamber during an official meeting of the Council.

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(d)(1) No signs, placards, posters, or attention-seeking devices of any kind or nature shall be carried or placed within the Council hearing or meeting rooms or Chamber or any area where a public hearing is being conducted. No demonstrations are permitted in the Chamber or any area in which a Council proceeding or a public hearing is being conducted.

(2) This prohibition shall not apply to armbands, emblems, badges, or other articles worn on the personal clothing of individuals; provided, that such armbands, emblems, badges, or other articles are of such a size and nature as not to interfere with the vision or hearing of other persons at a meeting nor extend from the body, potentially causing injury to another.

(3) Any person who violates the provisions of this subsection relating to signs, or who willfully interrupts or disturbs Council proceedings, after a warning to desist, may be removed from the proceeding or premises.

(4) Models, photographs, maps, charts, drawings, and other such demonstrative materials intended for use in a presentation by a specific person in testimony before the Council shall be permitted without objection.

(e) No person, except a Councilmember or Council staff, shall be allowed in the anterooms of the Chamber during the course of any hearing or other proceeding of the Council or any committee of the Council, except upon invitation of the Chairman or the chairperson of the committee holding the public hearing.

D. RULES OF DEBATE.

331. OBTAINING THE FLOOR.

A Councilmember who wishes to speak, give notice, make a motion, submit a report, or obtain the floor for any other purpose, shall address and be recognized by the Chairman before addressing the Council.

332. TIME LIMITS FOR DEBATE.

(a) No Councilmember may be recognized more than once to debate or make a motion relating to a pending matter until all Councilmembers who wish to speak have been recognized.

(b) A Councilmember may speak no more than 3 minutes during the first round of debate on a pending matter, and no more than 2 minutes during a subsequent round.

(c) A Councilmember may yield all or part of the Councilmember's time provided by this section to another Councilmember.

(d) The Chairman may, in the Chairman's discretion, modify time limitations with respect to specific matters scheduled for debate.

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333. PERSONAL PRIVILEGE.

Any Councilmember, as a matter of personal privilege, may speak no more than 10 minutes under new business concerning a matter outside of a legislative meeting that may affect the Council collectively, its rights, its dignity, or the integrity of its proceedings, or the rights, reputation, or conduct of its individual members in their representative capacities only.

334. APPEAL.

An appeal may be made from any decision of the Chairman. A Councilmember shall state the basis for appealing a decision, to which the Chairman may respond. An appeal from a decision of the Chairman must be made promptly and before other business has intervened. A majority or tie vote of the Members present and voting on the question (whether the decision of the Chairman shall be sustained) sustains the decision. An appeal is not debatable; provided, that the Chairman may explain the basis for the Chairman's decision.

335. POINT OF ORDER.

A point of order is made when a Member raises the question to the Chairman, and seeks a determination by the Chairman, as to whether there has been a breach of order or Council Rule. A point of order is not debatable unless the Chairman permits debate. If the Chairman permits debate on a point of order, the Chairman may limit debate.

336. PARLIMENTARY INQUIRY.

A parliamentary inquiry is made when a Member raises a question to the Chairman seeking information about the procedure or business before the Council. The Chairman shall answer the question about the procedure or business before the Council, or, when the Chairman does not possess the information sought may direct the question to a Member or the General Counsel who may be in possession of the information. A parliamentary inquiry is not debatable or appealable.

337. RECOGNITION OF NON-MEMBERS.

The Chairman may recognize a person who is not a Councilmember if the participation of the person would, in the judgment of the Chairman, enhance the understanding of the matter under consideration by the Council.

E. MOTIONS.**341. MOTIONS RECOGNIZED DURING DEBATE.**

When a question is under debate, the Chairman may entertain the following motions, which shall take precedence in the following order:

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- (1) To adjourn;
- (2) To recess;
- (3) To reconsider;
- (4) To lay on the table;
- (5) To move the previous question;
- (6) To close debate;
- (7) To postpone to a certain time;
- (8) To recommit to committee;
- (9) To amend;
- (10) To postpone indefinitely;
- (11) To discharge; or
- (12) To take from the table.

342. WITHDRAWAL OR MODIFICATION OF MOTIONS.

Any motion may be withdrawn or modified by the mover at any time before it has been amended or voted on.

343. ADJOURN.

The Chairman shall adjourn a meeting when there is no more business before the Council. A Councilmember may move to adjourn at any time. A motion to adjourn is not debatable, but the Chairman may inform the Councilmembers of any unfinished business requiring attention of the Council.

344. RECESS.

(a) The Chairman may, without a vote, recess a legislative meeting of the Council to another time, day, or place.

(b)(1) A Councilmember may move to recess a meeting.

(2) A Councilmember may move to amend a pending motion to recess to set a different length of the recess.

(3) If a motion to recess does not specify the time, day, or place at which the meeting will reconvene, the Chairman may set a time, day, or place, or call the meeting to order and summons the Members in accordance with Rule 368.

(4) Neither a motion to recess nor a motion to amend a pending motion to recess shall be debatable.

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(c)(1) A committee chairperson may, without a vote, recess a hearing or roundtable and reconvene the hearing or roundtable at a future time, day, or place.

(2) If a hearing or roundtable is recessed without specifying the future time, day, or place for the hearing or roundtable, the chairperson of that committee shall circulate notice of the new time, day, or place in accordance with Rule 283.

345. RECONSIDER.

(a) A Councilmember recorded as having voted with the prevailing side on a question may move to reconsider the question at any time, except as limited by this section.

(b)(1) An act may be reconsidered before it has been signed or vetoed by the Mayor, or before it has been deemed approved by operation of section 404 of the Home Rule Act.

(2) A resolution may be reconsidered at any time before its implementation.

(3) A committee may reconsider its vote to report a measure at any time before the Council votes on the measure.

(4) A motion to reconsider a question considered at a different meeting shall not be in order unless the motion to reconsider has been noticed in accordance with Rule 429.

(c) For the purpose of this rule, a Councilmember who was present and voting on a question decided by a voice vote shall be considered as having voted with the prevailing side on the question, unless the Councilmember had asked to be recorded as voting against the prevailing side or recorded as "PRESENT".

(d) A motion to reconsider cannot be made by a Councilmember who was absent during a voice or roll-call vote on a question.

(e) A motion to reconsider requires the approval of a majority of the Councilmembers present and voting.

(f)(1) If the question to which a motion to reconsider applies is debatable, the motion to reconsider is debatable, and the debate may go to the question.

(2) If the question to which a motion to reconsider applies is not debatable, the motion to reconsider shall not be debatable.

(g) If a motion to reconsider fails, the motion cannot be repeated.

(h) A motion to reconsider is not required to consider amendments accepted or rejected on a previous reading of a measure.

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(i) Votes to approve or amend these Rules may not be reconsidered pursuant to this section.

346. LAY ON THE TABLE.

(a)(1) A Councilmember may make an unqualified motion to lay a question on the table, which is not debatable and, if adopted by a majority of Councilmembers present and voting, shall immediately end debate on the question.

(2) If an amendment to a measure is pending before the Council, a Councilmember may make a motion to lay the amendment on the table, which is not debatable and, if adopted by a majority of Councilmembers present and voting, shall immediately end debate on the amendment.

(b) A motion to lay on the table may be applied to main motions only.

(c) A committee chairperson may carry over a measure reported by that committee from Council consideration until the next regular legislative meeting (or additional meeting, with the Chairman's concurrence) in this Council Period. If a measure has been sequentially referred, the committee chairperson of the last-reporting committee may carry over a measure under this subsection.

347. MOTION TO MOVE THE PREVIOUS QUESTION.

(a) A Councilmember may limit debate by making a motion to move the previous question, which shall require approval of 2/3rds of the Councilmembers present and voting. If a motion to move the previous question carries, no further debate is in order on the pending question, and no further amendments to the main motion are in order absent a motion to reconsider the motion to move the previous question.

(b) A Motion to move the previous questions is not debatable.

348. MOTION TO CLOSE DEBATE.

(a) A Councilmember also may limit debate by making a motion to close debate, which is not debatable.

(b) A motion to close debate shall require approval of 2/3rds of the Councilmembers present and voting. If a motion to close debate carries, no further debate is in order, except that:

(1) Each Councilmember who has not spoken on the pending question may speak for no more than 2 minutes; and

(2) The Chairman may recognize the maker of the pending motion.

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349. POSTPONE TO A CERTAIN TIME.

(a) A Councilmember may move to postpone a question to a certain time, which shall be adopted by a majority of Councilmembers present and voting. A motion to postpone to a certain time is debatable, though it is not in order to debate the merits of the underlying question.

(b) A motion to postpone to a certain time may be applied to main motions only.

350. RECOMMIT.

A Councilmember may move to recommit a measure pending before the Council to a standing committee. If a majority of Councilmembers present and voting approve a motion to recommit, the Chairman shall refer the measure to a standing committee or committees in accordance with Rule 404(b). A motion to recommit is debatable, though debate shall be limited to the desirability of committing the measure to the committee. Debate on the merits of the measure is not in order while a motion to recommit is pending.

351. AMEND.

A Councilmember may move to amend a measure pursuant to Part F of this Article.

352. POSTPONE INDEFINITELY.

(a) A Councilmember may move to postpone indefinitely any question pending before the Council. A motion to postpone indefinitely is debatable, and it is in order to debate the merits of the underlying question.

(b) A motion to postpone indefinitely requires a vote of the majority of Councilmembers present and voting.

(c) Upon adoption of a motion to postpone indefinitely, the question may not be reconsidered unless 2/3rds of Councilmembers present and voting agree to reconsider the question.

(d) A motion to postpone indefinitely may be applied to main motions only.

353. DISCHARGE.

The Council may, by a vote of 2/3rds of the Members present and voting, discharge a committee from further consideration of a measure that has been referred to the committee. Upon approval of the discharge motion, the Council shall consider the measure as if it had been reported from the committee without amendment or modification or recommit the measure to another committee.

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354. TAKE FROM THE TABLE.

(a) When no question is pending before the Council, a Councilmember may move to take from the table any measure previously tabled during the legislative meeting.

(b) When a measure is pending before the Council, a Councilmember may move to take from the table any amendment to the measure that was previously tabled.

(c) Provided that a Councilmember provided the notice required by Rule 429(2), the Councilmember may move to take from the table any measure tabled during a previous legislative meeting.

(d) A motion to take from the table is not debatable and shall be adopted by a majority vote of Councilmembers present and voting.

(e)(1) Upon adoption of a motion to take a question from the table, the question shall be before the Council in the same status as it was when the Council tabled the question.

(2) If the motion to take a question from the table does not occur during the legislative meeting at which the question was tabled, each Councilmember shall be entitled to debate the question as if the last motion adhering to the question was just made.

F. AMENDMENTS.**355. AMENDMENTS TO BE WRITTEN.**

(a) Councilmembers shall endeavor to file with the Secretary amendments to pending measures by 6:00 p.m. on the business day before the legislative meeting at which they are to be moved. The Secretary shall circulate links to the amendments shortly after 6:00 p.m.

(b)(1) If a Councilmember has not filed an amendment with the Secretary in accordance with subsection (a) of this section, the Councilmember shall circulate copies for each Councilmember and 7 additional copies at the legislative meeting.

(2) A Councilmember shall file an amendment in accordance with Rule 282(a) and (b) within 24 hours of the legislative meeting at which the amendment was offered if the amendment was not previously filed in accordance with subsection (a) of this section.

(c) Notwithstanding any other rule, if an oral amendment is made before a vote on a measure, such oral amendment shall be reduced to writing and read by the General Counsel, and made available for public inspection as soon as practicable.

(d) As required by Rule 309, no amendment may be approved by the Council without a fiscal impact statement presented to the Council at the time of its

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consideration; provided, that the Chairman may waive these requirements if the Chairman concurs with the Budget Director that there is no adverse fiscal impact.

(e) As required by Rule 310, no amendment may be approved by the Council without a legal sufficiency determination presented to the Council at the time of its consideration; provided, that the Chairman may waive these requirements if the Chairman concurs with the General Counsel that the amendment is legally sufficient.

356. GERMANE AMENDMENTS.

(a) To be germane to a measure, the amendment is required to relate in an appropriate, relevant, and logical way to the subject of the main measure. It may entirely change the effect of or be in conflict with the spirit of the main measure and still be germane to the subject.

(b) An amendment in the nature of a substitute may be offered as long as it is germane to the subject matter of the main measure.

(c) An amendment to a prior-offered amendment must be germane to the subject of the prior-offered amendment and to the subject matter of the main measure.

(d) Every amendment proposed to an emergency or temporary measure must be germane to the subject matter of the main measure to be amended.

(e) A non-germane amendment to a permanent bill requires 2 readings and must be approved by 2/3rds of the Members present and voting.

357. FRIENDLY AMENDMENTS.

Without objection, the mover of a motion or a measure may accept a friendly amendment, which, if accepted, shall be voted on simultaneously with the motion or measure. A friendly amendment to a second-degree amendment is not considered a third-degree amendment.

358. AMENDMENT IN THE NATURE OF A SUBSTITUTE.

(a) A notice of intent to move an amendment in the nature of a substitute to a measure at a legislative meeting shall be filed with the Secretary and circulated by noon on the business day before the legislative meeting. The filed notice shall explain the rationale and the mover's reasoning for the amendment and be accompanied by the proposed amendment in the nature of a substitute, which shall reflect all substantive changes from the prior version of the legislation (committee print or engrossment) by using strikeovers on the language that is proposed to be deleted from the prior version and underscore on all new language that is proposed to be added by the amendment in the nature of a substitute.

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(b) The mover of an amendment in the nature of a substitute may have a separate amendment considered simultaneously with the amendment in the nature of a substitute.

(c) Notwithstanding subsection (a) of this section, if the Council is closed for a legal holiday on the day before a legislative meeting, the notice and accompanying amendment shall be filed and circulated no later than close of business on the business day before the legislative meeting.

G. VOTING.**361. FORM OF VOTE.**

Voting shall be in the form of "YES", "NO", and "PRESENT". A vote of "PRESENT" shall be deemed the equivalent of an abstention or a non-vote.

362. VOICE VOTES.

Except as provided in Rule 363, votes on all questions shall be by voice, with the results determined by the Chairman. A Councilmember's vote upon any matter shall be recorded upon request.

363. DEMAND FOR ROLL-CALL VOTE.

Any Member, in advance of a vote or immediately thereafter, may demand a roll-call vote.

364. CALLING THE ROLL.

When a roll-call vote is demanded, the Secretary shall call the roll of the Councilmembers in rotating alphabetical order so that the Councilmember whose name is called first is the same Member whose name was called second on the next previous vote, and so on through the roll, so that the Councilmember whose name is called last is the same Councilmember whose name was called first on the next previous vote. At the end of the roll call, the names of those who failed to answer can be called again, or the Chairman can ask if anyone entered the room after the Councilmember's name was called. Changes of vote are also permitted at this time, before the result is announced. No Councilmember may vote "pass" more than once on the same amendment to a measure or on the measure in its entirety. A second vote of "pass" shall be considered a vote of "present."

365. RECORDS OF VOTES.

(a) When a measure is approved or disapproved by voice vote, the Secretary shall record all Members present as voting on the prevailing side, unless there has been a request to be recorded as having voted "YES", "NO", or "PRESENT", or a Member has recused themselves from voting.

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(b) When a roll-call vote is demanded, the Secretary will record the names of those voting "YES", "NO", or "PRESENT". Members will be recorded as absent if they are not visible or in the Chamber when a vote is taken. Voting records are official records of the Council.

(c) After the Chairman has announced the result of a vote, a Councilmember may not change his or her vote.

366. TAX ABATEMENT FINANCIAL ANALYSIS (TAFAs)

Where a TAFAs issued by the Chief Financial Officer states that an abatement or tax relief is not necessary, a measure authorizing such abatement or tax relief shall, at first reading, require approval of 2/3rds of the Councilmembers present and voting.

367. PROXY VOTING PROHIBITED.

No remote voting or proxy shall be permitted either for the purpose of voting or for the purpose of obtaining a quorum; except, that remote voting for the purpose of voting or obtaining a quorum may be allowed during a public emergency and until such time as the Council resumes full in-person operations at the Chairman's discretion.

368. SUMMONS OF MEMBERS.

(a) Before putting a question to vote, the Chairman may hold open the vote for no more than 2 minutes for the purpose of summoning Members who are absent. During that time, the Secretary shall summon the Members who are absent from the Chamber. At the Chairman's direction, the Secretary shall call the names of the absent Members.

(b) No Councilmember may be summoned more than once at the same legislative meeting.

H. OPEN MEETINGS.**371. OPEN MEETINGS, GENERALLY.**

(a) Except as provided in Rule 375, a meeting of the Council and a meeting of a committee shall be open to the public.

(b) The Council or a committee shall not keep the number of attendees below a quorum to avoid the requirements of this section.

(c) For the purposes of this part, the terms:

(1) "Meeting of a committee" means a gathering of a quorum of a committee of the Council, whether informal or formal, regular, special, additional, or emergency, at which the Councilmembers consider, conduct, or advise on public business, including gathering information, taking testimony, discussing,

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deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication. A meeting of a committee shall not include:

(A) A chance or social gathering; provided, that it is not held to avoid the provisions of this paragraph; or

(B) Press conferences.

(2) "Meeting of the Council" means a gathering of a quorum of the Council, including hearings and roundtables, whether informal or formal, regular, special, additional or emergency, at which the Councilmembers consider, conduct, or advise on public business, including gathering information, taking testimony, discussing, deliberating, recommending, and voting, regardless of whether held in person, by telephone, electronically, or by other means of communication. A meeting of the Council shall not include:

(A) A chance meeting or social gathering; provided, that it is not held to avoid the provisions of this paragraph; or

(B) Press conferences.

372. MEETINGS DEEMED OPEN.

A meeting of the Council or a meeting of a committee is deemed open if the:

(1) Public is permitted to be physically present;

(2) News media is permitted to be physically present;

(3) Meeting is televised; or

(4) Meeting otherwise complies with section 405(a) of the Open Meeting Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575(a)).

373. NOTICE OF MEETINGS.

(a)(1) Before a meeting of the Council is held, whether open or closed, at least one Councilmember attending the meeting shall notify the Secretary at least 48 hours before the meeting, unless emergency circumstances require less notice.

(2) Before a meeting of a committee is held, whether open or closed, at least one Councilmember attending the meeting shall notify the Secretary at least 24 hours before the meeting, unless emergency circumstances require less notice.

(b) Notice provided pursuant to this section shall be posted by the Secretary in plain view in the John A. Wilson Building, except during a period for which a public emergency has been declared pursuant to section 5 of the District of Columbia Public

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Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7-2304), and on the website of the Council.

(c) A notice for a meeting of the Council or a meeting of a committee provided pursuant to this section shall include the:

- (1) Date;
- (2) Time;
- (3) Location; and
- (4) Planned agenda, if applicable, for the meeting.

(d) If a meeting of the Council or a meeting of a committee, or any portion of a meeting, is expected to be closed, the notice shall include a statement of the intent to close the meeting, including the reasons for the closure.

(e) This section shall not apply to administrative meetings, breakfast meetings, open discussions, or other gathering of the Council when no official action is expected to take place; provided, that no official action may be taken at such meetings.

(f) Notice for hearings or roundtables shall be provided pursuant to Rule 421.

374. RECORD OF MEETINGS.

(a) Except as provided in subsection (c) of this section, all meetings, whether open or closed, shall be recorded electronically. In accordance with Rule 807 and 808, the electronic recording shall be produced and maintained by the Secretary; provided, that if a recording is not possible, detailed minutes of the meetings shall be kept by the Secretary.

(b) If a meeting is open:

(1) Copies of the records shall be provided to the public or any requester at his or her expense;

(2) A copy of the draft minutes shall be made available to the public or requester no more than 3 business days after the meeting; and

(3) A copy of the full record, including any recording or transcript, shall be made available no later than 7 business days after the meeting.

(c) This section shall not apply to administrative meetings, breakfast meetings, open discussions, or other gathering of the Council when no official action is expected to take place; provided, that no official action may be taken at such meetings.

375. EXCEPTIONS TO OPEN MEETINGS.

A meeting, or a portion of a meeting, may be closed for the following reasons:

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(1) A law or court order requires that a particular matter or proceeding not be public;

(2) To discuss, establish, or instruct a public body's staff or negotiating agents concerning the position to be taken in negotiating the price and other material terms of a contract, including an employment contract, if an open meeting would adversely affect the bargaining position or negotiating strategy of the public body;

(3) To discuss, establish, or instruct a public body's staff or negotiating agents concerning the position to be taken in negotiating incentives relating to the location or expansion of industries or other businesses or business activities in the District;

(4)(A) To consult with an attorney to obtain legal advice and to preserve the attorney-client privilege between an attorney and a public body, or to approve settlement agreements; provided, that, upon request, the public body may decide to waive the privilege.

(B) Nothing herein shall be construed to permit a public body to close a meeting that would otherwise be open merely because the attorney for the public body is a participant;

(5) Planning, discussing, or conducting specific collective-bargaining negotiations;

(6) Preparation, administration, or grading of scholastic, licensing, or qualifying examinations;

(7) To prevent premature disclosure of an honorary degree, scholarship, prize, or similar award;

(8) To discuss and take action regarding specific methods and procedures to protect the public from existing or potential terrorist activity or substantial dangers to public health and safety, and to receive briefings by staff members, legal counsel, law-enforcement officials, or emergency-service officials concerning these methods and procedures; provided, that disclosure would endanger the public and a record of the closed session is made public if and when the public would not be endangered by that disclosure;

(9) To discuss disciplinary matters;

(10) To discuss the appointment, employment, assignment, promotion, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials, including Councilmembers and staff;

(11) To discuss trade secrets and commercial or financial information obtained from outside the government, to the extent that disclosure would result in

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substantial harm to the competitive position of the person from whom the information was obtained;

(12) To train and develop members of a public body, including the Council and staff;

(13) To deliberate upon a decision in an adjudication action or proceeding by a public body exercising quasi-judicial functions;

(14) To plan, discuss, or hear reports concerning ongoing or planned investigations of alleged criminal or civil misconduct or violations of law or regulations, if disclosure to the public would harm the investigation; and

(15) Any other reason provided in section 405(b) of the Open Meeting Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575(b)).

376. CLOSED MEETINGS

(a)(1) Before a meeting or portion of a meeting may be closed, the Council or committee shall meet in public session at which a majority of the members present vote, upon good cause shown, in favor of closure.

(2) The presiding officer shall make a statement providing the reason for closure, including citations from Rule 375, and the subjects to be discussed. A copy of the roll call vote and the statement shall be provided in writing and made available to the public.

(3) A public body that meets in closed session shall not discuss or consider matters other than those matters listed under Rule 375.

(b) Except as provided in subsection (c) of this section, the record of a closed meeting, including testimony taken and evidence received in a closed meeting, shall be confidential and may not be released to the public.

(c)(1) Upon good cause shown and, if applicable, after the 10-day period described in paragraph (3) of this subsection, a majority of the Council or committee may approve the release of the record, including testimony taken or evidence received in a closed meeting.

(2) Ten days before the release of testimony taken or evidence received in a closed meeting, the Council or committee must notify, in writing, the affected witness that the Council or committee intends to release the testimony or evidence.

(3) Before the expiration of the 10-day period, the affected witness may request, in writing directed to the presiding Council or committee member, and the Council or committee may consider withholding the testimony or evidence described in the notice.

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ARTICLE IV—LEGISLATION.

A. INTRODUCTION OF LEGISLATION.

401. WHO MAY INTRODUCE.

(a)(1) Only a Councilmember may introduce legislation for consideration by the Council.

(2) At the time a measure is filed with the Secretary, in accordance with Rule 282, the measure shall be placed in Word format, on the Council's intranet.

(b)(1) Proposed legislation transmitted to the Council by the Mayor, the Uniform Law Commission, or an independent agency shall be submitted in Word format, shall be complete, and shall comply with these Rules. It shall be introduced by the Chairman, at the request of the Mayor (or as submitted by the Mayor), or the independent agency. Legislation transmitted by the Mayor or an independent agency shall not be introduced on the dais at a legislative meeting or a work session of the Committee of the Whole.

(2)(A) To be considered at a legislative meeting, legislation transmitted by the Mayor or an independent agency that requests Council approval of a contract shall be filed with the Secretary, with the required contract summary and contract, including relevant modifications, no later than the close of business on the fourth business day before the meeting.

(B) To be considered at a legislative meeting, all other measures transmitted by the Mayor or an independent agency shall be filed with the Secretary no later than noon on the second business day before the meeting.

(3) Proposed legislation from the Mayor, the Uniform Law Commission, or an independent agency shall be transmitted to the Council by hard copy and a copy in Word format by email, or any other medium as determined by the Secretary. All confirmation resolutions submitted to the Council by the Mayor shall include a copy of the current resume of the nominee. The Secretary shall place a Word format copy of the proposed legislation on the Council's intranet.

(4) Legislation transmitted under this subsection shall be filed with the Secretary during normal business hours.

(5) The Secretary shall determine whether the proposed legislation is in the appropriate form, complete, and complies with these Rules, and may return any proposed legislation that is not in the appropriate form or complete to the Mayor, the Uniform Law Commission, or the independent agency.

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402. MANNER OF INTRODUCTION.

(a) A Councilmember may introduce a measure by filing the signed original of the measure with the Secretary during normal business hours.

(b) An introduced measure may be accompanied by a Statement of Introduction at the time of filing, which shall be available on LIMS and made part of the official record of the measure.

(c) Co-introduction of a measure shall be evidenced by the signature of the co-introducer on the face of the measure at the time of filing. Co-sponsorship shall be permitted by a memo to the Secretary pursuant to Rule 802(b).

(d) A Councilmember may withdraw as a co-introducer or a co-sponsor by filing a notice of withdrawal with the Secretary.

(e) Unless a law specifically provides otherwise, no matter transmitted for a period of Council review before taking effect shall be deemed transmitted to the Council or the Chairman, and no time period for Council review shall begin to run, until the matter has been formally introduced by the Chairman pursuant to subsection (a) of this section.

(f) Whenever a measure would require the Secretary to transmit its text or anything associated with the text to a person, the Councilmember who introduced the measure, or the Mayor if the measure is introduced at the request of the Mayor, shall provide the Secretary with the last-known address of the recipient.

(g) Proposed legislation transmitted for introduction by the Mayor, the Uniform Law Commission, or an independent agency shall be addressed to the Chairman and filed with the Secretary. The Secretary shall circulate the measure in accordance with these Rules.

(h) Any filing sheet and other documentation accompanying legislation that is required by the Secretary shall be typed or legibly printed and shall be specific to the legislation.

403. READING INTRODUCTIONS.

(a) At each legislative meeting and work session of the Committee of the Whole, during the period designated for introductions, the Secretary shall read the short titles of measures that were introduced pursuant to Rules 401 and 402 between the previous reporting period and 10 a.m. of the business day before the legislative meeting or Committee of the Whole work session, and provide the numbers assigned as provided in Rule 805 and the committee referrals as provided in Rule 404.

(b) Measures may not be debated or amended when they are read for introduction.

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(c) The formal reading of the Secretary's report as provided in subsection (a) of this section may be waived by unanimous consent.

(d) A Councilmember may raise questions regarding a committee referral included in the Secretary's report without a formal reading of the entire Secretary's report.

404. COMMITTEE REFERRAL.

(a) When a measure is introduced, the Chairman shall refer it to the appropriate committee or committees, unless the Council retains the measure. Such referral is not official until it is read at a meeting pursuant to Rule 403.

(b)(1) The Chairman may refer a measure to 2 or more committees for sequential consideration of all or part of the measure, and may refer all or part of the measure to one or more committees for comments.

(2) When there is a sequential referral, the Chairman may specify a time period within which one or more of the committees must report the measure. If a committee fails to file a report within the specified time period, the measure shall be deemed discharged from the committee, and the Secretary shall provide notice that the measure is ready for subsequent action by another committee or to be agendaized for Council consideration.

(c) The Chairman may re-refer a measure and the new referral shall become official at the next legislative meeting or Committee of the Whole work session.

(d) A committee may not consider a measure unless the Chairman has made an official referral, although a hearing or roundtable notice may be filed in the meantime.

405. COMMENTS BY EXECUTIVE.

The Executive may comment on any measure. Unless otherwise required by law, neither the Council nor a committee must wait for Executive comments before considering a measure.

406. WITHDRAWAL OF LEGISLATION.

(a) Whenever a rule, regulation, or resolution is proposed for promulgation by an entity other than the Council and is required by law to be approved, disapproved, or reviewed by the Council before its taking effect and would take effect automatically by operation of law, the proposal may be withdrawn formally by the proposer before final Council action or, if the Council takes no action, before any time limit imposed by law. The withdrawal shall render the original proposal a nullity as if it were never proposed. These proposed rules, regulations, and resolutions may be withdrawn only by written request transmitted to the Chairman.

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(b) Except as provided above in subsection (a) of this Rule, a proposer may withdraw any measure he or she introduced before a vote has been taken by the committee to which the measure has been referred. A withdrawal shall be filed with the Secretary. A withdrawal shall render the original measure a nullity, as if it were never introduced. If a measure has been introduced by more than one Councilmember, all co-introducers must consent to withdrawal under this subsection.

(c) Notwithstanding subsection (a) of this section, if a Councilmember withdraws a resolution approving or disapproving a contract or reprogramming after the date the contract or reprogramming would otherwise have been deemed approved, the measure shall be deemed approved on the date the resolution is withdrawn, unless it has been deemed approved before that time by operation of law.

407. COMMITTEE APPROVAL

(a) Each committee may take action on any measure referred to the committee, except as provided in subsection (b) of this section.

(b) A committee may not vote on a measure sequentially referred to that committee until all conditions of the referral have been met to make such measure ripe for consideration by the committee.

(c) A hearing on a measure by any committee of the Council shall satisfy the requirements of Rule 501(a)(2) for measures referred sequentially to committees.

(d) After approval of a committee print on a measure by the Committee of the Whole, the Chairperson may file the committee print with the Secretary as specified in Rule 282 without the committee report.

B. COUNCIL APPROVAL.**411. CONSENT AGENDA.**

(a) The Chairman shall prepare a consent agenda for each legislative meeting that shall include measures that the Chairman believes will be adopted by unanimous vote. Without objection, a Councilmember may amend the committee print of a measure without removing the bill or resolution from the consent agenda, if the amendment is filed with the Secretary at or before a Committee of the Whole meeting and circulated to the Councilmembers at the Committee of the Whole meeting.

(b) A Councilmember may remove a measure from the consent agenda at the Committee of the Whole meeting or at the legislative meeting before the vote on the consent agenda.

(c) Measures removed from the consent agenda shall be considered as provided in Rule 315 or 316, except that the Chairman may first consider items removed from the consent agenda.

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(d) Before the vote on the consent agenda at a legislative meeting, and without objection from any other Councilmember, a Councilmember may request that a measure on the non-consent agenda be moved to the consent agenda.

(e) Approval of the consent agenda during a legislative meeting will include the unanimous approval of all matters included in the consent agenda. If a Councilmember asks for his or her vote to be recorded on a particular measure, the measure shall be removed from the consent agenda.

412. EMERGENCY LEGISLATION.

(a)(1) When a Councilmember proposes a measure to be approved immediately due to emergency circumstances, the Council may debate the question of the existence of an emergency and then shall vote on whether emergency circumstances exist.

(2) A Councilmember may debate the merits of a measure to determine whether emergency circumstances exist.

(3) If 2/3rds of the Councilmembers find that emergency circumstances exist, the Council shall consider the measure on its merits.

(b) For the purposes of this section, an "emergency" means a situation that adversely affects the health, safety, welfare, or economic well-being of the District, its residents, its businesses, or other persons or entities for which legislative relief is deemed appropriate and necessary by the Council, and for which adherence to the ordinary legislative process would result in delay that would adversely affect the circumstances which the legislation is intended to protect.

(c) An emergency resolution shall take effect, according to its terms, either immediately or at a specific time. Pursuant to section 412(a) of the Charter (D.C. Official Code § 1-204.12(a)), an emergency act shall be effective law for no more than 90 days.

(d) As required by Rule 309, no emergency measure may be approved by the Council without a fiscal impact statement presented to the Council at the time of its consideration; provided, that the Chairman may waive this requirement if the Chairman concurs with the Budget Director that the measure does not have a negative fiscal impact.

(e) As required by Rule 310, no emergency measure may be approved by the Council without a legal sufficiency determination presented to the Council at the time of its consideration; provided, that the Chairman may waive this requirement if the Chairman concurs with the General Counsel that the measure is legally sufficient.

(f) An emergency measure on the agenda for the legislative meeting shall be moved by the Councilmember who noticed the measure or, in the absence of that Councilmember, may be moved by another Councilmember designated by the

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Councilmember who noticed the measure. If no Councilmember has been designated to move the measure in the absence of the Councilmember who noticed the measure, the measure shall be considered to have been withdrawn.

(g) The Chairman may rule out of order an emergency measure that is subject to inclusion in an approved budget and financial plan.

413. TEMPORARY LEGISLATION.

If the Council approves an emergency bill under Rule 412, the Council may, at the same legislative meeting, consider a temporary bill on first reading without committee referral. At first reading, the temporary bill must be substantially similar to the emergency bill and may remain effective for no more than 225 days.

414. TECHNICAL-AMENDMENT LEGISLATION.

(a) On an occasional basis, the General Counsel shall prepare a technical-amendment bill for introduction by the Chairman.

(b) Notwithstanding Rule 501(a), no hearing is required before final adoption of a technical-amendment bill prepared in accordance with this section.

(c) A technical-amendment bill shall contain only amendments to existing law, and no amendment included in the technical-amendment bill may make substantive changes to the existing law. Any amendment to the technical-amendment bill must be certified as technical by the General Counsel.

(d) An amendment to a technical-amendment bill that has not been certified as technical by the General Counsel shall be out of order for Council consideration.

415. ENACTMENT LEGISLATION.

(a) On an occasional basis, the General Counsel shall prepare an enactment bill for introduction by the Chairman.

(b) Notwithstanding Rule 501(a), no hearing is required before final adoption of an enactment bill prepared in accordance with this section.

(c) An enactment bill shall present, for each title of the District of Columbia Official Code proposed to be enacted into positive law, a compilation, restatement, and revision of the general and permanent laws of the District of Columbia that conforms to the understood policy, intent, and purpose of the Council or Congress in the original enactments, with such amendments and corrections as to remove ambiguity, contradictions, and other imperfections, both of substance and of form.

(d) An amendment to an enactment bill that has not been proposed by the General Counsel as an amendment consistent with subsection (c) of this section shall be out of order for Council consideration.

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416. VETOED LEGISLATION.

(a) Whenever the Mayor disapproves and returns an act pursuant to section 404(e) of the Charter (D.C. Official Code § 1-204.04(e)), the disapproved act shall be the property of the full Council. The Chairman may solicit comments or recommendations on the disapproved act from a committee or committees. A Councilmember may move for the Council to reenact the disapproved act before the end of the 30-day review period provided in section 404(e) of the Charter. If 2/3rds of the Councilmembers present and voting vote to reenact the act, the act shall become law subject to the provisions of section 602(c) of the Home Rule Act (D.C. Official Code § 1-206.02(c)).

(b) Whenever the Mayor disapproves and returns any item or provision of a budget act pursuant to section 404(f) of the Charter (D.C. Official Code § 1-204.04(f)), the act containing the disapproved item or provision shall be the property of the full Council. The Chairman may solicit comments or recommendations on the disapproved item or provision from a committee or committees. A Councilmember may move for the Council to reenact any disapproved item or provision of the budget act before the end of the 30-day review period provided in section 404(f) of the Charter. If 2/3rds of the Councilmembers present and voting vote to reenact any item or provision of the budget act, the item or provision so reenacted shall be incorporated in the budget and become law subject to the provisions of section 602(c) of the Home Rule Act (D.C. Official Code § 1-206.02(c)).

417. TRANSMISSION OF ACTS.

The Chairman shall transmit adopted acts to the Mayor and enacted acts to the United States Senate and the United States House of Representatives as required by the Charter.

418. EFFECT OF END OF COUNCIL PERIOD.

(a)(1) A measure that has not been finally adopted by the Council before the end of the Council Period in which the measure was introduced lapses without prejudice to the measure's reintroduction in a subsequent Council Period.

(2) If temporary legislation has been passed on first reading pursuant to Rule 413 in a Council Period, it may be considered on final reading during the next Council Period.

(3) A matter transmitted by the Mayor or an independent agency for a designated period of Council review that is pending at the end of a Council period shall be in the same status that the matter was at the end of the prior Council period and the legislation assigned a new number. If notice required by these Rules has been given in the prior Council period, no additional notice shall be required before action on the matter.

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(b) Legislation that has been finally adopted by the Council during a Council Period shall not lapse simply because any of the following occurs:

- (1) Approval or veto by the Mayor;
- (2) Approval by operation of law;
- (3) Reenactment after a veto;
- (4) Submission to referendum; or
- (5) Transmittal to Congress.

C. NOTICE AND PUBLICATION OF INTENDED ACTIONS.**421. GENERAL NOTICE BY PUBLICATION OF INTENDED ACTIONS AND HEARINGS.**

(a)(1) Except as provided in these Rules, 15 days' notice by publication in the Register is required before Council adoption of a measure.

(2) Abbreviated notice under this subsection may be given upon good cause found and published in the Register with the notice.

(b) No prior notice by publication in the Register is required for the adoption of a ceremonial resolution, an emergency bill or resolution, an emergency-declaration resolution, or a resolution adopting Council Rules, appointing Council officers and committee chairpersons and members, or otherwise pertaining to the internal operation or organization of the Council.

(c) Except as provided in these Rules, 15 days' notice by publication in the Register or abbreviated notice published in the Register is required before the conduct of a hearing.

(d) Abbreviated notice under subsection (c) of this section may be given:

(1) For a hearing on a permanent bill for the purpose of rescheduling the hearing when the hearing was previously noticed in the Register;

(2) For a hearing on a resolution, when a hearing is required, upon good cause found and published in the Register with the notice, and when the abbreviated notice provides at least 3 business days' notice;

(3) For an oversight or investigative hearing, when such notice is posted on the Council website or published in the Register;

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(4) For a hearing that was scheduled on a day when there is an unscheduled closing of the government and when the abbreviated notice provides at least 3 business days' notice; or

(5) For a hearing on any matter on which a notice has been filed to add any item that does not otherwise require a hearing and when the abbreviated notice provides at least 3 business days' notice.

(e)(1) Notice of a roundtable on a resolution or an oversight roundtable shall be filed with the Secretary and circulated to Councilmembers at least 24 hours before the roundtable.

(2) Notwithstanding the requirements of paragraph (1) of this subsection, when a committee elects to conduct a roundtable on a confirmation resolution, 5 calendar days' notice is required before the conduct of the roundtable, such notice to be filed with the Secretary and circulated to Members. The notice shall also be posted on the Council website.

(f) A notice of a cancellation of a hearing or roundtable shall be filed and circulated at least 24 hours before the scheduled hearing or roundtable, unless the reason for the cancellation precludes such notice.

422. PERSONAL SERVICE OR ACTUAL NOTICE.

Notice by publication is not required if all persons subject to an intended action are named, and in accordance with law, either are served personally or have actual notice of the Council's intended action.

423. METHODS OF NOTICE.

(a) When not otherwise required by these Rules or other provisions of law to be done in specific fashion, notice may be given by:

(1) Publication in the Register;

(2) Publication in one or more newspapers of general circulation;

(3) Mailing notices to a mailing list of organizations and individuals established and maintained by the Secretary;

(4) Use of other news media;

(5) Posting notice in a prominent place in the John A. Wilson Building and other public buildings or posting places;

(6) Facsimile;

(7) E-mail;

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(8) Posting on the Council's official website; or

(9) In any other manner directed by the Council.

(b) When notice to the public is required under these Rules, by law, or otherwise, the notice shall be posted on the Council website.

424. NOTICE OF EMERGENCY ACTIONS.

(a)(1) When an emergency measure is to be considered, a notice that includes the following shall be circulated by noon on the third business day before the legislative meeting at which the emergency measure is to be considered, unless the nature of the emergency precludes such notice:

(A) A statement of the circumstances making it necessary that the measure be considered on an emergency basis, which shall comply with Rule 412(b);

(B) A statement of the intended effect of the emergency measure;
and

(C) A draft of the emergency measure and emergency-declaration resolution.

(2) If the nature of the emergency precludes the notice required by paragraph (1) of this subsection, the sponsor of the legislation shall circulate and file the measure with the Secretary and take steps to ensure that Councilmembers have notice at the earliest possible time before the meeting at which the emergency measure is to be considered.

(b) In addition to the provisions of subsection (a) of this section, public notice of intended emergency action shall be given by the Council before adoption of an emergency bill or resolution by at least one method provided in Rule 423.

425. NOTICE OF TEMPORARY LEGISLATION.

(a) Each temporary bill adopted pursuant to Rule 413 shall be circulated and filed with the accompanying emergency measure in accordance with Rule 424. Following approval on first reading, the Secretary shall publish a notice of intent to adopt the temporary bill on second reading in the Register.

(b) When temporary legislation is to be considered under Rule 413, the notice of emergency action under Rule 424 shall include notice of the temporary legislation.

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426. NOTICE OF WAIVER OF RULE 231(C).

(a) A notice of a request to waive Rule 231(c) shall be filed and circulated no later than noon on the third business day before the legislative meeting at which a measure is to be considered. The notice shall include a rationale for the request.

(b) If the committee report for a measure is not filed before noon on the third business day before the legislative meeting, a motion to waive Rule 231(c) may not be placed on the legislative agenda.

(c) Before approval of a motion to waive Rule 231(c), a certification shall be made of a measure's legal sufficiency and technical compliance with the drafting rules of the Council; the fiscal impact; the completion of the record; and a determination made of the fiscal-impact.

(d) Approval of a motion to waive Rule 231(c) shall require a vote of 2/3rds of the Members present and voting.

(e) A motion to waive Rule 231(c) is not in order if the legislation includes amendments made by one or more committees that are beyond the jurisdiction of the committee or committees.

(f) At the discretion of the Chairman, a notice of a request to waive Rule 231(c) may be considered as notice of a request to consider the measure at a meeting of the Committee of the Whole, pursuant to Committee of the Whole Rule 403(b), preceding the legislative meeting for which the request to waive was filed.

427. CEREMONIAL RESOLUTIONS.

Each ceremonial resolution shall be circulated and filed by noon on the business day before the legislative meeting at which it is to be considered.

428. NOTICE AND PUBLICATION OF ADOPTED LEGISLATION.

Each measure adopted by the Council shall be published in the Register. Except as provided in section 204 of the District of Columbia Codification Act of 1975, effective October 8, 1975 (D.C. Law 1-19; D.C. Official Code § 2-602), no measure shall become effective until after its publication. Once notice by publication has been given in accordance with this section, no additional publication is necessary for an act completing congressional review to become effective law as provided in section 602 of the Home Rule Act (D.C. Official Code § 1-206.02).

429. NOTICE OF NEW BUSINESS.

Except as provided in these Rules, a Councilmember shall file a notice of intent by noon on the third business day before a legislative meeting, to make any of the following motions:

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(1) A motion to reconsider a measure that was considered at a prior legislative meeting;

(2) A motion to take from the table a measure that was laid on the table at a prior legislative meeting;

(3) A motion to discharge;

(4) A point of personal privilege;

(5) A motion to override a Mayoral veto; or

(6) Any other motion that brings new business before the Council.

430. NOTICE OF COMMITTEE MEETINGS.

(a) A committee shall file and circulate notice, which shall be made publicly available at least 24 hours before a meeting, of the date, hour, and place of a committee meeting. Such notice shall include a copy of the agenda and a draft, including a comparative print when required by Rule 803(e)(5), of any measures to be considered at the meeting.

(b) If at least 4 members of the committee agree in writing to a shorter notice, the committee may consider matters not included on the agenda.

(c) A committee shall file and circulate notice, at least 24 hours before a meeting, of the cancellation of a committee meeting.

ARTICLE V—HEARING PROCEDURES.**A. PROCEDURES FOR HEARINGS.****501. AUTHORITY TO CALL HEARINGS.**

(a)(1) The Council shall hold a hearing when required by law and may hold a hearing on any matter relating to the affairs of the District. A Council hearing may be called by the Chairman.

(2) A hearing shall be held on all permanent bills before final adoption by the Council. A hearing shall not be required when a hearing on the same or a similar bill was held in the same or immediately preceding Council Period.

(b) A committee of the Council shall hold a hearing when required by law and may hold a hearing on any matter relating to the affairs of the District that is properly within the committee's jurisdiction as provided in these Rules.

(c) Unless a hearing is required by law or regulation, a committee may hold a roundtable on any matter relating to the affairs of the District that is properly within

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the committee's jurisdiction as provided in these Rules. A roundtable shall comply with the hearing requirements set forth in this Article.

(d) A notice of a hearing or roundtable shall be filed with the Secretary.

502. QUORUM.

One Councilmember, for the Council, or one member of a committee, for the committee, shall constitute a quorum for the purpose of holding a hearing or a roundtable.

503. PARTICIPATION BY MEMBERS.

(a) Each Councilmember may participate in hearings of the Council or of a committee, without regard to whether the Councilmember is a member of the committee conducting the hearing.

(b) Each Councilmember may question witnesses for no more than 10 minutes until after each Councilmember has had an opportunity to question the witnesses.

504. WITNESSES AT A PUBLIC HEARING.

(a) If a committee, in the publication of notice of a hearing or roundtable, sets a deadline before which a person must contact the committee to be permitted to be a witness at the public hearing, then at the time that the public hearing is held, each person who complied with the committee's requirements shall be given an opportunity to testify.

(b) A person who fails to comply with the requirements of this section may not testify unless the presiding member allows the person to testify.

B. RECEIVING TESTIMONY.**511. QUESTIONING WITNESSES.**

Witnesses may be questioned by Councilmembers and, with the consent of the presiding member, by authorized staff or counsel.

512. DECORUM OF WITNESSES.

(a) A witness may address a Councilmember only through the presiding member.

(b) A witness shall confine their remarks to the question under discussion and shall avoid making negative personal comments.

(c) The presiding member shall maintain order in the hearing or roundtable and, after issuing a warning, may order the removal of a disorderly person as provided in Rule 322.

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C. RIGHTS OF WITNESSES.**521. RIGHT TO COUNSEL.**

Any witness who appears before the Council or a committee has the right to be represented by counsel.

522. RIGHT TO MAKE OPENING STATEMENT.

(a) Each witness testifying on behalf of the Executive Branch, including an agency, entity, board, commission, or independent agency of the Executive Branch must submit written testimony to the chair of the committee before which the witness is to testify at least 48 hours before the commencement of a hearing or roundtable. This requirement may be waived by the presiding chairperson if the presiding chairperson determines there is good cause.

(b) Any witness testifying at a hearing or roundtable may submit an opening statement, which shall be placed in the record of the hearing or roundtable if timely submitted. The presiding member may permit the witness to read the witness's statement at the hearing or roundtable.

D. RECORD OF HEARINGS.**531. HEARING RECORDS, REQUIRED.**

(a) Within 20 business days after the close of the record for a hearing or roundtable, a committee shall file with the Secretary a hearing record, which shall be a complete record of the hearing or roundtable. The hearing record shall contain the following:

- (1) A copy of the published notice;
- (2) A copy of the witness list;
- (3) Copies of written testimony;
- (4) Statements or other materials submitted for the record;
- (5) Important correspondence with the Mayor, if applicable; and
- (6) Other information that the committee chairperson considers

necessary.

(b) If new materials are provided to the committee after the close of the record, the committee chairperson may supplement the hearing record.

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532. CLOSE OF RECORD.

Unless otherwise provided in the hearing notice or stated at the hearing, the record for a hearing or roundtable shall close 10 business days after the hearing or roundtable. A committee may not mark-up a measure within its jurisdiction until after the official close of the record on such measure.

ARTICLE VI—INVESTIGATIONS AND SUBPOENAS.**A. PROCEDURES FOR INVESTIGATIONS USING SUBPOENAS.****601. RESOLUTION AUTHORIZING THE USE OF SUBPOENAS IN AN INVESTIGATION.**

(a) In order to use subpoenas to obtain testimony or documents, the Council shall adopt a resolution authorizing an investigation by the Council.

(b) In order to use subpoenas to obtain testimony or documents, a standing committee, an ad hoc committee, or, if authorized by the resolution establishing it, a special committee, shall adopt a resolution of the committee authorizing an investigation. This resolution shall be filed in the Office of the Secretary.

(c) To afford witnesses adequate notice of the scope of the inquiry, a resolution authorizing an investigation under this section shall delineate the purpose of the investigation and the subject matter to be investigated.

602. NOTICE OF INVESTIGATION.

The Secretary shall publish a notice of each investigation authorized under Rule 601 in the Register, which notice shall include a copy or description of the resolution authorizing the investigation and the date the resolution was filed in the Office of the Secretary.

603. REPORT OF INVESTIGATION.

(a) Within 90 days after the conclusion of an investigation under this article, a committee shall submit to the Council the results of the investigation, unless the Council, by majority vote of the Members present and voting, extends the time limit.

(b) The committee, by a majority vote of the Members present and voting, may vote not to release all or part of its report. The Council, by a majority vote of Members present and voting, may direct a committee to release its report under terms that the Council sets.

604. TESTIMONY UNDER OATH.

A witness may be affirmed or sworn to give truthful testimony.

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605. ISSUING THE OATH.

Any person authorized by law may issue an oath or affirmation to a witness.

606. DEPOSITIONS.

The Council or committee may authorize a Councilmember, staff, or counsel to take the testimony of witnesses by oral or written depositions.

B. SUBPOENAS.**611. ISSUANCE OF SUBPOENAS.**

The Council, any standing committee of the Council, an ad hoc committee, and, if authorized by the resolution establishing it, any special committee, may subpoena the attendance and testimony of witnesses and the production of documents and other tangible items at meetings, hearings, and depositions in connection with an investigation. Subpoenas shall be issued in the form set forth in Appendix A, and, except as provided in Rule 613(b), shall be served not less than 5 business days before the return date.

612. REPORT TO SECRETARY REGARDING USE OF SUBPOENA.

Before issuing a subpoena, the Council, a standing committee, an ad hoc committee, or authorized special committee shall submit a report to the Secretary outlining the nature and scope of the investigation and the type of information sought through the use of the subpoena.

613. SERVICE OF SUBPOENAS.

(a) Except as provided in subsection (b) of this section, a subpoena shall be served personally on the witness or the witness's designated agent in one of the following ways, which may be attempted concurrently or successively:

(1) By a person at least 18 years of age, designated by the committee or the Council from among the staff appointed by the Secretary who is not directly involved in the investigation; or

(2) By a person, at least 18 years of age, engaged by the committee or the Council for this purpose.

(b) If, after a reasonable attempt, personal service on a witness or witness's designated agent cannot be obtained, service may be effectuated by registered or certified mail not less than 8 business days before the return date.

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614. ENFORCEMENT OF SUBPOENAS.

A committee may refer to the Council any case of contumacy by a person subpoenaed to appear before the committee. The Council may refer by resolution any case of contumacy by any person subpoenaed by the Council or a committee to the Superior Court of the District of Columbia as provided in section 413 of the Charter (D.C. Official Code § 1-204.13).

C. RIGHTS OF WITNESSES.**621. RIGHT TO ASSERT PRIVILEGES.**

(a) A witness has the right to refuse to answer a question that might tend to incriminate the witness by claiming the witness's Fifth Amendment privilege against self-incrimination, other Constitutional privileges, or statutory or common law privileges recognized in the Superior Court of the District of Columbia.

(b) If a witness asserts a privilege, the presiding member shall inquire into the witness's reasons for claiming the privilege. If the presiding member determines that the claim of privilege is not warranted, the presiding member shall direct the witness to answer the question. A witness's continued claim of privilege in the face of an order by the presiding member to answer a specific question constitutes contumacy by the witness.

622. NOTIFICATION OF RIGHTS.

When a witness under subpoena is not represented by counsel, the presiding member shall advise the witness of the witness's privilege against self-incrimination.

623. RIGHT TO TRANSCRIPT.

A witness under subpoena is entitled to receive, at the cost of producing it, a written transcript or a transcription of the witness's testimony in connection with an investigation.

624. RIGHTS OF PERSONS WHO ARE SUBJECTS OF INVESTIGATIONS.

Any person who is the subject of an investigation authorized under Rule 601 may submit written questions for the cross-examination of other witnesses at a public investigative hearing called by the Council or a committee. With the consent of the Councilmembers present and voting, the questions may be put to the witness by a Councilmember, by staff, or by counsel.

625. RIGHTS OF PERSONS IDENTIFIED IN INVESTIGATIONS.

Any person, who is named or specifically identified in connection with an investigation and who believes that the testimony or other evidence or comment by a member of the Council or a committee or its staff does not comport with the truth, may

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file a sworn statement of facts relevant to the testimony or other evidence or comment complained of.

D. REPRIMAND, CENSURE, AND EXPULSION PROCEDURES.**651. ESTABLISHING AN AD HOC COMMITTEE.**

(a) An ad hoc committee may be established pursuant to subsection (b) or (c) of this section for the purposes of considering allegations of a violation of a law or rule by a Councilmember and making recommendations for further action.

(b) An ad hoc committee shall be established, pursuant to subsection (d) of this section, within 3 business days after:

(1) BEGA censures a Councilmember;

(2) Outside counsel delivers to the Council an investigative report that contains a finding that a Councilmember has violated the Council's sexual harassment policy; or

(3) 5 Councilmembers file with the Secretary a written request for the establishment of an ad hoc committee, which shall include a description of the alleged violation of law or rule that forms the basis of the request.

(c) The Chairman may establish an ad hoc committee pursuant to this section at the Chairman's discretion, regardless of whether one of the events described in subsection (b) of this section has occurred. If the Chairman establishes an ad hoc committee under this subsection, the memorandum filed pursuant to subsection (d) of this section shall include a description of the alleged violation of law or rule committed by the Councilmember whose conduct will be under consideration by the ad hoc committee.

(d) To establish an ad hoc committee, the Chairman shall file a memorandum with the Secretary appointing 3 or more Councilmembers to serve on the ad hoc committee, and designating one of the appointed members to serve as the chairperson. The ad hoc committee shall not include any Councilmember whose conduct is under consideration by the ad hoc committee.

(e) The Secretary shall deliver a copy of the memorandum filed pursuant to subsection (d) of this section to each Councilmember, including the Councilmember whose conduct is under consideration by the ad hoc committee, within 48 business hours of the Secretary's receipt of that memorandum.

(f) No sanction pursuant to Rule 655 shall be imposed unless:

(1) First recommended by an ad hoc committee; and

(2) A proceeding is held pursuant to Rule 653.

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(g) The ad hoc committee's proceedings may be conducted in executive session in accordance with Rule 375, except that its recommendation for further action shall be made public. In connection with any action taken under this part, the Council shall take all reasonable steps to protect the identity of any complainant who alleges sexual harassment, as defined in the Sexual Harassment Policy. Such actions may include voting to close meetings under Part H of Article III and withholding or redacting identifying information in written documents.

(h) For the purposes of this part, the term "Chairman" means, if the Chairman is the Councilmember whose conduct is under consideration by the ad hoc committee, the Chairman Pro Tempore.

652. AD HOC COMMITTEE PROCEDURES.

(a) An ad hoc committee established pursuant to Rule 651 shall:

(1) In the case of an ad hoc committee established pursuant to Rule 651(b)(1) or (2), consider BEGA's findings or outside counsel's investigative report;

(2) In the case of an ad hoc committee established pursuant to Rule 651(b)(3), consider the description of the alleged violation of law or rule in the written request filed pursuant to Rule 651(b)(3);

(3) In the case of an ad hoc committee established pursuant to Rule 651(c), consider the description of the alleged violation of law or rule in the memorandum filed pursuant to Rule 651(d);

(4) Permit testimony from the Councilmember whose conduct is under consideration by the ad hoc committee;

(5) Except as provided in subsection (b) of this section, collect more evidence, as needed, including by authorizing an investigation pursuant to Rule 601(b); except, that the Chairman, pursuant to an authorizing resolution, may appoint any person to perform the actions described in this paragraph in lieu of the ad hoc committee;

(6) Consider the findings of any other investigation of the conduct that is under consideration by the ad hoc committee; and

(7) File a report, as described in subsection (c) of this section, with the Secretary within:

(A) In the case of an ad hoc committee established pursuant to Rule 651(b)(1) or (2), 45 days after the ad hoc committee is established; or

(B) In the case of an ad hoc committee established pursuant to Rule 651(b)(3) or (c), 90 days after the ad hoc committee is established.

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(b) An ad hoc committee created pursuant to Rule 651(b)(2) may not engage in additional fact finding and shall rely on the findings of outside counsel for the purposes of the report required by subsection (a)(7) of this section.

(c)(1) The report required by subsection (a)(7) of this section shall:

(A) Summarize the actions taken by the ad hoc committee;

(B) Describe the findings of the ad hoc committee, including identifying the law or rule that has been violated and summarizing the evidence in support of those findings; and

(C) Recommend sanctions, if any, including reprimand, censure, or expulsion.

(2)(A) If the report required by subsection (a)(7) of this section recommends a sanction that would require a resolution of the Council to implement, the chairperson of the ad hoc committee or the Chairman shall introduce such resolution at the same time the report is filed; except, that, if the report recommends multiple actions, including censure or expulsion, the resolution of censure or expulsion shall be introduced as a separate measure.

(B)(i) A resolution of censure or expulsion introduced pursuant to this paragraph shall identify specific charges against the accused.

(ii) Each charge shall set forth an offense of which the accused is alleged to have committed, including a citation to the law or rule alleged to have been violated.

(iii) Each charge shall be accompanied by at least one specification, which shall state what actions the accused is alleged to have taken, which, if true, would constitute an instance of the offense indicated in the charge, and a description of the evidence supporting the specification.

(iv) The resolution(s) introduced pursuant to this paragraph shall be retained by the Council.

(d) Failure of an ad hoc committee to file its report by the deadline provided in subsection (a)(7) of this section shall be construed as having failed to reach a decision.

653. COUNCIL CONSIDERATION OF REPORT.

(a)(1) If an ad hoc committee recommends censure or expulsion, the Chairman, or another Councilmember designated by the Chairman, shall hold a proceeding within 45 days after the ad hoc committee files its report pursuant to Rule 652.

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(2) At least 30 days before the proceeding, the Secretary shall provide written notice of the proceeding to the accused or the accused's Council office, which shall include a copy of the report and resolution filed pursuant to Rule 652.

(3)(A) The Chairman, or another Councilmember designated by the Chairman, shall preside over the proceeding. At the beginning of the proceeding, the Chairman shall:

(i) Read the charges and specifications listed in the resolution filed pursuant to Rule 652(c)(2); and

(ii) Ask the accused how the accused answers—admit or deny—first to each specification, and then to each charge.

(B) If the accused admits all charges, no further action at the proceeding shall be required and the Council shall consider the resolution of censure or expulsion at the next legislative meeting.

(C) At the proceeding, the chairperson of the ad hoc committee, or the chairperson's designee, shall be given the opportunity to make an opening and a closing statement, to call witnesses, and to question any witnesses called by the accused; except, that nothing in this paragraph shall be construed to require the chair to present evidence against the accused at the proceeding.

(D) At the proceeding, the accused shall be given the opportunity to make an opening and a closing statement, to call witnesses on the accused's behalf, and to question any witnesses called by the chairperson of the ad hoc committee; except, that the accused shall have no right to have the Council compel the production of evidence or the testimony of witnesses.

(E) The accused may be represented by a person of the accused's choice, whether or not the person is an attorney at law, and may have that representative speak or question witnesses on the accused's behalf.

(F) The questioning or cross-examining of witnesses, if any witnesses testify, may be reasonably limited by the presiding member.

(G) If testimony is taken from witnesses, such testimony shall only be taken from witnesses having direct knowledge of facts or circumstances relevant to the specific charges under consideration.

(H) The rules of evidence and judicial procedure applicable in courts of law shall not be applicable to this proceeding, and the procedures shall be generally informal.

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(4) The accused shall have no rights beyond those stated herein and the accused shall not be entitled to any process beyond notice and an opportunity to be heard.

(5)(A) Following the proceeding, the chairperson of the ad hoc committee shall request that the resolution of censure or expulsion be agendized for the next legislative meeting.

(B) During the consideration of a resolution of censure or expulsion, a Councilmember may offer an amendment to the resolution; except, that a resolution of censure may not be amended to impose expulsion.

(6) The accused shall be recused from voting on the resolution of censure or expulsion.

(b) Any other resolution pertaining to sanctions, introduced pursuant to Rule 652(c)(2), shall be placed on the agenda of a forthcoming legislative meeting by the Chairman.

654. REPRIMAND.

(a) A reprimand is a formal statement of the Council officially disapproving the conduct of one of its members. A reprimand shall be directed to a particular member of the Council based on a particular action or set of actions that is determined to be in violation of the Council's Rules, law, or policy, or otherwise inappropriate, but is considered to be not sufficiently serious to require censure or expulsion.

(b) The Council may adopt a resolution of reprimand in the same manner as provided for the adoption of any resolution; provided, that the Councilmember who is the subject of the resolution is permitted to speak in his or her defense prior to action on the motion for adoption of the resolution. The fact that the Councilmember who is the subject of a reprimand does not choose to respond to the resolution or does not attend the meeting at which the resolution is to be adopted shall not prevent the Council from adopting the resolution; provided, that the Councilmember had actual notice of the inclusion of the resolution on the agenda and had a reasonable opportunity to attend the meeting.

655. CENSURE AND EXPULSION.

(a)(1) Censure is a formal statement of the Council officially disciplining one of its members. It is a punitive action, which serves as a penalty imposed for wrongdoing, but it carries no fine or suspension of the rights of the Member as an elected official. Censure should be used for cases in which the Council determines that the Councilmember committed a violation of a law or rule of a serious nature.

(2) The Council may, by a 2/3rds vote of Councilmembers present and voting, adopt a resolution of censure if it finds, based on substantial evidence contained

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in the resolution or presented at the proceeding, that the Councilmember committed a violation of a law or rule of a serious nature.

(b)(1) Expulsion is the most severe punitive action, serving as a penalty imposed for egregious wrongdoing. Expulsion results in the removal of the Member. Expulsion should be used for cases in which the Council determines that the Councilmember committed a violation of law of the most serious nature, including a violation that substantially threatens the public trust.

(2) The Council may, by a 5/6 vote of Councilmembers, adopt a resolution of expulsion if it finds, based on substantial evidence contained in the resolution or presented at the proceeding, that the Councilmember committed a violation of law that amounts to a gross failure to meet the highest standards of personal and professional conduct.

(c) To protect the exercise of official Councilmember duties and the overriding principle of freedom of speech, the Council shall not impose censure or expulsion on any Councilmember for the exercise of the Councilmember's First Amendment right, no matter how distasteful the expression of that right was to the Council and the District.

(d) For the purposes of this section, the term "substantial evidence" means proof that a reasonable person would accept as adequate to support a conclusion or decision in favor of censure or expulsion.

ARTICLE VII—BUDGET PROCEDURES.

A. BUDGET REVIEW PROCEDURES.

701. ROLE OF THE COMMITTEE OF THE WHOLE.

The Mayor's annual proposed budget for the District government and any revised, supplemental, or deficiency budget submitted to the Council pursuant to section 442 of the Charter (D.C. Official Code § 1-204.42) shall be referred to the Committee of the Whole.

702. BUDGET-REVIEW SCHEDULE.

(a) The Budget Director, at the direction of the Chairman, shall prepare a budget-review schedule, including committee hearings; and other budget activities as necessary or appropriate.

(b) The budget-review schedule shall be presented to the Committee of the Whole for approval. The Budget Director may change the schedule as necessary or appropriate and shall circulate the updated budget-review schedule and publish it on the Council website.

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703. ROLE OF COUNCIL COMMITTEES.

(a) Each standing committee shall be responsible, in accordance with the budget-review schedule, for reviewing the proposed budget for agencies within its purview, including:

- (1) Holding public hearings;
- (2) Recommending funding and personnel levels for each agency;
- (3) Identifying additional budget needs not included in the committee's recommendation under paragraph (2) of this subsection, for which funding is sought;
- (4) Identifying legislative actions required to implement the committee's budget recommendations; and
- (5) Identifying issues for further analysis by the Mayor pursuant to section 442(a)(6) of the Charter (D.C. Official Code § 1-204.42(a)(6)).

(b)(1) Each standing committee shall hold a markup of its report of recommendations to the Committee of the Whole for the proposed budget for agencies within its purview, in accordance with report requirements issued by the Budget Director.

(2) The committee report of recommendations shall be balanced. No report shall result in a net increase in the total amount of the budget request for all agencies under its purview unless that report also identifies additional revenue sources, additional budget reductions, or both, within the committee's jurisdiction, sufficient to provide funding for the increase, except where another committee has directed funds to the committee.

(3) Each proposed subtitle in the committee report shall be within the purview of the committee.

(4) No amendment offered at markup shall have the effect of putting the committee budget recommendations out of balance.

(5) No transfers or substantive changes shall be made after the markup that were not approved at the markup.

(c)(1) Each standing committee shall submit its committee report to the Budget Director for certification by close of business the day before the Committee of the Whole working session.

(2) Following certification by the Budget Director, each committee shall file its report with the Secretary.

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704. COMMITTEE OF THE WHOLE CONSIDERATION OF PROPOSED BUDGET.

(a) The Budget Director upon receipt of committee reports and at the direction of the Chairman, shall prepare a summary of committee recommendations for presentation at a working session of the Committee of the Whole.

(b) Following the working session, the Budget Director, at the direction of the Chairman, shall prepare a draft report and print for the budget measures that includes the Chairman's recommendations. The report shall include a comparison of the budget levels recommended by committees with any changes recommended by the Chairman. The Committee of the Whole shall meet to consider and mark up the draft report and print.

(c) An amendment offered to a budget measure shall be accompanied by a fiscal impact statement and a legal sufficiency determination, as required by Rules 309 and 310, respectively. No amendment shall have the effect of putting the budget out of balance.

705. COUNCIL CONSIDERATION OF THE BUDGET.

(a) Following the markup and report on the budget by the Committee of the Whole, the reported budget shall be presented for 2 readings at the next legislative meetings or additional meetings called by the Chairman for that purpose.

(b) An amendment offered to a budget measure shall be accompanied by a fiscal impact statement and a legal sufficiency determination, as required by Rules 309 and 310, respectively. No amendment shall be in order if it has the effect of putting the budget out of balance.

B. REPROGRAMMING POLICY ACT PROCEDURES.**711. EFFECT OF RECESS ON PROCEDURES.**

Reprogramming requests and grant budget modification requests may not be submitted to the Council during a recess of the Council. No time period provided in this part for the consideration of the requests will continue to run during a recess of the Council.

712. COMMITTEE REFERRAL OF REQUESTS.

The Chairman may refer reprogramming requests for comments to the standing committee having oversight responsibility for the program or agency affected.

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713. CIRCULATION OF REQUESTS.

The Secretary shall circulate a copy of a reprogramming request or a grant budget modification request within one business day after the filing of the request with the Secretary.

714. PUBLICATION OF NOTICE.

Upon receipt of a reprogramming request or a grant budget modification request, the Secretary shall publish a "notice of reprogramming request" or a "notice of grant budget modification request", as the case may be, in the Register that, at a minimum, includes:

- (1) A description of the action requested;
- (2) The date the request was received by the Council; and

(3) A statement that the request will be deemed approved 14 days from the date it was received by the Council unless a notice of disapproval has been filed before that time by a member of the Council, and that, if a notice of disapproval is filed, the request will be deemed approved 30 days from the date the request was received unless, before that time, the Council adopts a resolution to disapprove the request.

715. WITHDRAWAL OF REPROGRAMMING REQUESTS.

The Mayor may withdraw a reprogramming request or grant budget modification request at any time before the Council takes final action on the request, or before it takes effect without Council action.

716. REQUIREMENTS FOR DISAPPROVAL OF REQUESTS.

(a) To initiate disapproval of a reprogramming request or a grant budget-modification request, a Councilmember shall file a written notice of disapproval with the Secretary within 14 days after the Council receives the request. The Secretary shall circulate copies of the written notice of disapproval.

(b) If this notice is given, the Council may consider and take final action, as provided in this section, to disapprove the request within 30 calendar days after the Council receives the request.

717. AUTOMATIC APPROVAL OF REQUESTS.

If the notice of disapproval provided in Rule 716 is not given within 14 days after the Council receives the request, the reprogramming request or a grant budget modification request shall be deemed approved. If the notice is given as provided in Rule 716(a) and the Council does not take final action to disapprove the request as provided in Rule 716(b), the reprogramming request or a grant budget modification request shall be deemed approved.

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718. TRANSMITTAL TO MAYOR.

The Chairman shall transmit, by letter to the Mayor, notification of the Council's disapproving or failure to disapprove a reprogramming request or a grant budget modification request.

C. FUNDS CONTROL ACT PROCEDURES.

[RESERVED].

D. SPECIFIED FUNDING ALLOCATION PROCEDURES.**730. REQUIRED INFORMATION PRIOR TO APPROVAL.**

(a) To receive an earmarked grant through the budget process or a supplemental budget, each grantee shall submit 2 copies of the following, postmarked or hand delivered to the Budget Director no later than 7 days following the date of the first reading of the Council on the budget:

(1) The organization's Articles of Incorporation;

(2) Internal Revenue Service certification that the organization is tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1986, approved August 16, 1954 (68A Stat. 163; 26 U.S.C. § 501(c)(3));

(3)(A) The organization's most recent financial audit, not more than 2 years old; or

(B) A recent financial statement, not more than one year old, prepared by a certified accountant that shows that the organization is in good financial standing and that delineates its:

(i) Existing assets and liabilities;

(ii) Pending lawsuits, if any; and

(iii) Pending and final judgments, if any;

(4) Internal Revenue Service Form 990 covering the organization's most recently completed fiscal year;

(5) A notarized statement from the grantee certifying that:

(A) The organization is current on District and federal taxes;

(B) The Council of the District of Columbia is authorized to verify the organization's tax status with the District of Columbia Office of Tax and Revenue and the Office of Tax and Revenue is authorized to release this information to the Council, the Mayor, and the Auditor;

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(C) The organization focuses primarily on services to District of Columbia; and

(D) The District government shall have access to its financial, administrative, and operational records, including specific consent for the Auditor to access its books, accounts, records, findings, and documents related to the grant; and

(6) A comprehensive program statement that includes a detailed:

(A) Scope of work; and

(B) Budget that describes how the grant funds shall be spent.

(b) Nothing in this part shall be construed as waiving the requirements to submit information required of all grantees by the grantor agencies or organizations.

(c)(1) If an organization cannot meet the submission requirements established in subsection (a) of this section, the organization shall be required to submit:

(A) A notarized statement designating a nonprofit organization that does meet the criteria to serve as its fiscal agent or fiscal sponsor postmarked or hand delivered to the Council's Office of the Budget Director no later than the time prescribed in subsection (a) of this section; and

(B) The information required by subsection (a)(5) of this section.

(2) The fiscal agent or fiscal sponsor shall be required to submit the following, postmarked or hand delivered to the Council's Office of the Budget Director no later than the time prescribed in subsection (a) of this section.

(A) A notarized statement agreeing to serve as fiscal agent or fiscal sponsor; and

(B) The information required by subsection (a) of this section.

(d)(1) All earmarked grants shall be listed in the Budget Support Act to include the grantee name, grant amount, and purpose of the grant.

(2) Before the second reading of the Budget Support Act, the Council's Budget Director shall certify which grantees have met the requirements of subsection (a) of this section. Any grantee that has not met the requirements shall be removed from the Budget Support Act on second reading and shall not receive funding through an earmarked grant.

(e) This part shall not apply to funds or grants provided to instrumentalities of the District or entities that are named in the Local Budget Act.

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731. PROHIBITION ON CONSECUTIVE ALLOCATIONS.

(a) An organization may not receive a specified funding allocation if the organization has received an award in the prior fiscal year.

(b) An organization that receives a specified funding allocation for a capital project shall be limited to only one capital award, annually.

732. LIMITS ON AWARD AMOUNTS.

Specified funding allocations per fiscal year shall be limited to \$250,000 for non-capital projects and \$1 million for all capital projects.

733. AUDIT REQUIREMENTS.

(a) Grantees shall be notified that the District of Columbia Auditor may randomly audit grant recipients.

(b) The District of Columbia Auditor's report, if applicable, shall be issued no later than March 1st of the fiscal year immediately following the year for which the grant was awarded.

734. DISCLOSURE REQUIREMENTS.

Councilmembers and staff and the officers and directors of a proposed grantee shall disclose the existence of any personal, familial, or financial relationship between a Councilmember or staff and any officer or director of the grantee.

E. REPORTS ON BILLS SUBJECT TO INCLUSION IN THE BUDGET AND FINANCIAL PLAN.**735. REPORTS ON BILLS SUBJECT TO INCLUSION IN THE BUDGET AND FINANCIAL PLAN.**

The Budget Director shall circulate and publish quarterly reports in accordance with Rule 283(b) no later than 15 days after the end of each quarter, identifying the bills adopted by the Council that are subject to inclusion in the budget and financial plan or subject to appropriation.

736. REPEAL OF LAWS SUBJECT TO APPROPRIATION.

(a) A law, or provision of a law, that will be applicable subject to inclusion in a budget and financial plan that remains unfunded for 2 fiscal years shall be subject to repeal in the Budget Support Act on the third fiscal year following its enactment.

(b) The Budget Director shall prepare and submit a list of the laws, or provisions thereof, that meet the criteria for repeal to the Chairman that the Chairman may

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propose for approval by the Committee of the Whole for inclusion in the Budget Support Act.

ARTICLE VIII—COUNCIL RECORDS**A. COUNCIL RECORDS.****801. RESPONSIBILITY FOR RECORDS.**

(a) The Secretary shall maintain accurate and up-to-date Council records, described in Rules 806 and 807, and shall make the records available to the public.

(b) Each committee shall make records on legislation assigned to the committee and on other committee activities and shall file the records, when the record on a matter is closed post-hearing in accordance with Rule 532, with the Secretary. When records are in the custody of the committee, the committee shall make them available to the public.

802. FORM FOR INTRODUCTIONS.

(a) Each measure shall be introduced in typewritten form, signed by the Councilmember introducing it, include a long title that summarizes the subject matter of the measure, and be in substantial compliance with the form required for final adoption. The Secretary shall make the determination as to whether the measure complies with this subsection.

(b) Co-introduction of a measure shall be evidenced by the signature of the co-introducer on the face of the measure. Co-sponsorship shall be permitted up to the close of business the day following the legislative meeting or Committee of the Whole work session at which the measure was officially referred.

(c) A Councilmember may withdraw as a co-introducer or a co-sponsor pursuant to Rule 402.

803. REPORTS ON LEGISLATION.

(a) Each measure that is adopted by a committee shall be accompanied by a report.

(b) The report shall be adopted by the committee at the same meeting at which the measure is approved.

(c) Each adopted report on a measure shall be in writing, signed by the committee's chairperson, accompanied by the final measure, and dated as of the date of the markup.

(d) Each adopted report shall contain the following information, in the order listed, regarding the reported legislation:

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(1) A comprehensive section stating the measure's background, need, purpose, and effect. This section shall also include the committee's reasoning, analysis of relevant issues, legislative intent, and, if applicable, guidance on statutory construction;

(2) A chronology of action, including the date:

(A) Of introduction;

(B) That the notice of intent to act on the measure was published in the Register;

(C) That each notice of hearing or roundtable was published in the Register;

(D) Of each hearing or roundtable on the measure; and

(E) Of the committee meeting at which the measure and report were adopted;

(3) The position of the Executive, if any, on the measure;

(4) The committee's response to the relevant recommendations adopted by a resolution of an affected Advisory Neighborhood Commission, if any, that has been provided to the committee before the close of the record;

(5) A list of witnesses who testified at the hearing or roundtable, or who submitted a statement for the record before close of the record, and a brief summary of each witness's position;

(6) An explanation of the impact on existing provisions of law that the measure would modify or affect;

(7) A summary of the fiscal impact, including whether funds are sufficient to implement the legislation, and, if applicable, a summary of the tax abatement financial analysis conducted pursuant to D.C. Official Code § 47-4701;

(8) A summary of the racial equity impact, if an assessment has been provided pursuant to Rule 311;

(9) A detailed section-by-section analysis of the measure's substantive provisions;

(10) Any additional information that the committee decides to include;

(11) A summary of the committee's markup of the measure, including:

(A) Dissenting, separate, and individual views of committee members, if members demanded the opportunity to state their views;

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(B) A record of the results of a voice vote or, if a roll-call vote, the votes to adopt the legislation and the motion to adopt the report; and

(C) Any recorded votes on amendments to the measure or other motions; and

(12) The report adopted by the final committee in cases of a sequential referral may summarize paragraphs (2), (4), and (5) of this subsection, if the previous committee report (in the sequential referral) is included (with or without attachments).

(e) Attached to each report, in the following order, shall be:

(1) The measure, as introduced, along with any transmittal letter, if applicable (but not necessarily any other attachments to the introduction), and the Secretary's memorandum of referral;

(2) Any written statements or materials that the committee decides to attach;

(3) The Racial Equity Impact Assessment, if one has been issued pursuant to Rule 311;

(4) As required by Rule 309, a fiscal impact statement;

(5) The tax abatement financial analysis conducted pursuant to D.C. Official Code § 47-4701, if applicable;

(6) As required by Rule 310, a legal sufficiency determination;

(7) If reporting a bill repealing or amending existing law, a comparative print showing, by italic, underscore, strikethrough, or other typographical device, the changes proposed; except, that when a new section, or greater part is being added, such as a new chapter or title, a comparative print shall not be required but a reference to the new section or part shall be included in the committee report; and

(8) A committee print that states the number of the measure and, in the top left-hand corner of the measure, the name of the committee, the date of the committee markup, and the words "committee print".

(f) Each report prepared by the Committee of the Whole on a Council appointment to another body and each report prepared by another committee on a confirmation shall include a current resume of the nominee.

(g) As required by Rule 309, no measure may be approved by a committee without a fiscal impact statement on the measure that is included in the committee report at the time of its consideration.

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(h) As required by Rule 310, no measure may be approved by a committee without a legal sufficiency determination on the measure that is included in the committee report at the time of its consideration.

(i)(1) A committee chairperson shall file a reported bill or resolution with the Secretary within 20 business days after committee action on the bill or resolution unless the committee votes to reconsider the bill or resolution.

(2) If a committee chairperson has failed to file a reported measure within the period of time specified in paragraph (1) of this subsection, the committee, by a majority vote of the members of the committee, may vote to have the measure as reported filed immediately with the Secretary, to be agendized at the next scheduled Committee of the Whole meeting.

(j) This section shall not apply to a budget measure or an emergency or temporary measure.

(k) The Secretary shall determine whether the report complies with this section.

804. SUPPLEMENTAL COMMITTEE REPORT.

A committee may adopt a supplemental committee report on a measure that expounds on the intent of that measure and explains the reasoning for any amendments to the measure by the Council after the filing of the committee report on the measure. A supplemental committee report adopted by a Committee shall be filed with the Secretary.

805. IDENTIFICATION OF COUNCIL DOCUMENTS.

(a) Legislative documents shall be identified by a name that describes the type of document and a 2-part document number.

(b) Legislative documents shall be identified by the following names:

(1) A bill, whether permanent, temporary, or emergency, shall be known as a "Bill";

(2) A resolution, before its adoption, shall be known as a "Proposed Resolution";

(3) An enacted bill signed by the Mayor, a bill vetoed by the Mayor and approved by members of the Council, or an approved initiative certified by the Board of Elections shall be known as a "District of Columbia Act";

(4) An adopted resolution shall be known as a "Resolution";

(5) A ceremonial resolution, whether proposed or adopted, shall be known as a "Ceremonial Resolution";

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(6) An act that has taken effect following a congressional review period shall be known as a "District of Columbia Law";

(7) A proposed reorganization plan shall be known as a "Reorganization Plan";

(8) A request for a reprogramming shall be known as a "Reprogramming Request";

(9) A proposed state plan shall be known as a "Proposed State Plan"; and

(10) A request for a grant budget modification shall be known as a "Grant Budget Modification".

(c) The Secretary shall assign 2-part numbers to Council documents identified in subsection (b) of this section in the order of introduction, filing, adoption, or approval. The first part of the number consists of the current Council Period, and the second part consists of a consecutive serial number beginning with the number "1" in each Council Period.

(d) A report on a measure or a topic shall be titled as a "Report on _____" (with the name to be filled in as appropriate under subsection (b) of this section). Titled reports shall be further identified by:

(1) A number corresponding to the number, if any, assigned to a measure;
or

(2) If the report is not on a measure, a sequential number preceded by the year filed.

806. LEGISLATIVE FILES.

(a) The Secretary shall maintain an official file on each bill and proposed resolution, which shall include the original of the following:

(1) The introduced version of the bill or proposed resolution;

(2) Any recordings, transcripts, or items submitted for the record of hearings on the legislation;

(3) The committee report on the legislation;

(4) Files transmitted from the committee regarding committee consideration of the bill or resolution;

(5) Any amendments to the bill or proposed resolution presented in legislative meetings;

(6) The engrossed and enrolled versions of the legislation;

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(7) Records of the publication and notice given of Council consideration of the legislation;

(8) Records of official transmittal of the legislation to the Mayor, to Congress, or other agencies or entities as required by law or the legislation; and

(9) Records from the Mayor, including vetoes and other statements transmitted to the Council by the Mayor, records from independent agencies or entities, such as the Office of the Chief Financial Officer and the Washington Metropolitan Area Transit Authority, and records from Congress or a member of Congress.

(b) The posting of draft measures and associated notices on the Council's website shall not be considered official documents unless expressly incorporated in the official file by the Secretary pursuant to subsection (a) of this section.

807. OTHER OFFICIAL RECORDS.

The Secretary shall maintain other official Council records, including:

(1) Transcripts and recordings of all legislative meetings;

(2) Audio and video recordings and minutes of all committee meetings;

(3) Audio and video recordings and documents submitted for the record of all legislative hearings;

(4) Audio and video recordings and documents submitted for the record of investigative hearings, recordings and transcripts of depositions and other testimony taken in connection with investigations, and reports of investigations;

(5) Records of all committee meetings to include the meeting agenda, the draft committee print considered at the meeting, and each amendment to a measure moved at the meeting; and

(6) Any other document or record required by law or these Rules to be filed with the Council or with the Secretary.

808. RECORDS OF LEGISLATIVE MEETINGS.

A recording of each legislative meeting shall be produced and maintained by the Secretary. A written transcript or a transcription of each legislative meeting shall be made available upon request. The Council may establish a fee to cover the cost of production of any recording or transcript.

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809. COMMITTEE RECORDS.

Whenever there is a change in the chairperson of a committee, the incumbent committee chairperson shall ensure that official committee files and records are maintained and transmitted to the incoming committee chairperson.

B. FREEDOM OF INFORMATION AND SERVICE OF PROCESS.**811. FOIA PROCEDURES.**

(a) For the purposes of the Freedom of Information Act (D.C. Official Code § 2-531 *et seq.*) ("FOIA"), the General Counsel, or the General Counsel's designee, shall be the Council's FOIA Officer.

(b) To ensure accurate and timely compliance with FOIA, if a Councilmember, staff member, or Council office receives a request for information contained in a record or access to a record, the request shall be forwarded to the FOIA Officer within one business day after receipt. The FOIA Officer shall endeavor to provide documents under FOIA to requesters as soon as possible, and within the time period prescribed in D.C. Official Code § 2-532.

(c)(1) Within one business day after receiving a finalized FOIA request, the FOIA Officer shall inform the Councilmember or Council office that is the subject of the request.

(2) For FOIA requests for public records within the control and possession of a Councilmember or Council office, the FOIA Officer shall instruct the subject to put a preservation hold on, to search for, and to provide copies of any public records responsive to the request to the FOIA Officer.

(3) For FOIA requests for public records in any electronic format, the FOIA Officer shall instruct the subject to put a preservation hold on such records responsive to the request.

(d)(1) Upon receipt of a written request for access to a record, the FOIA Officer shall make a good-faith effort to determine if the record requested is a public record and whether the Council possesses the identified record.

(2) If a requester specifically identifies a public record that is not in the possession of the Council and has made a reasonable showing that the record is in the possession of a Council employee, including the Chairman and each Councilmember, the FOIA Officer shall request that the employee search for and produce the public record believed to be in the employee's possession. An employee receiving a request under this paragraph shall make reasonable efforts to search for and produce the public record to the FOIA Officer within the time and in the form prescribed by the FOIA Officer and shall verify in writing that reasonable efforts were made.

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(e) Before releasing any documents, emails, or materials, the FOIA Officer shall give the subject 2 business days to review the documents, emails, and materials, and to assert any legally cognizable privileges or statutory exemptions from disclosure for a specific document, email, or material.

(f) The General Counsel shall make the final determination on whether particular public records are responsive to the request and privileged or otherwise subject to disclosure.

(g) For the purposes of this rule, the term “public record” shall have the same meaning as provided in D.C. Official Code § 2-539.

812. TRANSACTION OF PUBLIC BUSINESS BY ELECTRONIC FORMAT.

A Council employee, including the Chairman and each Councilmember, shall use only the employee’s government-provided email account, cellular phone, or tablet device to transact public business by email, text or other electronically transmitted message, including official action of any kind, unless the employee takes steps to ensure that any emails, text messages, or other electronically transmitted messages including those designed to disappear after a certain time period, sent or received on an account other than the email account, cellular phone, or tablet device provided by the government are otherwise incorporated into the Council’s records in a text-searchable format.

813. SERVICE OF PROCESS.

(a) For the purpose of receiving legal correspondence (including summonses, complaints, and subpoenas), only the Secretary and the General Counsel, or their designees, may accept service of process for the Council or any Councilmember in an official capacity.

(b) To ensure timely responses to legal pleadings, and to timely assert the Council’s legislative privilege for actions taken within the scope of a Member’s legislative duties, the Office of the General Counsel shall be notified immediately of receipt of any legal correspondence, and such legal correspondence shall be transmitted to the Office of the General Counsel within one business day after receipt.

(c) A Member may not accept service of process of a legal document on behalf of the Council or for another Member.

ARTICLE IX—AUDITOR.**901. SELECTION.**

The Chairman shall nominate the Auditor, and the Council shall, by resolution, act on the nomination.

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902. TERM AND COMPENSATION.

The Auditor shall serve for a term of 6 years and shall be paid at a rate of compensation as may be established from time to time by the Council.

903. VACANCY.

A vacancy in the Office of the Auditor shall be filled in the manner prescribed for full-term appointments to that office, and any person appointed to fill the vacancy shall serve until the end of the predecessor's term.

904. STAFF.

The Auditor shall appoint, remove, and set the relative remuneration, in accordance with the budget of the Office of the Auditor, of the Auditor's subordinate staff.

905. REPORTS AVAILABLE TO THE PUBLIC.

The Council shall make audit reports submitted to the Council by the Auditor, and any other material it deems pertinent to the report, available for public inspection.

ARTICLE X—CONSTRUCTION, SUSPENSION, AND AMENDMENT OF RULES.**1001. PARLIAMENTARY AUTHORITY.**

Matters not covered by these Rules shall be governed by Mason's Manual of Legislative Procedure. It is the duty of the Chairman to interpret the Rules. Matters not covered by Mason's Manual of Legislative Procedure shall be determined by the Chairman subject to the right of a Member to appeal the Chairman's ruling. The Council recognizes the principle of *stare decisis* in resolving questions of order.

1002. GENDER RULE OF CONSTRUCTION.

Unless the context indicates otherwise, words importing one gender include other genders.

1003. SUSPENSION OF RULES.

(a) Except for rules regarding notice, quorum, or amendment of these Rules and any requirement of the Charter or other law, any Rule governing procedures of the Council may be suspended during the consideration of a specified matter by motion to suspend the Rules approved by 2/3rds of the Members present and voting.

(b) A motion to suspend the Rules is not debatable and may not be reconsidered.

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1004. AMENDMENT OF RULES.

(a) These Rules may be amended by a vote of a majority of the Council.

(b) The proposed rules to be adopted at the organizational meeting pursuant to Rule 301 shall be filed by the Chairman with the Secretary no later than the business day before the organizational meeting. An amendment to the Rules at any other time shall be introduced by the Chairman and shall be noticed and a draft circulated by noon on the third business day before the meeting at which it is to be considered.

(c) The current version of these Rules shall be featured prominently on the Council website, including any amendments adopted since the Rules were first adopted at the organizational meeting held pursuant to Rule 301.

1005. EFFECTIVE PERIOD.

These Rules shall be effective until superseded by Rules of Organization and Procedure adopted in a succeeding Council Period, as provided in Rule 301.

APPENDIX A.

TO: _____

(Address)

PURSUANT TO D.C. Official Code § 1-204.13, YOU ARE COMMANDED TO APPEAR before the (Council/Committee on) _____, of the Council of the District of Columbia, at ____ (a.m./p.m.) on the day of _____, 20__, to testify before the Council/Committee concerning:

_____ and bring with

you: _____.

ISSUED BY: _____ ATTEST: _____

Chairman/Member of the Secretary to the Council

Council of the District of Columbia (Seal of the District)

IMPORTANT: If you fail to appear at the time and place stated or to bring with you the documents or items requested, the Council may refer the matter to the Superior Court of the District of Columbia for an order compelling your attendance or the production of the documents or items requested.

Failure to obey such an order may be punished as contempt of Court. DO NOT FAIL TO APPEAR OR PRODUCE THE REQUESTED ITEMS AT THE REQUIRED TIME.

RETURN:

I, _____ certify that I served a copy of this subpoena on the named party at _____ (address), on the _____ day of _____, 20__, at _____, (a.m./p.m.) by the following means:

PROCESS SERVER: _____

(Address) Washington, D.C.

DISTRICT OF COLUMBIA: SS

SUBSCRIBED AND AFFIRMED TO ME BEFORE THIS __ DAY OF _____, 20__

NOTARY PUBLIC, D.C.

MY COMMISSION EXPIRES:

You may obtain a copy of the Rules of Organization and Procedure for the Council of the District of Columbia and the Resolution authorizing this investigation from the Council's Legislative Services Division, John A. Wilson Building, Room 10, 1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004

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COUNCIL OF THE DISTRICT OF COLUMBIA
CODE OF OFFICIAL CONDUCT
COUNCIL PERIOD 24

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I. CONFLICTS OF INTEREST

- (a) **GENERALLY.** No employee shall use his or her official position or title, or personally and substantially participate, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter, or attempt to influence the outcome of a particular matter, in a manner that the employee knows is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.
- (b) **WAIVERS.** An employee other than a Councilmember may seek a waiver, and the prohibition in subsection (a) of this section shall not apply, if the employee:
- (1) Advises the employee's supervisor and the Ethics Board of the nature and circumstances of the particular matter;
 - (2) Makes full disclosure of the financial interest; and
 - (3) Receives in advance a written determination made by both the supervisor and the Ethics Board that:
 - (A) The interest is not so substantial as to be deemed likely to affect the integrity of the services that the government may expect from such employee; or
 - (B) Another legally cognizable basis for waiver exists.
- (c)(1) An employee other than a Councilmember who, in the discharge of the employee's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall make full disclosure of the financial interest and:
- (A) Prepare a written statement describing the matter and the nature of the potential conflict of interest; and
 - (B) Deliver the statement to the employee's supervisor and to the Ethics Board.

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- (2) Upon receipt of the statement provided in paragraph (1) of this subsection, the employee's supervisor shall assign the matter to another employee who does not have a potential conflict of interest.
- (d) RECUSAL STATEMENT.
- (1) A Councilmember who, in the discharge of the Councilmember's official duties, would be required to act in any matter prohibited under subsection (a) of this section shall make full disclosure of the financial interest, prepare a written statement describing the matter and the nature of the potential conflict of interest, and deliver the statement to the Council Chairman.
 - (2) During a proceeding in which a Councilmember would be required to take action in any matter that is prohibited under subsection (a) of this section, the Chairman shall:
 - (A) Read the statement provided in paragraph (1) of this subsection into the record of proceedings; and
 - (B) Excuse the elected official from votes, deliberations, and other actions on the matter.
 - (3) No Councilmember excused from votes, deliberations, or other actions on a matter shall in any way participate in or attempt to influence the outcome of the particular matter in a manner that is likely to have a direct and predictable effect on the employee's financial interests or the financial interests of a person closely affiliated with the employee.
- (e) SPECIFIC CONFLICT SITUATIONS.
- (1) An employee shall not receive any compensation, salary, or contribution to salary, gratuity, or any other thing of value from any source other than the District government for the employee's performance of official duties.
 - (2) No employee or member of the employee's household may knowingly acquire:
 - (A) Stocks, bonds, commodities, real estate, or other property, whether held individually or jointly, the acquisition of which could unduly influence

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or give the appearance of unduly influencing the employee in the conduct of his or her official duties and responsibilities; or

- (B) An interest in a business or commercial enterprise that is related directly to the employee's official duties, or which might otherwise be involved in an official action taken or recommended by the employee, or which is in any way related to matters over which the employee could wield any influence, official or otherwise.

(f) DEFINITIONS. For the purposes of this Rule, the term:

- (1) "Affiliated organization" means an organization or entity:
 - (A) In which the employee serves as officer, director, trustee, general partner, or employee;
 - (B) In which the employee or member of the employee's household is a director, officer, owner, employee, or holder of stock worth \$1,000 or more at fair market value;
 - (C) That is a client of the employee or member of the employee's household; or
 - (D) With whom the employee is negotiating for or has an arrangement concerning prospective employment.
- (2) "Direct and predictable effect" means there is:
 - (A) A close causal link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest; and
 - (B) A real, as opposed to a speculative possibility, that the matter will affect the financial interest.
- (3) "Member of the employee's household" means a person who resides in the same household as the employee and is:
 - (A) A spouse or domestic partner of the employee;

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- (B) A parent, sibling, or child of the employee or of any person in subparagraph (A) of this paragraph; or
 - (C) A spouse or domestic partner of any person in subparagraph (B) of this paragraph.
- (4) "Particular matter" is limited to deliberation, decision, or action that is focused upon the interests of specific persons, or a discrete and identifiable class of persons.
 - (5) "Person closely affiliated with the employee" means a spouse, dependent child, general partner, a member of the employee's household, or an affiliated organization.

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II. OUTSIDE ACTIVITIES

- (a) GENERALLY.
- (1) No employee shall engage in outside employment or private activity that conflicts or would appear to conflict with the fair, impartial, and objective performance of the employee's official duties and responsibilities or with the efficient operation of the Council.
 - (2) Before engaging in outside employment, an employee other than a Councilmember shall obtain the approval of his or her supervisor.
- (b) LIMITATIONS ON PERMISSIBLE ACTIVITIES.
- (1) An employee may engage in outside employment or activities such as teaching, writing for publication, consultative activities, and speaking engagements if the activities are:
 - (A) Consistent with subsection (a) of this Rule;
 - (B) Not otherwise prohibited by law or regulation; and
 - (C) Conducted outside of regular working hours, while the employee is on annual leave or leave without pay, or at a minimal level during work hours in a manner that does not interfere with the employee's official duties.
 - (2) The information used by an employee engaging in outside employment or activities shall not draw on official data or ideas that are not public information, unless the employee has written authorization from the employee's supervisor to use such information.
- (c) SPECIFIC RESTRICTION ON REPRESENTATION.
- (1) Except as provided in paragraph (2) of this subsection, an employee shall not:
 - (A) Represent another person, have a financial interest, or provide assistance in prosecuting a claim against the District of Columbia before any regulatory agency or court of the District of Columbia; or

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- (B) Represent another person before any regulatory agency or court of the District of Columbia in a matter in which the District of Columbia is a party or has a direct and substantial interest.
- (2) The prohibition in paragraph (1) of this subsection shall not apply to an employee, who, if not inconsistent with the faithful performance of the employee's duties, and acting without compensation, represents:
- (A) A person who is the subject of disciplinary or other personnel administration proceedings in connection with those proceedings; or
 - (B) A nonprofit cooperative, voluntary, professional, recreational, or similar organization or group, if a majority of the organization's or group's members are current officers or employees of the United States government or of the District of Columbia government, or their spouses or dependent children; provided, that this exception shall not apply to any matter that:
 - (i) Is a claim under paragraph (1)(A) of this subsection;
 - (ii) Is a judicial or administrative proceeding where the organization or group is a party; or
 - (iii) Involves a grant, contract, or other agreement (including a request for any such grant, contract, or agreement) providing for the disbursement of federal funds to the organization or group.

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III. GIFTS FROM OUTSIDE SOURCES

- (a) Except as provided in subsection (c) of this Rule and Rule IV, an employee shall not solicit or accept, either directly or indirectly, any gift from a prohibited source.
- (b) An employee who receives a gift from a prohibited source shall:
 - (1) Return the gift to the donor;
 - (2) Reimburse the donor the market value of the gift; or
 - (3) If the gift is perishable and it would not be practical to return it to the donor, donate the gift to charity, share it with the office staff, or destroy it.
- (c) Notwithstanding subsection (a) of this Rule, an employee may accept the following gifts:
 - (1) Greeting cards and items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation;
 - (2) Loans from banks and other financial institutions on terms generally available to the public;
 - (3) Rewards and prizes given to competitors in contests or events, including random drawings, open to the public;
 - (4) Opportunities and benefits, including favorable rates and commercial discounts:
 - (A) Available to the public or to a class consisting of all District employees;
 - (B) Offered to members of a group or class in which membership is unrelated to District employment; or
 - (C) Offered to members of an organization, such as an employees' association or agency credit union, in which membership is related to District employment if the same offer is broadly available to large segments of the public through organizations of similar size;
 - (5) Pension and benefits resulting from continued participation in an employee welfare and benefits plan maintained by a former employer;

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- (6) Anything that is paid for by the Council or the District or the employee or secured by the Council or the District under contract;
 - (7)(A) Unsolicited gifts having an aggregate market value of \$50 or less per source per occasion; provided, that the aggregate market value of individual gifts received from any prohibited source under the authority of this paragraph shall not exceed \$100 in a calendar year;
 - (B) When the market value of a gift or the aggregate market value of gifts offered on any single occasion under this paragraph exceeds \$50, the employee may not pay excess value over \$50 in order to accept that portion of the gift or those gifts worth \$50;
 - (C) When the aggregate value of tangible items offered on a single occasion exceeds \$50, the employee may decline any distinct and separate item in order to accept those items aggregating \$50 or less; and
 - (D) This paragraph shall not apply to gifts of cash, stock, bonds, or certificates of deposit;
 - (8) Gifts given to an employee under circumstances that make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee. Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift;
 - (9) Reduced membership or other fees for participation in organization activities offered to all District employees by professional organizations if the only restrictions on membership relate to professional qualifications; or
 - (10) Gifts approved in advance by the employee's supervising Councilmember in exceptional circumstances that are disclosed on Sterling and posted on the Council's website.
- (d) A gift that is solicited or accepted indirectly includes a gift given:

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- (1) With the employee's knowledge and acquiescence to his parent, sibling, spouse, domestic partner, child, or dependent relative because of that person's relationship to the employee; or
 - (2) To any other person, including any charitable organization, on the basis of designation, recommendation, or other specification by the employee, except as permitted for the disposition of perishable items under subsection (b)(3) of this Rule.
- (e) SPECIFIC GIFT RESTRICTIONS. Except as provided in Rule IV, no employee shall:
- (1) Solicit or accept anything of value from a registered lobbyist that is given for the purpose of influencing the actions of the employee in making or influencing the making of an administrative decision or legislative action or
 - (2) Directly or indirectly demand, seek, receive, accept, or agree to receive or accept anything of value personally or for any other person or entity, in return for:
 - (A) Any official act performed or to be performed by the employee;
 - (B) Being influenced in the performance of any official act;
 - (C) Being influenced to commit or aid in committing, or to collude in, or allow, any fraud, or make opportunity for the commission of any fraud, on the District of Columbia; or
 - (D) Being induced to do or omit to do any act in violation of the employee's official duty.
- (f) GOVERNMENT RESOURCES AVAILABLE TO THE PUBLIC. Employees are not prohibited from accepting any material, article, or service that is available as part of any District government program or provided free to District residents or visitors.
- (g) DEFINITIONS. For the purposes of this Rule, the term:
- (1) "Gift" means any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value. Gifts may also consist of training, transportation, local travel, lodgings and meals, whether provided

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in-kind, by purchase of a ticket, payment in advance, or reimbursement after the expense has incurred.

- (2) "Prohibited source" means any person or entity that:
- (A) Has or is seeking to obtain contractual or other business or financial relations with the District government;
 - (B) Conducts operations or activities that are subject to regulation by the District government; or
 - (C) Has an interest that may be favorably affected by the performance or non-performance of the employee's official responsibilities.

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IV. CONFERENCES, TRAVEL, AND RECEPTIONS AND DONATIONS TO THE COUNCIL

- (a) CONFERENCES AND TRAVEL.
- (1) Employees may accept reasonable expenses for food, travel, lodging, and scheduled entertainment to attend a meeting, conference, or to participate in educational travel, if:
 - (A) The donor is neither a registered lobbyist nor a prohibited source (an entity that has substantial interests before the Council);
 - (B) The meeting or conference is an organized event;
 - (C) The topics or subjects are related to official Council business;
 - (D) The event is widely attended by a range of attendees other than District employees; and
 - (E) Other attendees are treated similarly in terms of the food, travel, lodging, and entertainment expenses that they are offered.
 - (2) Spouses and domestic partners of employees may share lodging with the employee who is attending an event under this subsection; however, the spouse or domestic partner may not accept food, travel, or entertainment expenses unless the spouse or domestic partner pays market value for the same.
 - (3) Employees are encouraged to submit a copy of the itinerary of the meeting, conference, or educational travel in advance to the General Counsel for review.
- (b) WIDELY ATTENDED EVENTS.
- (1) An employee may accept:
 - (A) An offer of free attendance at a convention, conference, symposium, forum, panel discussion, dinner, gala, viewing, reception, or similar event; provided, that:

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- (i) At least 25 persons from outside the District government are expected to be in attendance;
 - (ii) Attendance at the event is open to members from throughout a given industry or profession, or to a range of persons interested in an issue; and
 - (iii) Attendance is connected to the attendee's official Council duties.
 - (B) Free attendance for one accompanying individual to the event described in subparagraph (A) of this paragraph; and
 - (C) A meal that is offered to all attendees as part of the event described in subparagraph (A) of this paragraph.
- (2) For the purposes of this subsection, the term "connected to the attendee's official Council duties" includes participation in the event as a speaker or a panel participant, presenting information related to the Council or matters before the Council, performing a ceremonial function appropriate to the official position of such individual, or attending when otherwise appropriate to the representative function of the Council.
- (c) GIFT BAGS. An employee may not accept a gift bag for an event under subsection (a) or (b) of this Rule if the organizing event sponsor is a prohibited source, unless the contents of the bag meet the requirements under Rule III.
- (d) DONATIONS TO THE COUNCIL.
- (1) An employee may solicit or accept, pursuant to D.C. Official Code § 1-329.01(a), a thing of a value as a donation made to the Council to carry out authorized functions or duties of the Council. Donations are considered Council property and may not be used for unauthorized purposes.
- (2)(A) Recognition of Donors. Donors may be recognized for their donations through letters of acceptance and appreciation, press releases, certificates, and other items that commemorate the donation.

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(B) Recognition of corporate donations must not give the impression of advertising or commercialization. A short, discreet unobtrusive donor credit line may be used as recognition, but no product names or logos may be used.

(e) DISCLOSURE.

- (1) An employee accepting a thing of value under this rule shall disclose the acceptance in accordance with paragraph (2) of this subsection.
 - (2)(A) An employee accepting a thing of value under this rule shall, by the last business day of the month, disclose on Sterling a list of the following for each event and thing of value:
 - (i) Donor;
 - (ii) Date; and
 - (iii) Estimated value.
 - (B) Disclosures filed pursuant to this subsection shall be published on the Council's website on the first Friday in the first full week of each month or, if the Friday is a holiday, the next business day.
 - (C) Councilmembers who do not attend a qualifying event or accept a donation during the reporting period shall file a report indicating that nothing of value was accepted during the period.
- (3) For the purposes of this subsection, the term "thing of value" shall not include an offer of free attendance to an event if the employee does not attend the event.

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V. GIFTS BETWEEN EMPLOYEES

- (a) Except as provided in subsections (c) and (d) of this Rule, an employee may not:
 - (1) Directly or indirectly, give a gift to or make a donation toward a gift for an official superior; or
 - (2) Solicit a contribution from another employee for a gift to either the employee's official superior or the other employee's official superior.
- (b) An employee may not accept a gift, directly or indirectly, from an employee receiving less pay unless:
 - (1) The 2 employees are not in a subordinate-official superior relationship; and
 - (2) There is a personal relationship between the 2 employees that would justify the gift.
- (c) On an occasional basis, including any occasion on which gifts are traditionally given or exchanged, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:
 - (1) Items, other than cash, with an aggregate market value of \$50 or less per occasion;
 - (2) Items such as food and refreshments to be shared in the office among several employees;
 - (3) Personal hospitality provided at a residence that is of a type and value customarily provided by the employee to personal friends; or
 - (4) Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions.
- (d) A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:
 - (1) In recognition of special occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or
 - (2) Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.

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VI. USE OF GOVERNMENT RESOURCES

- (a) GENERALLY. Employees shall not:
- (1) Use Council time or government resources for purposes other than official business or other government-approved or government-sponsored activities, with the exception of *de minimis* use that does not interfere with an employee's official duties and responsibilities, including the incidental use of Council time or resources for purposes of scheduling;
 - (2) Order, direct, or request an employee to perform during regular working hours any personal services not related to official Council functions and activities, with the exception of incidental use of Council time or resources for purposes of scheduling; or
 - (3) Use or permit the use of government resources to support or oppose any candidate for elected office, to promote a political committee, or to support or oppose any initiative, referendum, or recall measure.
- (b) PRESTIGE OF OFFICE.
- (1) An employee may not knowingly use the prestige of office or public position for that employee's private gain or that of another.
 - (2) The performance of usual and customary constituent services, without additional compensation, is not prohibited under paragraph (1) of this subsection.
 - (3) Council employees shall not use or permit the use of their position or title or any authority associated with their public office in a manner that could reasonably be construed to imply that the Council sanctions or endorses the personal or business activities of another, unless the Council has officially sanctioned or endorsed the activities.
 - (4) A Councilmember may serve as an honorary chair or honorary member, or speak or appear at of a nonprofit entity's fundraising event, so long as the entity for which funds are raised supports a nongovernmental bona fide charitable activity. Use of the Councilmember's name or title in fundraising

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solicitations or announcements of general circulation shall be in accordance with such terms and limitations as the Councilmember may prescribe. The authority granted by this paragraph shall not extend to the use of the Councilmember's name or title in solicitations made by or on behalf of the Councilmember directly to individual contributors.

- (5) Notwithstanding any other rule, during a period of time for which the Mayor has declared a public health emergency pursuant to section 5a of the District of Columbia Public Emergency Act of 1980, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 7- 2304.01), a Councilmember may disseminate information about, and connect constituents with, services and offers, including from for-profit entities, that the Councilmember determines is in the public interest in light of the public health emergency.
- (c) SPECIAL RULES FOR LETTERS OF RECOMMENDATION.
- (1) Employees may sign a letter of recommendation using their official titles only in response to a request for an employment recommendation or character reference based upon personal knowledge of the ability or character of an individual or entity with whom they have dealt in the course of their Council employment.
 - (2) Letters of recommendation may be written on Council letterhead if the applicant is a current or former Council employee or has worked with the Council in an official capacity and the letter relates to the duties performed by the applicant.
 - (3) If an employee does not have personal knowledge of an individual or entity's work ability or performance, the employee may sign a letter of recommendation on Council letterhead addressing only the character or residence of the individual or entity requesting the letter.
- (d) DEFINITIONS. For the purposes of this Rule, the term:

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- (1) "Government Resources" means any property, equipment, or material of any kind, including that acquired through lease, and the personal services of an employee during his or her hours of work.
- (2) "Usual and customary constituent services" includes an employee's representational activities, such as advocacy, communications, inquiry, oversight, and other actions, made on another person's behalf; provided, that the employee does not, directly or indirectly:
 - (A) Threaten reprisal or promise favoritism for the performance or nonperformance of another person's duties; or
 - (B) Request that another person abuse or exceed the discretion available to that person under law.

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VII. USE OF CONFIDENTIAL INFORMATION

Employees and former employees may not:

- (1) Willfully or knowingly disclose or use confidential or privileged information acquired by reason of their position without authorization or unless authorized or required by law to do so; or
- (2) Divulge information in advance of the time prescribed for its authorized issuance or otherwise make use of or permit others to make use of information not available to the general public.

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VIII. POST-GOVERNMENTAL EMPLOYMENT CONFLICTS OF INTEREST

- (a) PERMANENT RESTRICTIONS ON REPRESENTATION ON PARTICULAR MATTERS. No employee, after the termination of his or her service or employment with the Council, shall knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the District of Columbia, on behalf of any other person (except the District of Columbia) in connection with a particular matter:
- (1) In which the District of Columbia is a party or has a direct and substantial interest;
 - (2) In which the person participated personally and substantially as such officer or employee; and
 - (3) Which involved a specific party or specific parties at the time of such participation.
- (b) TWO-YEAR RESTRICTIONS CONCERNING PARTICULAR MATTERS UNDER OFFICIAL RESPONSIBILITY. No employee shall, within 2 years after the termination of his or her service or employment with the Council, knowingly make, with the intent to influence, any communication to or appearance before any officer or employee of any department, agency, court, or court-martial of the Council, on behalf of any other person (except the District of Columbia), in connection with a particular matter:
- (1) In which the District of Columbia is a party or has a direct and substantial interest;
 - (2) Which the person knows or reasonably should know was actually pending under his or her official responsibility as such officer or employee within a period of one year before the termination of his or her service or employment with the Council; and
 - (3) Which involved a specific party or specific parties at the time it was pending.

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- (c) SPECIAL RULES FOR FORMER COUNCIL EMPLOYEES. A former Council employee shall not, within one year after leaving government service or employment, knowingly make, with the intent to influence, any communication to or appearance before the Councilmember for whom the employee worked or any former subordinate employee, on behalf of any other person, other than the District of Columbia, in connection with any matter on which the former employee seeks action by a Councilmember or Council employee in his or her official capacity.
- (d)(1) EXCEPTIONS. The prohibitions contained in this Rule shall not apply to acts done in carrying out official duties on behalf of:
- (A) The United States or the District of Columbia, as an elected official of a state or local government;
 - (B) An agency or instrumentality of a state or local government if the appearance, communication, or representation is on behalf of such government; or
 - (C) An accredited, degree-granting institution of higher education, as defined in the Higher Education Act of 1965, approved November 8, 1965 (79 Stat. 1219; 20 U.S.C. § 1001), or a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1986, if the appearance, communication, or representation is on behalf of such institution, hospital, or organization.
- (2) Nothing in this Rule shall prevent an individual from giving testimony under oath, or from making statements required to be made under penalty of perjury. Notwithstanding the preceding sentence, a former employee of the Council who is subject to the restrictions in subsection (a) of this Rule with respect to a particular matter may not, except pursuant to court order, serve as an expert witness for any other person, other than the District of Columbia, in that matter.

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IX. POLITICAL ACTIVITIES

- (a) PROHIBITIONS. No Council employee shall:
- (1) Use his or her official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
 - (2) Directly or indirectly solicit, accept, or receive a political contribution from any person;
 - (3) Run for nomination or as a candidate for election to a partisan political office;
 - (4) Knowingly solicit or discourage the participation in any political activity of any person who:
 - (A) Has a measure pending before the Council; or
 - (B) Is the subject of or a participant in an ongoing audit, investigation, or enforcement action being carried out by the Council; or
 - (5) Knowingly direct, or authorize anyone else to direct, that any subordinate employee participate in an election campaign or request a subordinate to make a political contribution.
- (b) No Council employee shall:
- (1) Engage in political activity:
 - (A) While the employee is on duty;
 - (B) In any room or building occupied in the discharge of official duties by an individual employed or holding office in the District government or in the Government of the United States or any agency or instrumentality thereof;
 - (C) While wearing a uniform or official insignia identifying the office or position of the employee; or
 - (D) Using any vehicle owned or leased by the District government or the Government of the United States or any agency or instrumentality thereof; or

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- (2) Coerce, explicitly or implicitly, any subordinate employee to engage in political activity.
- (c) DESIGNATED EMPLOYEES. Each member of the Council may designate one employee while on annual or unpaid leave to perform any of the functions described in subsection (a)(2) of this Rule; provided, that:
- (1) The employee shall not perform the functions in the circumstances described in subsection (b) of this Rule;
 - (2) The employee may only perform the functions for a principal campaign committee, exploratory committee, or transition committee;
 - (3) Any designation pursuant to this subsection shall be made in writing by the member of the Council to the Secretary to the Council; and
 - (4) Any designated employee shall file a report, in a form as prescribed by the Ethics Board, with the Ethics Board within 15 days after being designated.
- (d) DEFINITIONS. For the purposes of this Rule, the term:
- (1) "Employee" shall not include members of the Council.
 - (2) "Political activity" means an activity that is regulated by the District directed toward the success or failure of a political party, candidate for partisan political office, partisan political group initiative, referendum, or recall. For the purposes of subsection (b) of this Rule, political activity is not limited to activities regulated by the District.
- (e) CONSTRUCTION. Nothing in this rule should be construed as prohibiting a Council employee from taking an active part in political management or in political campaigns unless the employee's activity violates subsection (a) or subsection (b) of this Rule.

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X. OFFICIAL MAIL RULES

- (a) DEFINITIONS. For the purposes of this rule, the term:
- (1) “Electronic newsletter” means more than 500 substantially identical newsletters or similar types of materials, transmitted through the internet at public expense, during any 30-day period related to a Councilmember’s activities, including such matters as the impact of laws and decisions on the government and its citizens, reports on public and official action taken by a Councilmember, and discussions of proposed or pending legislation or governmental action.
 - (2) “Mass mailing” means more than 100 substantially identical newsletters or similar types of material, transmitted through the mails, during any 30-day period, but shall not include a response to a communication initiated by a constituent.
 - (3) “Newsletter” means the usual and customary correspondence that deals with such matters as the impact of laws and decisions on the government and its citizens, reports on public and official action taken by a Councilmember, and discussions of proposed or pending legislation or governmental action. The term “newsletter” includes a news release.
 - (4) “Official mail” means correspondence, including newsletters or similar types of materials, suitable to be mailed at public expense that pertains directly or indirectly to the legislative process or to a Council legislative function, including any matter related to a past or current Council, the performance of official duties by a Councilmember in connection with a Council function, or other related matters of public concern or public service.
- (b) PERMITTED CATEGORIES OF OFFICIAL MAIL. Except as otherwise provided in this Rule, an employee may not mail, as official mail, any matter, article, material, or document for any reason other than the following:
- (1) A request for a matter, article, material, or document that has been previously received by the Council;

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- (2) The mailing of the document is required by law;
 - (3) The material or matter requests information pertinent to the conduct of the official business of the Council;
 - (4) The material contains information relating to the activities of the Council or to the availability of Council publications or other documents;
 - (5) The enclosures are forms, blanks, cards, or other documents necessary or beneficial to the administration of the Council;
 - (6) The materials are copies of federal, state, or local laws, rules, regulations, orders, instructions, or interpretations thereof; or
 - (7) The materials are being mailed to federal, state, or other public authorities.
- (c) OFFICIALLY MARKED ENVELOPES. An envelope or other material that is used to enclose official mail shall bear on its face the name and address of the Council and the words "official business." Envelopes and other materials shall not be used to enclose materials, documents, or other articles except those enumerated in subsections (b) and (e) of this Rule or other materials not prohibited by subsection (d) of this Rule.
- (d) PROHIBITED USES OF OFFICIAL MAIL BY ELECTED OFFICIALS.
- (1) A Councilmember may not mail, as official mail, a mass mailing within the 90-day period that immediately precedes a primary, special, or general election in which the Councilmember is a candidate for office.
 - (2) A Councilmember may mail, as official mail, newsletters; provided, that these materials do not contain any of the following:
 - (A) Autobiographical articles;
 - (B) Political cartoons;
 - (C) Reference to past or future campaigns;
 - (D) Announcements of filings for reelection;
 - (E) Announcements of campaign schedules;
 - (F) Announcements of political or partisan meetings;

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- (G) Reports on family life;
 - (H) Personal references that are included for publicity, advertising, or political purposes;
 - (I) Pictures of the official members with any partisan label such as "Democrat," "Republican," "Statehood Party," or any other label that purports to advertise the member rather than to illustrate the accompanying text;
 - (J) Articles about community events that are unrelated to official government business; or
 - (K) Reports on non-official activities of the Councilmember that have the effect of lending the franking privilege to others, no matter how worthwhile or charitable the endeavors of those to whom the franking privilege would be loaned.
- (3) A Councilmember may not use official mail to solicit directly or indirectly funds for any purpose.
 - (4) A Councilmember may not use official mail for transmission of matter that is purely personal to the sender and is unrelated to the official duties, activities, and business of the member.
 - (5) A Councilmember may not mail, as official mail, cards or other materials that express holiday greetings from the Councilmember or the Councilmember's family.
- (e) AUTHORIZED USES OF OFFICIAL MAIL. The provisions of subsection (d) of this Rule do not prohibit a Councilmember or the Councilmember's staff from mailing, as official mail, any of the following:
- (1) The whole or part of a record, speech, debate, or report of the Council or a committee of the Council;
 - (2) The tabulation of a Councilmember's vote or explanation of the vote;
 - (3) An expression of condolences to a person who has suffered a loss or congratulations to a person who has achieved some personal or public

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- distinction; provided, that mass mailings of a congratulatory nature that are substantially the same except for individualized addresses are not authorized;
- (4) Information concerning the Councilmember's schedule of meeting constituents;
 - (5) Information concerning the meeting schedule and agenda for committees and subcommittees upon which the Councilmember serves;
 - (6) Information concerning financial disclosure information, whether or not required by law;
 - (7) Matter that consists of federal, state, or local laws, regulations, or publications paid for by public funds;
 - (8) Questionnaires that relate to matters on public policy or administration; or
 - (9) Matter that contains a picture of the member or biographical or autobiographical data whenever the matter is mailed in response to a specific request.
- (f) USE OF ELECTRONIC NEWSLETTERS.
- (1) A Councilmember or Council employee shall not transmit an electronic newsletter within the 90-day period immediately before a primary, special, or general election in which the Councilmember is a candidate for office, unless the electronic newsletter conforms with the following requirements:
 - (A) The recipients have individually subscribed to receive the electronic newsletter;
 - (B) The electronic newsletter contains a clear and conspicuous notice of the method by which a recipient can request not to receive future electronic newsletters; and
 - (C) The proposed newsletter has been submitted for review by the General Counsel or the Office of Campaign Finance.
 - (2) An electronic newsletter shall comply with the requirements of subsection (d)(2) of this Rule.

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- (3) An electronic newsletter shall not be transmitted at public expense unless, when viewed as a whole, it:
 - (A) Is informational rather than self-promotional; and
 - (B) Is directly related to a Councilmember's official legislative or representative duties.

- (g) PHOTOGRAPHS AND SKETCHES CONTAINED IN NEWSLETTERS. Each photograph or sketch contained in a newsletter or report on constituent service activities shall relate to the official legislative duties of the Councilmember and shall not, because of excessive use and size, have the effect of advertising or publicizing the Councilmember. In addition, to be mailed at public expense as official mail, a newsletter or report on constituent service activities may not contain any of the following:
 - (1) More than one photograph or likeness of the Councilmember appearing alone;
 - (2) A photographic likeness of the Councilmember appearing alone that covers more than 6% of a single page or that exceeds 6 square inches on 8 ½" x 11" paper;
 - (3) More than 2 photographs per page that include the Councilmember with other persons;
 - (4) Two photographs on a single page that include the Councilmember and exceed 20% of the page;
 - (5) A photograph of a Councilmember with a label such as "Democrat," "Republican," "Statehood Party," or any other label that purports to advertise the Councilmember rather than to illustrate the accompanying text; or
 - (6) A photograph that does not relate to, illustrate, or explain the accompanying text.

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- (h) SIZE AND PRINT TYPES FOR NAMES.
- (1) A Councilmember's name in the masthead of a newsletter shall not appear in print type larger than ½" in height.
 - (2) A Councilmember's name in the text of a newsletter shall not appear in type style or size larger than the other matter, nor in print size larger than 1/4" in height.
- (i) USE OF OFFICIAL MAIL BY OFFICIALS-ELECT. In addition to Councilmembers, the Chairman elect and members elect of the Council may mail materials as official mail.
- (j) GENERAL COUNSEL REVIEW. The General Counsel shall be available to Councilmembers and their staff to review materials intended to be mailed as official mail to ensure that the materials comply with the laws and rules governing official mail. Upon written request of a Councilmember, the General Counsel shall provide a written opinion concerning whether the materials, submitted by the Councilmember and intended to be mailed as official mail, comply with the laws and rules governing official mail.

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XI. DEFINITIONS, FINANCIAL DISCLOSURES, AND ETHICS COUNSELING

- (a) **DEFINITIONS.** For the purposes of the Code of Official Conduct, the term:
- (1) “Employee” shall include all Council staff and Councilmembers, unless specifically stated otherwise.
 - (2) “General Counsel” means the General Counsel to the Council of the District of Columbia, or a designated employee within the Office of the General Counsel to the Council of the District of Columbia.
- (b) **FINANCIAL DISCLOSURE.**
- (1) An employee who is covered under section 224 or 225 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1162.24 or § 1-1162.25) (“Government Ethics Act”), shall file the required disclosures in accordance with the Government Ethics Act.
 - (2) A departing employee who would have been required to file a disclosure pursuant to section 225 of the Government Ethics Act shall file a to-date disclosure with the employee’s personnel authority within 30 days after termination of employment.
- (c) **ETHICS COUNSELING AND SAFE HARBOR.**
- (1) The General Counsel shall provide at the request of an employee confidential advice about compliance with the Code of Official Conduct and any other applicable laws and regulations.
 - (2)(A) An employee who, after providing full disclosure of all relevant facts, obtains advice from the General Counsel and acts in accordance with that advice, even if that action is later found to constitute a violation of this Code of Official Conduct, shall not, subject to subparagraph (B) of this paragraph, be found to have violated the provisions of the Code of Official Conduct.

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(B) If the employee knows or has reason to know that the General Counsel's advice was based upon fraudulent, misleading, or otherwise incorrect information provided by the employee, subparagraph (A) of this paragraph shall not apply.

(C) An employee is responsible for providing and maintaining appropriate documentation of the underlying facts.

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XII. DECORUM OF COUNCILMEMBERS

- (a) **GENERALLY.** During any meeting of the Council that is open to the public, as defined by section 405 of the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575), a Councilmember shall treat other Councilmembers with dignity and respect and refrain from using profane, indecent, or abusive language directed at another Councilmember or the Council as an institution.
- (b) **REMOVAL OF COUNCILMEMBERS.**
- (1) The Chairman shall maintain order during any meeting of the Council. The Chairman may order the removal of a Councilmember from a meeting if:
 - (A) The Chairman determines that:
 - (i) The Councilmember has violated subsection (a) of this Rule; and
 - (ii) Removal of the Councilmember is necessary to maintain order; and
 - (B) The Chairman has warned the Councilmember to come to order.
 - (2) This subsection shall not be construed to apply to any regular, additional, or special meeting of the Council or Committee of the Whole held pursuant to Rules 231, 301, 302, or 303 of the Rules of Organization and Procedure for the Council of the District of Columbia.
 - (3) This subsection shall not be construed to otherwise limit the ability of the Council to enforce this Rule.
- (c) **CONSTRUCTION.**
- (1) The conduct prohibited by subsection (a) of this Rule shall not be considered a violation of the Code of Official Conduct for purposes of discipline if a Councilmember promptly comes to order upon warning by the Chairman.
 - (2) This Rule shall not be construed to prohibit the exercise of a Councilmember's First Amendment rights.

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COUNCIL OF THE DISTRICT OF COLUMBIA THE
WILSON BUILDING

Office Of The Secretary
(202) 724-8080 (Voice)
(202) 347-3070 (Fax)

SEXUAL HARASSMENT POLICY

Policy Statement

It is the policy of the Council of the District of Columbia ("Council") to provide a work environment free from sexual harassment. Sexual harassment of any employee has a debilitating impact on employee morale and productivity and violates the law. This policy also prohibits retaliation against employees who report sexual harassment or participate in a sexual harassment complaint. If the Council receives an allegation of sexual harassment, or has reason to believe sexual harassment is occurring, it will take necessary steps to ensure that any harassing conduct immediately ceases and that the matter is promptly addressed. The Council is committed to taking remedial action when it learns of possible sexual harassment, even if the purported target of the harassment does not wish to file a complaint.

This policy serves as the Council's official policy and supersedes any other existing policy. Personnel authorities within the Council may individually adopt a sexual harassment policy, but to the extent there is a conflict with other policies, this policy shall prevail.

I. SCOPE

This policy governs the conduct of the Council's employees, Councilmembers, and third parties doing business with or carrying out the goals and objectives of the Council, e.g., vendors, employees of District agencies, and other persons visiting or working at the Council's worksite.

All Council employees and Councilmembers are required to comply with this policy. Employees and Councilmembers are also expected to behave professionally and to exercise good judgment in work-related relationships, whether with fellow employees, business colleagues, or members of the public with whom they come into contact in the course of official duties. Further, all

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employees and Councilmembers are expected to take appropriate measures to prevent sexual harassment. Additionally, all employees and Councilmembers are encouraged to report incidents of perceived sexual harassment so that any target of alleged sexual harassment may gain access to available support. All Council employees and Councilmembers must take steps to stop unwelcome behavior of a sexual nature before it becomes severe or pervasive and rises to a violation of law.

II. DEFINITIONS.**Complainant**

A Council employee who files a complaint under this policy. A complainant may be the target of sexual harassment or a witness to sexual harassment.

Officer

For the purposes of this policy, the term "Officer" means the Secretary, Budget Director, General Counsel, or Chief Technology Officer of the Council.

Sexual Harassment**(a) Quid Pro Quo Sexual Harassment.**

Quid pro quo sexual harassment is unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when any one of the following criteria is present:

- (1) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or
- (2) Submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting the individual.

(b) Hostile Work Environment Sexual Harassment.

- (1) Sexual harassment creates a hostile work environment when the conduct is unwelcome in nature and has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.
- (2) The following, although not an exhaustive list, are examples of conduct that may create a hostile work environment in violation of this policy, including during work-related travel, events, and social gatherings:

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- (A) Sex acts;
- (B) Display of sexual organs;
- (C) Giving a preference to a third party who is engaged in a sexual or romantic relationship, to the disadvantage of an employee who is not engaged in a sexual relationship with a supervisor, hiring official, or person exercising authority over the disadvantaged party (described legally as a “paramour preference”);
- (D) Using sexually oriented or sexually degrading language describing an individual or his/her body, clothing, hair, accessories or sexual experiences;
- (E) Sexually offensive comments or off-color language, jokes, or innuendo that a reasonable person would consider to be of a sexual nature, or belittling or demeaning to an individual or a group's sexual orientation or gender identity;
- (F) “Sexting” or seeking or sending pictures of intimate body parts, or taking or displaying pictures of body parts meant to be covered up (such as “upskirting” pictures), including by sending messages of a suggestive nature on self-destructing messaging apps where evidence of the written word or images is difficult to document;
- (G) The display or dissemination of sexually suggestive objects, books, magazines, photographs, music, cartoons, or computer internet sites or references;
- (H) Unnecessary and inappropriate touching or physical contact, such as brushing against a colleague's body, touching or brushing a colleague's hair or clothing, massaging, groping, patting, pinching, or hugging, that a reasonable person would consider to be of a sexual nature;
- (I) Lascivious leering or sexually suggestive gestures or sounds, e.g. whistling or kissing noises;
- (J) Sexual comments, conduct, displays, and suggestions in the workplace between two willing parties that would cause a reasonable third party to be offended;
- (K) Making inquiries about someone's private sex life or describing one's own sex life;
- (L) Any unwanted repeated contact, including but not limited to in-person or telephonic contact, for romantic or sexual purposes;
- (M) Sexual assault, stalking, trapping someone such that they are not free to leave and a sexual encounter is expected or threatened, threats of bodily harm relating

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to sex or the refusal to have sex, or crimes related to egregious acts of sexual harassment.

(c) Anyone, regardless of sex, gender, or sexual orientation may be the target or perpetrator of sexual harassment.

(d) Sexual harassment is not limited to inappropriate exercise of authority by persons in power over an employee. It can occur by an employee toward a co-worker, by an employee toward a supervisor, or by a non-employee toward an employee.

Sexual Harassment Officer

A Sexual Harassment Officer ("SHO") is one of two individuals designated by the Secretary to the Council and specially trained to receive complaints of sexual harassment and to conciliate complaints of sexual harassment under this policy.

Sexual Consent

Sexual consent is positive, unambiguous, and voluntary agreement to engage in specific activity throughout an encounter involving sexual activity. Consent should not be inferred from the absence of a "no". Consent to some activity does not constitute consent to others, nor does past consent to a given activity constitute present or future consent. Consent can be revoked at any time and cannot be obtained by threat, coercion, or force.

III. CONSENSUAL RELATIONSHIPS

(a) Sexual/intimate relationships between employees and supervisors in the employee's chain of command are strongly discouraged. The existence of a sexual/intimate relationship between an employee and a supervisor will be a factor in any proceeding in which the relationship is alleged to have contributed to a hostile work environment and/or adversely affected the terms and conditions of employment.

(b) Employees who engage in a limited consensual relationship with a supervisor or colleague, such as going out to dinner or on dates, remain free to refuse further sexual overtures and have the right to demand that sexual or sexually harassing conduct going beyond that which was consented to must stop. Alternatively, they also may seek the assistance of a supervisor or manager or the Council's SHOs to demand that sexually harassing conduct cease.

(c) Conduct that was once welcome or consensual may become unwelcome. Once the conduct is no longer welcome, conduct of a sexually harassing nature must cease.

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IV. REPORTING AND REMEDYING SEXUAL HARASSMENT

This policy provides several avenues an employee may pursue in response to witnessing or experiencing sexual harassment. All complaints of sexual harassment will be treated with the same rigor and gravity, regardless of the complaint avenue the complainant elects. All complaints of sexual harassment by a Councilmember will generate an investigation by outside counsel.

Any employee who believes he or she has been the target of sexual harassment can inform the offending person orally or in writing that such conduct is unwelcome and offensive and ask the offending person to stop the offensive conduct. If the employee does not wish to communicate directly with the offending person, or if such communication has been ineffective, the employee should report the sexual harassment.

(a) Reporting Harassment by a Council Employee.

Sexual harassment by a Council employee, if reported, shall be reported through the channels described below. Complaints to supervisors will not automatically initiate an investigation by outside counsel, whereas complaints to an SHO will.

(1) Target complaints to supervisors.

(A) An employee who believes they are the target of sexual harassment from another Council employee may make a complaint to the employee's supervisor orally or in writing. The complainant's supervisor should reduce the complaint to writing and provide the complainant with section VII (External Reporting and Resources) of this policy. Upon receipt of the complaint, the complainant's supervisor must inform the alleged harasser to cease all offending conduct (if the alleged harasser is not in the supervisor's chain-of-command, the supervisor must enlist the assistance of an SHO or a supervisor in the alleged harasser's chain of command to inform the alleged harasser to cease all offending conduct). The supervisor shall promptly seek to resolve the complaint in a manner that ensures the offending conduct will not recur and take corrective action appropriate to the severity of the offense. If a supervisor cannot resolve the complaint, the supervisor must inform the complainant and encourage the complainant to make a complaint to an SHO. Supervisors are encouraged to seek advice in resolving complaints from an SHO or the General Counsel. A supervisor's consultation or request for assistance from an SHO is not considered a complaint to an SHO and will not automatically initiate an investigation by outside counsel.

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In appropriate circumstances, a complaint to a supervisor may be resolved through conciliation. Conciliation is an informal method of alternative dispute resolution in which an SHO works with the complainant and alleged harasser to end the harassment and reach a resolution that is mutually agreeable to both parties. A complainant may initiate conciliation by informing the complainant's supervisor, who shall inform an SHO, of the complainant's desire to conciliate. Participation in conciliation is voluntary and requires the cooperation of both the target and alleged harasser. Ultimately, an SHO will make a case-by-case determination of whether a complaint is appropriate for conciliation.

Upon resolution of a complaint, or in the event a supervisor cannot resolve a complaint, the supervisor must provide a written report to an SHO and the General Counsel, which identifies the parties involved, the nature of the complaint, and steps taken to resolve the complaint. The SHOs and the General Counsel will evaluate the report to determine whether further action, including further investigation or corrective action, is warranted. The report shall be kept confidential consistent with the terms of this policy.

(B) If an employee chooses not to complain to a supervisor or is unsatisfied with the results of a complaint to a supervisor, the employee may make a complaint to an SHO.

(2) Anonymous and Witness Complaints.

(A) The Council encourages all employees to report instances of sexual harassment they witness to their supervisors, through the Council's online complaint portal, or directly to an SHO.¹ A supervisor who receives a complaint of sexual harassment from a witness should follow the procedures described above in subsection (a)(1)(A) to resolve and report the complaint's resolution or refer the matter to an SHO for resolution in accordance with subparagraph (C) of this paragraph.

(B) An employee, whether a target or a witness of sexual harassment, may anonymously report sexual harassment through the Council's online complaint portal by selecting the anonymous complaint option. An anonymous complaint through the Council's complaint portal will be transmitted to the SHOs.

¹ Instructions for accessing the online complaint portal will be provided once the portal is operational.

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(C) An SHO who receives a witness or anonymous complaint will perform an initial assessment of the facts of the complaint, including interviewing the alleged target and harasser, to determine what further action, including investigation by outside counsel, is possible, desired, or warranted given the nature and severity of the complaint.

(3) Target complaints to SHOs.

(A) A person who is sexually harassed may make a complaint directly to an SHO. A complaint made directly to an SHO may be oral or written; the SHO who receives an oral complaint shall reduce the complaint to writing. Complaints made through the Council's online complaint portal will be transmitted to the SHOs.

(B) Upon receipt of a complaint under this policy, the SHO who receives the complaint shall provide the complainant with section VII (External Reporting and Resources) of this policy.

(C) The SHO shall notify the alleged harasser, in writing, that a complaint has been made against him or her and direct the individual to cease all offending conduct.

(4) Investigation of Target Complaints to SHOs.

(A) Upon receipt of a complaint from a target of sexual harassment, the SHO shall inform the General Counsel, who shall contact outside counsel to investigate the complaint. Supervisors of the alleged target and harasser will be notified of the investigation, unless the target requests confidentiality, in which case, no supervisor shall be notified until the investigation is complete, unless the imposition of interim measures or the nature of the investigation necessitates notification.

(B) The SHOs will recommend interim measures to ensure no further apparent or alleged harassment occurs pending completion of an investigation. Supervisors and Councilmembers agree to abide by and implement the interim measures recommended by the SHOs. The following interim measures may be appropriate to ensure cessation of alleged harassment during the pendency of an investigation:

(i) Administrative leave with pay;

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- (ii) Physical separation, including the use of available swing space or shifting workspaces between physical offices;
- (iii) Working from home; or
- (iv) Other measures that limit contact between the target and alleged harasser.

Acceptable interim measures are administrative in nature and are not per se an adverse employment action to either party. Where a target of harassment requests separation from the alleged harasser, the SHO must require the target of harassment to make the request in writing.

(C) During the investigation, the SHO will be the point of contact for the complainant's or the alleged harasser's questions or concerns related to the complaint.

(D) Outside counsel has responsibility for investigating alleged sexual harassment in a prompt, thorough, and impartial manner.

(E) Outside counsel's investigation may take up to 30 days. If the investigation is not completed during that time, the complainant may elect to pursue remedies outside the Council, as further described in section VII (External Reporting and Resources).

(5) Resolving Target Complaints to SHOs.

(A) At the end of the investigation, outside counsel shall submit a written report of its findings and any recommendations of corrective action to the SHOs and the General Counsel.

(B) If outside counsel does not find that harassment occurred, an SHO shall notify the complainant and the alleged harasser of the result. No further action shall be taken.

(C)(i) If the outside counsel does find that harassment has occurred, the report shall also be submitted to:

- (I) The Councilmember for whom the alleged harasser works; or
- (II) The Officer for whom the alleged harasser works.

(ii) Councilmembers and Officers agree to take, at minimum, the corrective action recommended in the report from outside counsel, up to and including termination of the alleged harasser.

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(b) Reporting Harassment by a Non-Council Employee.

A Council employee who experiences sexual harassment from a non-Council employee may make a complaint to a supervisor or an SHO through the avenues described above. The supervisor or SHO shall handle the complaint in the same manner as described above, including, if the complaint is to a supervisor, by providing a written resolution report to an SHO and the General Counsel that identifies the parties involved, the nature of the complaint, and steps taken to resolve the complaint. The Council's ability to resolve or investigate the complaint may be limited by lack of control over the alleged harasser. Resolution of a complaint of harassment against a non-Council employee may include the following:

- (1) Instituting a no-contact policy between the alleged harasser and the target, including barring the alleged harasser from the personal or committee offices of a Councilmember, as appropriate; and
- (2) Notifying the alleged harasser's employer of the alleged conduct and requesting the employer take appropriate action.

(c) Reporting Harassment by a Councilmember

(1) If an employee is sexually harassed by a Councilmember, the target or witness may make a complaint to an SHO. Except as otherwise provided in this subsection, all complaints against Councilmembers, including anonymous complaints, shall follow the same investigation and reporting steps outlined in subsection (a)(4) and (5) of this section, including investigation by outside counsel, imposition of interim measures, and submission of a written report by outside counsel.

(2) If outside counsel finds that the Councilmember engaged in conduct that violates this policy:

(A) The report shall not include recommendations for corrective action; but shall include information and findings sufficient for members of an ad hoc committee to recommend penalties, if any, against the offending member, pursuant to Council Rule 652.

(B) The report shall be submitted to:

- (i) The General Counsel;
- (ii) The SHOs; and
- (iii) The Chairman.

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(C) If the Chairman is the subject of the complaint, the Chairman pro tempore shall receive the report with no redactions.

(D) An ad hoc committee shall be established pursuant to Council Rule 651 within 3 business days after the investigative report is received from outside counsel. Members of the ad hoc committee shall receive unredacted versions of outside counsel's investigative report and shall protect the identities of individuals named in the report to the greatest extent possible. Based on the findings in the report, the ad hoc committee may recommend penalties against the member in accordance with Council Rule 652.

(d) Confidentiality

All reports of sexual harassment received pursuant to this policy shall be treated as confidential consistent with the procedural mandates of this policy. Recipients of sexual harassment complaints and those involved in any conciliation, investigation, or resolution of a complaint have an obligation to protect the identities of the complainant, alleged target, alleged harasser, and other witnesses to the fullest extent possible in light of the nature of any investigation conducted and remedial action sought or pursued. Disclosure of facts related to the complaint to an alleged target and alleged harasser's supervisor or Councilmember, the Office of General Counsel, outside counsel, and the Council as a body, in the case of a complaint against a Councilmember, may be necessary to achieve appropriate remedial action.

(e) Rights of the Alleged Harasser

Persons accused of sexual harassment deserve the full protections afforded to them under the law in administrative matters, including, but not limited to, the right to respond to allegations of sexual harassment, to counsel and representation, and the presumption of innocence. The right to counsel does not include the right to have counsel paid for by the government or Council.

V. TRAINING

The Council will provide training on sexual harassment to all Councilmembers and employees at least one time per year, which shall include training on retaliation. Annual sexual harassment training is mandatory for all Councilmembers and employees.

VI. RETALIATION

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It is a violation of this policy to retaliate against someone who has reported possible sexual harassment.

Retaliation is conduct that punishes a person for exercising rights under this policy or discourages a reasonable person from engaging in activity protected under this policy. Such protected activity includes making a complaint under this policy, aiding or encouraging any other person to make a complaint under this policy, participating in the investigation or resolution of a complaint under this policy, opposing sexual harassment, refusing to follow orders that would result in sexual harassment, or intervening to protect others from sexual harassment.

Retaliatory behavior may include, but is not limited to, termination, unwarranted reprimands, intimidation, threats, unfairly downgrading personnel evaluations, transfers to less desirable positions, verbal or physical abuse, altered and more inconvenient work schedules, or coercion intended to pressure an individual to participate, not participate, or provide false or misleading information in a complaint or investigation under this policy.

The Council will take necessary steps to protect from retaliation employees who, in good faith, report incidents of potential sexual harassment and participate in investigations under this policy. Employees found to have engaged in retaliatory behavior shall be recommended for discipline, up to an including termination.

VII. EXTERNAL REPORTING AND RESOURCES

The remedies and procedures available under this policy are in addition to the legal remedies available under District and federal law. A target of sexual harassment, or a person acting on the target's behalf with or without the target's consent, may report sexual harassment within one year of the alleged harassment or its discovery to the District of Columbia Office of Human Rights ("OHR") (D.C. Official Code § 2-1403.04(a)); a target of sexual harassment may also file a charge with the U.S. Equal Employment Opportunity Commission ("EEOC") within 300 days of the alleged harassment (42 U.S.C. 2000e-5(e)).² Filing a complaint under this policy does not extend the time a target has to file a complaint or charge with OHR or the EEOC.

In addition to the remedies under this policy, the target is encouraged to report sexual harassment that rises to the level of criminal misconduct, such as sexual assault, kidnapping, stalking, and threats to do bodily harm, to a law enforcement agency, including the Metropolitan Police Department (MPD).

² The timelines for filing with administrative agencies are accurate as of January 4, 2021.

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Victims of sexual assault or other possible crimes may choose to call the DC Victim Hotline at 1-844-443-5732. The Hotline is available 24/7 by telephone, text, or online chat to connect victims of crime to free resources and to help them navigate the physical, financial, legal, and emotional repercussions of crime. Victims may be matched with an advocate who can help them decide whether to pursue a matter through the criminal justice process.

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A RESOLUTION

24-2

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 4, 2021

To appoint the Chairperson Pro Tempore and chairpersons and members of each standing committee of the Council of the District of Columbia during Council Period 24.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Council Period 24 Appointment of Chairperson Pro Tempore, Committee Chairpersons, and Committee Membership Resolution of 2021”.

Sec. 2. Pursuant to section 212 of the Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 24, Resolution of 2021, effective January 4, 2021 (Res. 24-1; 68 DCR ___) (“Rules”), the Council appoints Kenyan McDuffie as Chairperson Pro Tempore.

Sec. 3. Pursuant to section 221 of the Rules, the Council appoints the following committee chairpersons and members:

(1) The chairperson of the Committee on Business and Economic Development, established by section 232 of the Rules, shall be Kenyan McDuffie, and its members shall be Charles Allen, Mary Cheh, Vincent Gray, and Brooke Pinto.

(2) The chairperson of the Committee on Government Operations and Facilities, established by section 233 of the Rules, shall be Robert White, and its members shall be Christina Henderson, Brianne Nadeau, Brooke Pinto, and Trayon White.

(3) The chairperson of the Committee on Health, established by section 234 of the Rules, shall be Vincent Gray, and its members shall be Charles Allen, Mary Cheh, Christina Henderson, and Brianne Nadeau.

(4) The chairperson of the Committee on Housing and Executive Administration established by section 235 of the Rules, shall be Anita Bonds, and its members shall be Kenyan McDuffie, Brooke Pinto, Elissa Silverman, and Robert White.

(5) The chairperson of the Committee on Human Services, established by section 236 of the Rules, shall be Brianne Nadeau, and its members shall be Janeese Lewis George, Elissa Silverman, Robert White, and Trayon White.

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(6) The chairperson of the Committee on the Judiciary and Public Safety, established by section 237 of the Rules, shall be Charles Allen, and its members shall be Anita Bonds, Mary Cheh, Vincent Gray, and Brooke Pinto.

(7) The chairperson of the Committee on Labor and Workforce Development, established by section 238 of the Rules, shall be Elissa Silverman, and its members shall be Christina Henderson, Janeese Lewis George, Robert White, and Trayon White.

(8) The chairperson of the Committee on Recreation, Libraries, and Youth Affairs, established by section 239 of the Rules, shall be Trayon White, and its members shall be Anita Bonds, Janeese Lewis George, Kenyan McDuffie, and Brianne Nadeau.

(9) The chairperson of the Committee on Transportation and the Environment, established by section 240 of the Rules, shall be Mary Cheh, and its members shall be Charles Allen, Christina Henderson, Janeese Lewis George, and Kenyan McDuffie.

(10) The chairpersons of the Special Committee on COVID-19 Pandemic Recovery, established by section 241 of the Rules, shall be Vincent Gray and Charles Allen, and its members shall be Janeese Lewis George, Brooke Pinto, and Robert White.

(11) The chairperson of the Subcommittee on Redistricting, established by section 231(f), pursuant to section 245 of the Rules, shall be Elissa Silverman, and its members shall be Anita Bonds and Christina Henderson.

Sec. 4. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

24-3

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 4, 2021

To reappoint Ms. Nicole Streeter as General Counsel to the Council of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “General Counsel to the Council of the District of Columbia Nicole Streeter Reappointment Resolution of 2021”.

Sec. 2. The Council of the District of Columbia reappoints:

Ms. Nicole Streeter
12th Street, N.W.
Washington, D.C. 20009
(Ward 1)

as the General Counsel to the Council of the District of Columbia, beginning January 2, 2021.

Sec. 3. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

24-4

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 5, 2021

To reappoint Ms. Jennifer Budoff as Budget Director to the Council of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Budget Director to the Council of the District of Columbia Jennifer Budoff Reappointment Resolution of 2021”.

Sec. 2. The Council of the District of Columbia reappoints:

Ms. Jennifer Budoff
49th Street, N.W.
Washington, D.C. 20016
(Ward 3)

as the Budget Director to the Council of the District of Columbia, beginning January 2, 2021.

Sec. 3. This resolution shall take effect immediately.

ENROLLED ORIGINAL

A RESOLUTION

24-5

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

January 4, 2021

To reappoint Ms. Nyasha Smith as the Secretary to the Council of the District of Columbia.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the “Secretary to the Council of the District of Columbia Nyasha Smith Reappointment Resolution of 2021”.

Sec. 2. The Council of the District of Columbia reappoints:

Ms. Nyasha Smith
Fort Davis Street, S.E.
Washington, D.C. 20020
(Ward 7)

as the Secretary to the Council of the District of Columbia, beginning January 2, 2021.

Sec. 3. This resolution shall take effect immediately.

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

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

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

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

B24-0001 Comprehensive Plan Amendment Act of 2020

Intro. 01-04-2021 by Chairman Mendelson and referred to the Committee of the Whole

B24-0011 Alpha Phi Alpha Way Designation Act of 2021

Intro. 01-04-2021 by Councilmembers McDuffie, and R. White and referred to the Committee of the Whole

PR24-0001 Rules of Organization and Procedure for the Council of the District of Columbia, Council Period 24, Resolution of 2021

Intro. 01-04-2021 by Chairman Mendelson and referred to the Retained by the Council

PR24-0002 Council Period 24 Appointment of Chairperson Pro Tempore, Committee Chairpersons, and Committee Membership Resolution of 2021

Intro. 01-04-2021 by Chairman Mendelson and referred to the Retained by the Council

PR24-0003 General Counsel to the Council of the District of Columbia Nicole Streeter
Reappointment Resolution of 2021

Intro. 01-04-2021 by Chairman Mendelson and referred to the Retained by the
Council

PR24-0004 Budget Director to the Council of the District of Columbia Jennifer Budoff
Reappointment Resolution of 2021

Intro. 01-04-2021 by Chairman Mendelson and referred to the Retained by the
Council

PR24-0005 Secretary to the Council of the District of Columbia Nyasha Smith Reappointment
Resolution of 2021

Intro. 01-04-2021 by Chairman Mendelson and referred to the Retained by the
Council

PR24-0012 Construction Codes Fire Safety Amendment Approval Resolution of 2020

Intro. 10-05-2020 by Chairman Mendelson and referred to the Committee of the
Whole

PR24-0013 Construction Codes Flood Hazard Amendment Approval Resolution of 2020

Intro. 10-15-2020 by Chairman Mendelson and referred to the Committee of the
Whole

PR24-0014 Health Benefit Exchange Authority Executive Board Diane Claire Lewis
Confirmation Resolution of 2020

Intro. 10-20-2020 by Chairman Mendelson and referred to the Committee on
Health

PR24-0015 ABRA Technical Amendment Approval Resolution of 2020

Intro. 10-26-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

PR24-0016 Green Finance Authority Board Monica Ray Confirmation Resolution of 2020

Intro. 11-06-2020 by Chairman Mendelson and referred to the Committee on Transportation and the Environment

PR24-0017 Health Benefit Exchange Authority Executive Board Ramon Richards Confirmation Resolution of 2020

Intro. 11-06-2020 by Chairman Mendelson and referred to the Committee on Health

PR24-0018 District of Columbia Housing Authority Board of Commissioners Dionne Bussey-Reeder Confirmation Resolution of 2020

Intro. 11-23-2020 by Chairman Mendelson and referred to the Committee on Housing and Executive Administration

PR24-0019 District of Columbia Housing Authority Board of Commission LeJuan Strickland Confirmation Resolution of 2020

Intro. 11-23-2020 by Chairman Mendelson and referred to the Committee on Housing and Executive Administration

PR24-0020 District of Columbia Combat Sports Commission Kimberly Lockett Confirmation Resolution of 2020

Intro. 11-23-2020 by Chairman Mendelson and referred to the Committee on Business and Economic Development

PR24-0021 Board of Zoning Adjustment Carl Blake Confirmation Resolution of 2020

Intro. 11-23-2020 by Chairman Mendelson and referred to the Committee of the Whole

PR24-0022 Not-For-Profit Hospital Corporation Board of Directors Eydie Whittington Confirmation Resolution of 2020

Intro. 11-23-2020 by Chairman Mendelson and referred to the Committee on Health

PR24-0023 Board of Library Trustees C. Brian Williams Confirmation Resolution of 2020

Intro. 12-21-2020 by Chairman Mendelson and referred sequentially to the Committee on Recreation, Libraries, and Youth Affairs

PR24-0024 Board of Library Trustees Donella Brockington Confirmation Resolution of 2020

Intro. 12-21-2020 by Chairman Mendelson and referred sequentially to the Committee on Recreation, Libraries, and Youth Affairs

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

NOTICE OF EXCEPTED SERVICE EMPLOYEES

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

COUNCIL OF THE DISTRICT OF COLUMBIA			
NAME	POSITION TITLE	GRADE	TYPE OF APPOINTMENT
Wood, James	Constituent Services Specialist	1	Excepted Service - Reg Appt
Robbins, Milika	Policy Analyst	7	Excepted Service - Reg Appt
Fox, Malcom	Communications Director	5	Excepted Service - Reg Appt

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
1/8/2021

Notice is hereby given that:

License Number: ABRA-115514

License Class/Type: B Retail-Full Service
Grocery

Applicant: Foxtrot Retail D.C. LLC

Trade Name: Foxtrot

ANC: 2E05

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

1267 - 1271 WISCONSIN AVE NW

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
3/15/2021

A HEARING WILL BE HELD ON:
4/5/2021

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	7 am - 12 am	8 am - 12 am
Monday:	7 am - 12 am	8 am - 12 am
Tuesday:	7 am - 12 am	8 am - 12 am
Wednesday:	7 am - 12 am	8 am - 12 am
Thursday:	7 am - 12 am	8 am - 12 am
Friday:	7 am - 12 am	8 am - 12 am
Saturday:	7 am - 12 am	8 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION

NOTICE OF PUBLIC HEARING

Placard Posting Date: January 8, 2021
Protest Petition Deadline: March 15, 2021
Roll Call Hearing Date: April 5, 2021

License No.: ABRA-105012
Licensee: Heist Group LLC
Trade Name: Heist
License Class: Retailer's Class "C" Nightclub
Address: 1216 18th Street, N.W
Contact: Jeff Jackson: (202) 251-1566

WARD 2

ANC 2B

SMD 2B06

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 5, 2021 at 10 a.m., 4th Floor, 2000 14th Street, N.W., Washington, DC 20009. Petitions and/or requests to appear before the ABC Board must be filed on or before the Petition Deadline.

NATURE OF SUBSTANTIAL CHANGE

Licensee is requesting to add a Sports Wagering endorsement to their operations. Licensee would like to add 14 self-service terminals to their lounge, replacing their booth tables with betting terminals.

CURRENT HOURS OF OPERATION

Sunday through Thursday 11am - 3am, Friday and Saturday 11am - 4am

CURRENT HOURS OF ALCOHOLIC BEVERAGE SALES, SERVICE, AND CONSUMPTION

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

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ON
1/8/2021

Notice is hereby given that:

License Number: ABRA-105036 License Class/Type: B Retail - Grocery

Applicant: 2400 Minnesota Avenue, SE, LLC

Trade Name: Martha's Market

ANC: 7B03

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

2400 MINNESOTA AVE SE

PETITIONS/LETTERS OF OPPOSITION OR SUPPORT MUST BE FILED ON OR
BEFORE:
3/15/2021

A HEARING WILL BE HELD ON:
4/5/2021

AT 10:00 a.m., 2000 14th STREET, NW, 4th FLOOR, WASHINGTON, DC 20009

Days	Hours of Operation	Hours of Sales/Service
Sunday:	8 am - 12 am	9 am - 12 am
Monday:	8 am - 12 am	9 am - 12 am
Tuesday:	8 am - 12 am	9 am - 12 am
Wednesday:	8 am - 12 am	9 am - 12 am
Thursday:	8 am - 12 am	9 am - 12 am
Friday:	8 am - 12 am	9 am - 12 am
Saturday:	8 am - 12 am	9 am - 12 am

FOR FURTHER INFORMATION CALL: (202) 442-4423

**BOARD OF ZONING ADJUSTMENT
PUBLIC HEARING NOTICE
WEDNESDAY, MARCH 31, 2021
VIRTUAL HEARING via WEBEX**

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

TIME: 9:30 A.M.

WARD FOUR

Application of:	703 Randolph, LLC
Case No.:	20413
Address:	703 Randolph Street N.W. (Square 3132, Lot 12)
ANC:	4C
Relief:	Special Exceptions under: <ul style="list-style-type: none"> • the residential conversion requirements of Subtitle U § 320.2 (pursuant to Subtitle X § 901.2) and from; • the rooftop element requirements of Subtitle E § 206.1 (pursuant to Subtitles E §§ 206.4, 5207.1, and Subtitle X § 901.2)
Project:	To convert an existing, semi-detached, three-story flat into a three-unit apartment house, and to construct a new rooftop addition in the RF-1 Zone.

WARD ONE

Application of:	616 Quebec Place NW, LLC
Case No.:	20425
Address:	616 Quebec Place N.W. (Square 3034, Lot 182)
ANC:	1A
Relief:	Special Exceptions under: <ul style="list-style-type: none"> • the residential conversion requirements of Subtitle U § 320.2 (pursuant to Subtitle X § 901.2)
Project:	To convert an existing, three-story, semi-detached, principal dwelling unit into a three-unit apartment house in the RF-1 Zone.

BZA PUBLIC HEARING NOTICE
 MARCH 31, 2021
 PAGE NO. 2

WARD SIX

Application of:	MADM Development, LLC
Case No.:	20429
Address:	411 New Jersey Avenue S.E. (Square 693, Lot 96)
ANC:	6B
Relief:	<p>Special Exceptions from:</p> <ul style="list-style-type: none"> • the penthouse setback requirements of Subtitle C § 1502(b)(c) (pursuant to Subtitle C § 1504 and Subtitle X § 901.2) • the rear addition requirements of Subtitle E § 205.4 (pursuant to Subtitle E §§ 205.5 and 5201, and Subtitle X § 901.2) • the height requirements of Subtitle E § 503.2 (pursuant to Subtitle E § 5203 and Subtitle X § 901.2) and; <p>Area Variances from:</p> <ul style="list-style-type: none"> • the lot width requirements of Subtitle E § 201.1 (pursuant to Subtitle X, Chapter 10) • the side yard requirements of Subtitle E § 207.2 (pursuant to Subtitle X, Chapter 10) • the rear yard requirements of Subtitle E § 506.1 (pursuant to Subtitle X, Chapter 10)
Project:	To subdivide the existing vacant lot, and to construct two new, three-story, principal dwelling units in the PDR-5/RF-3 Zone.

WARD THREE

Application of:	Patrick Basse and Dolie Schein
Case No.:	20431
Address:	4403 Garrison Street N.W. (Square 1581, Lot 81)
ANC:	3E
Relief:	<p>Special Exception from:</p> <ul style="list-style-type: none"> • the side yard requirements of Subtitle D § 206.7 (pursuant to Subtitle D § 5201 and Subtitle X § 901.2)
Project:	To construct a two-story rear addition to an existing, two-story, detached principal dwelling unit in the R-2 Zone.

BZA PUBLIC HEARING NOTICE
MARCH 31, 2021
PAGE NO. 3

PLEASE NOTE:

This public hearing will be held virtually through WebEx. Information for parties and the public to participate, view, or listen to the public hearing will be provided on the Office of Zoning website and in the case record for each application or appeal by the Friday before the hearing date.

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

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

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

Do you need assistance to participate?

**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 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。这些是免费提供的服务。

French

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

Korean

참여하시는데 도움이 필요하세요?

BZA PUBLIC HEARING NOTICE
MARCH 31, 2021
PAGE NO. 4

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

Spanish

¿Necesita ayuda para participar?

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

Vietnamese

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

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

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

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

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

TIME AND PLACE: Thursday, April 1, 2021, @ 4:00 p.m.
WebEx or Telephone – Instructions will be provided on
the OZ website by Noon of the Hearing Date¹

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-22 (CQ Metro Land, LLC – Zoning Map Amendment – Square 5860, Lots 1039-1041)

THIS CASE IS OF INTEREST TO ANC 8A AND ANC 8C

CQ Metro Land, LLC (the “Applicant”), filed an application on September 8, 2020, requesting that the Zoning Commission (the “Zoning Commission”) approve a Zoning Map amendment from “unzoned” to the Northern Howard Road (“NHR”) zone for Lots 1039-1041 in Square 5860 (the “Property”), consistent with the immediately adjacent property, in order to facilitate interim uses currently not allowed due to the Property’s lack of zoning and eventual redevelopment of the Property consistent with the Comprehensive Plan (the “CP”).

The Property consists of approximately 55,436 square feet of land area on Howard Road, S.E., in Ward 8’s Anacostia neighborhood, and adjacent to the Anacostia Metrorail Station.

The CP’s Generalized Policy Map designates the Property as a Land Use Change Area within the Central Employment Area.

CP’s Future Land Use Map (“FLUM”) designates the Property multiple categories:

- The western portion is designated for a mix of High Density Residential, High Density Commercial, and Institutional uses;
- The central portion is designated for Parks, Recreation, and Open Space uses; and
- The eastern portion is designated for a mix of High Density Residential, Medium Density Commercial, and Institutional uses.

High Density Residential – typically has a density greater than a floor area ratio (“FAR”) of 4.0, with greater density possible when complying with Inclusionary Zoning (“IZ”) or a Planned Unit Development (“PUD”).

High Density Commercial – typically has a density greater than a FAR of 4.0, with greater density possible when complying with IZ or a PUD

Medium Density Commercial – typically has a density ranging between a FAR of 4.0 and 6.0, with greater density possible when complying with IZ or PUD

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

Parks, Recreation, and Open Space – includes permanent open space, open space along highways, a mix of passive and active open space, with varying zoning designations.

Institutional – Zoning designations vary depending on surrounding uses

The Property is currently unzoned.

The Application’s proposed NHR Zone would allow a maximum 130-foot height, a 9.0 floor area ratio, and 100% lot occupancy. The NHR Zone will require design review of any new development at the Property.

The Office of Planning (“OP”) filed a December 8, 2020, report (the “OP Setdown Report”) recommending that the Commission set the Application down for a public hearing because the proposed rezoning would be appropriate for the NHR zone because the Property is immediately adjacent to property currently in the NHR zone and is adjacent to the Anacostia Metro Station and would be inconsistent with the CP when considered as a whole, including the Lower Anacostia Waterfront/Near Southwest Area Element and the Land Use, Transportation, Housing, Economic Development, and Urban Design Elements. The OP Setdown Report also noted that the Application is not inconsistent with the planning guidance of the Anacostia Waterfront Initiative to which the Property is subject.

On December 17, 2020, the Commission voted to set down the Application for a public hearing as a contested case.

The Applicant submitted its prehearing submission on December 28, 2020.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, as well as the text adopted by the Commission on October 15, 2020, in Z.C. Case No. 20-11, as published in the Notice of Final Rulemaking published in the D.C. Register on October 30, 2020.

How to participate as a witness – oral presentation

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

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

4. Individuals

3 minutes each

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

How to participate as a witness - written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record, provided that **all written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing, unless approved by the Commission upon request to be introduced at the public hearing.** The public is encouraged to submit written testimony through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by e-mail to zcsubmissions@dc.gov. Please include the case number on your submission. If you are unable to use either of these means of submission, please contact Donna Hanousek at (202) 727-0789 for further assistance.

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1. A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact OZ at dcoz@dc.gov or at (202) 727-6311.

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

"Great weight" to written report of ANC

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

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

**ANTHONY J. HOOD, ROBERT E. MILLER, PETER G. MAY, PETER A. SHAPIRO,
AND MICHAEL G. TURNBULL ----- ZONING COMMISSION FOR THE DISTRICT**

OF COLUMBIA, BY SARA A. BARDIN, DIRECTOR, AND BY SHARON S. SCHELLIN, SECRETARY TO THE ZONING COMMISSION.

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

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

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA

NOTICE OF VIRTUAL PUBLIC HEARING

TIME AND PLACE: Monday, March 22, 2021 @ 4:00 p.m.
& if needed, Monday March 29, 2021 @ 4:00 p.m.
WebEx or Telephone – Instructions will be provided
On the Office of Zoning website by Noon on the Hearing Date¹

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-31 (THE AMERICAN UNIVERSITY – Campus Plan Approval for the Period of 2021 – 2031 (“2021 Campus Plan”))

THIS CASE IS OF INTEREST TO ANCs 3C, 3D, 3E, and 3F

The American University (“AU”) filed an application (the “Application”) on December 14, 2020, requesting review and approval by the Zoning Commission for the District of Columbia (the “Commission”) of its 2021 – 2031 Campus Plan (the “2021 Campus Plan”) pursuant to Subtitle X, Chapter 1, and Subtitle Z § 302 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified) for the following properties (collectively the “Campus Plan Property”):

- Square 1499, Lot 806, with an address of 4801 Massachusetts Avenue, N.W. (“4801 Mass. Ave.”);
- Square 1560, Lot 807;
- Square 1599, Lots 24 and 812;
- Square 1600, Lots 1, 801, 810 and 816;
- Square 1601, Lot 3, collectively with the preceding lots in Squares 1560, 1599, and 1600 with an address of 4400 Massachusetts Avenue, N.W. (the “Main Campus”);
- Square 1601, Lot 6, with an address of 3201 New Mexico Avenue, N.W. (“3201 NM Ave.”);
- Square 1728, Lot 1, with an address of 4300 Nebraska Avenue, N.W. (“Tenley Campus”);
- Square 1786, Lot 10, with an address of 4200 Wisconsin Avenue, N.W. (“4200 Wis. Ave.”)

CAMPUS PLAN PROPERTY**The Main Campus**

The Main Campus is located in the R-1-B, RA-1 and RA-2 Zones and includes academic and administrative uses, residential facilities, athletic and campus life facilities, as well as other ancillary uses that are related to the University.

The Tenley Campus

The Tenley Campus is located in the R-1-B Zones and includes academic and administrative uses primarily related to AU’s Washington College of Law.

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

The Additional Campus Properties

- 4801 Mass. Ave. is located in the MU-4 zone and includes academic/administrative uses.
- 3201 NM Ave. is located in the MU-3A zone and includes both AU academic/administrative uses and non-university related uses.
- 4200 Wis. Ave. is located in the MU-4 zone and includes academic/administrative uses, the Greenberg Theater (campus life use), and non-university related uses.

THE APPLICATION

The Application proposes:

- To continue the existing university uses on 4801 Mass. Ave., 3201 NM Ave., and 4200 Wis. Ave. (the “Additional Campus Properties”) by incorporating them into the 2021 Campus Plan pursuant to Subtitle X § 102.5² with no proposed new development or modifications;
- To continue the existing university uses on the Tenley Campus with some improvements to the existing Dunblane House to address accessibility requirements and address academic and administrative needs;
- To continue the existing university uses on the Main Campus and develop, redevelop, and renovate 15 buildings or sites across the Main Campus;
- To remain at or below the maximum 13,600 students and 2,900 employees approved by the 2011 Campus Plan, as adjusted by incorporating the Additional Campus Properties and the additional student categories required to be included by Subtitle Z § 302.10(d)³ as follows:
 - Maximum 14,380 students, including 2,000 law students (reduced by 119 from the 14,499 adjusted current limit); and
 - Maximum 3,350 employees (no change from the 3,350 adjusted current limit); and
- To continue providing on campus housing for 67% of the full-time undergraduate population.
- (14,499 students, and 3,350 employees), when adjusted to include the three additional campus properties and

2021 Campus Plan – New Development:

- **New Gross Floor Area (“GFA”)** – The proposed development and redevelopment on the Main Campus would add 747,500 square feet to the existing 2,586,484 square feet of GFA approved for the Main and Tenley Campuses by the 2011 Campus Plan as follows:
 - 289,064 square feet for Academic/Administrative uses;
 - 355,936 square feet for Residential/Campus Life uses; and
 - 102,500 square feet for Athletic uses;
- **Floor Area Ratio (“FAR”)** – The new development would increase the total 0.71 FAR approved for the combined Main and Tenley Campuses by the 2011 Campus Plan to 0.91 FAR, below the 1.8 FAR permitted for portions of campus in R, RF, and RA zones by Subtitle X § 101.5;

² These three properties were not included in the 2011 Campus Plan because they were located in non-residential zones. AU chose to extend these existing university uses by incorporating them into the 2021 Campus Plan instead of pursuing a separate special exception pursuant to Subtitle X § 102.1.

³ Subtitle Z § 302.10(d) provides specific directives about the types of students to be included in the enrollment count, including full-time, part-time, foreign, certificate/non-degree, single course, night programs, and executive program students (if applicable). These requirements were not in effect at the time of the Commission’s approval of the 2011 Campus Plan. In addition, as noted above, the Campus Plan has been enlarged to include three additional properties and the students on these properties are now included in the total enrollment figure.

- **Building Heights** – Will range from 2 to 4 stories, with one site proposed with a maximum of 7 stories; and
- **Parking** – The Application proposed to increase the maximum 2,200 parking spaces approved for university related use on the Main and Tenley Campuses by the 2011 Campus Plan to 3,000 spaces, an increase of 300 spaces over the approximately 2,700 spaces currently available on the Campus Plan Property.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, as well as the text adopted by the Commission on October 15, 2020, in Z.C. Case No. 20-11, as published in the Notice of Final Rulemaking published in the D.C. Register on October 30, 2020.

How to participate as a witness – oral presentation

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- | | |
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How to participate as a party

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

"Great weight" to written report of ANC

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

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

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

TIME AND PLACE: **Monday, March 15, 2021, @ 4:00 p.m.**
WebEx or Telephone – Instructions will be provided on the
Office of Zoning website by Noon on the Hearing Date¹

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-32 (45 Q STREET SW LLC – Design Review @ Square 657, Lot 815 [45 Q Street, S.W.]

THIS CASE IS OF INTEREST TO ANC 6D

45 Q STREET SW LLC (the “Applicant”) filed an application (the “Application”) on December 15, 2020, pursuant to 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) requesting that the Zoning Commission for the District of Columbia (the “Commission”) grant relief for Lot 815 in Square 657 (the “Property”), which has an address of 45 Q Street, SW., and is located in the CG-4 zone. The Applicant is requesting the following relief:

- Design Review approval as required by the provisions of Subtitle K § 512.1(e);
- Zoning flexibility pursuant to Subtitle X § 603.1 from
 - The lot occupancy requirements of Subtitle K § 504.6;
 - The rear yard requirements of Subtitle K § 504.8;
 - The side yard requirements of Subtitle K § 504.9; and
 - The closed court requirements of Subtitle K § 504.10; and
- Additional zoning relief pursuant to Subtitle X § 603.3:
 - A variance from the CG-4 zone public plaza requirements of Subtitle K § 504.13;
 - A variance from the loading requirements of Subtitle C § 901.1;
 - A special exception pursuant to Subtitle C § 703.2 from the parking access requirements of Subtitle C § 701.5 to provide additional parking through double height parking stackers and tandem spaces that do not meet the access requirements; and
 - A special exception pursuant to Subtitle C § 1500.3(c) to allow a rooftop bar/restaurant on the penthouse level.

The Property consists of approximately 15,620 square feet of land area and is comprised of a single tax lot that includes most of record lot 16 and part of record lot 15. The Property is located on the southwestern corner of Square 657, abutting Half Street, S.W. to the west and Q Street, S.W. to the south. Abutting the Property to the north is 10 P Street (currently used as an industrial warehouse) and to the east is 39 Q Street (currently used as a commercial garage). The Property is located two blocks east of Fort McNair, one block north and to the east of the soccer stadium, and half a block west of South Capitol Street and Nationals Park. An entrance to the Navy Yard

¹ Anyone who wishes to participate in this case but cannot do so via WebEx or telephone may submit written comments to the record. (See p. 2, *How to participate as a witness – written statements.*)

Metrorail Station is located approximately one-half mile northeast of the Property on Half Street, S.E. The Property is currently improved with a vacant warehouse.

The Applicant proposes to raze the existing building and construct a mixed-use building that will have:

- A maximum height of 100 feet;
- A floor area ratio (“FAR”) of 8.2;
- A lot occupancy ranging from 80.8%-97.7%;
- 60 residential units, including Inclusionary Zoning units;
- Approximately 62,000 sq. ft. of hotel space (190 hotel rooms);
- Approximately 9,000 sq. ft. of commercial uses (including a market area and rooftop bar); and
- At least 55 parking spaces, 41 long-term bicycle parking spaces, and 10 short-term bicycle parking spaces.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, as well as the text adopted by the Commission on October 15, 2020, in Z.C. Case No. 20-11, as published in the Notice of Final Rulemaking published in the D.C. Register on October 30, 2020.

How to participate as a witness – oral presentation

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

The Commission also requests that all witnesses prepare their testimony in writing, submit the written testimony prior to giving statements, and limit oral presentations to summaries of the most important points. The Commission must base its decision on the record before them. The following maximum time limits for oral testimony shall be adhered to and no time may be ceded:

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

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

How to participate as a witness - written statements

Written statements, in lieu of personal appearances or oral presentation, may be submitted for inclusion in the record, provided that **all written comments and/or testimony must be submitted to the record at least 24 hours prior to the start of the hearing, unless approved by the**

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

How to participate as a party.

Any person who desires to participate as a party in this case must so request and must comply with the provisions of Subtitle Z § 404.1. A party has the right to cross-examine witnesses, to submit proposed findings of fact and conclusions of law, to receive a copy of the written decision of the Commission, and to exercise the other rights of parties as specified in the Zoning Regulations. If you are still unsure of what it means to participate as a party and would like more information on this, please contact OZ at dcoz@dc.gov or at (202) 727-6311.

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

"Great weight" to written report of ANC

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

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

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

TIME AND PLACE: **Thursday, March 18, 2021, @ 4:00 p.m.**
WebEx or Telephone – Instructions will be provided on the
Office of Zoning website by Noon on the Hearing Date¹

FOR THE PURPOSE OF CONSIDERING THE FOLLOWING:

CASE NO. 20-34 (Jemal’s Cotton Annex L.L.C. – Special Exception Relief pursuant to Subtitle I § 581 @ Square 326, Lot 806 [300 12th Street, SW])

THIS CASE IS OF INTEREST TO ANC 6D

Jemal’s Cotton Annex L.L.C. (the “Applicant”) filed an application (the “Application”) on December 24, 2020, requesting that the Zoning Commission for the District of Columbia (the “Commission”) grant relief to construct a new mixed-used residential and retail/service building on Lot 806 in Square 326 (the “Property”), with an address of 300 12th Street, S.W. in the D-8 zone. The Applicant is requesting the following:

- A special exception approval as required by and pursuant to Subtitle I § 581 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified) and Subtitle X, Chapter 9; and
- The following zoning relief pursuant to Subtitle I § 581.5:
 - A variance from the court dimension requirements of Subtitle I § 207.1, and
 - a variance from the limitation on increasing the density within the footprint of a historic structure under Subtitle I § 200.3.

Property

The Property consists of approximately 61,672 square feet. The Property is bounded to the north by the closed dead-end portion of C Street, S.W. (now private property), to the east by the 12th Street Expressway, to the south by D Street, S.W., and to the west by 12th Street, S.W. The National Mall is approximately three blocks to the north of the Property and Maryland Avenue, S.W., runs diagonally to the south of the Property. The surrounding area is characterized by a number of large federal buildings, monuments, hotels, office buildings, and museums. The Property is partially improved with the Cotton Annex building, a designated historic landmark that was constructed for the United States Department of Agriculture and that the Applicant acquired in 2017. The Cotton Annex is now vacant.

Project

The Application proposes to rehabilitate and incorporate the existing historic building into a 12-story building designed around a central courtyard with the following:

- A maximum building height of approximately 119 feet, not including the penthouse;

¹ Anyone who wishes to participate in this case but cannot do so via WebEx or telephone may submit written comments to the record. (See p. 2, *How to participate as a witness – written statements*)

- Approximately 452,582 square feet of gross floor area, of which approximately 82,4000 square feet will be in the existing historic building;
- An approximately 7.34 floor area ratio;
- Approximately 600 dwelling units;
- 1,368 square feet of ground floor retail/service use; and
- Approximately 93 vehicular parking spaces.

This public hearing will be conducted in accordance with the contested case provisions of Subtitle Z, Chapter 4, as well as the text adopted by the Commission on October 15, 2020, in Z.C. Case No. 20-11, as published in the Notice of Final Rulemaking published in the *D.C. Register* on October 30, 2020.

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OFFICE OF DOCUMENTS AND ADMINISTRATIVE ISSUANCES

ERRATA NOTICE

The Administrator of the Office of Documents and Administrative Issuances (ODAI), pursuant to the authority set forth in Section 309 of the District of Columbia Administrative Procedure Act, approved October 21, 1968, as amended (82 Stat. 1203; D.C. Official Code § 2-559 (2016 Repl.)), hereby gives notice of a correction to the Notice of Final Rulemaking and Zoning Commission Order No. 19-21, issued by the Zoning Commission of the District of Columbia and published in the *D.C. Register* on November 13, 2020, at 67 DCR 13346, *et seq.*

The final rulemaking amended Subtitles D (Residential House (R) Zones) and E (Residential Flats (RF) Zones) of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (DCMR), Zoning Regulations of 2016).

Among other changes, the final rulemaking:

- Revised Subtitle E § 206.3 to clarify the standards to be applied to determine if a proposed building cast shadows that significantly interfered with a solar energy system on an abutting property. The final rulemaking accidentally proposed deleting the existing provision that authorized the owner of such a solar energy system to allow the significant interference, to which the new paragraph (d) of that subsection referred;
- Proposed to add the limit on excessive shading on solar energy systems of Subtitle E § 206.3 to the R zones in Subtitle D § 208.1. The final rulemaking applied the same language of Subtitle E § 206.3 that inadvertently deleted the reference to the agreement allowing significant interference; and
- Revised Subtitle E § 206.4 to add a cross-reference to a requirement from which special exception relief is authorized. The final rulemaking inadvertently referred to Subtitle E § 206.2, from which no special exception relief was intended as it authorized limited flexibility to the Zoning Administrator, instead of Subtitle E § 206.3, from which special exception relief was specifically intended as demonstrated by the reference in Subtitle E § 5207.2.

Therefore, the final rulemaking is corrected to amend:

- Subtitles D § 208.1 and E § 206.3 to add back in the erroneously deleted reference to an agreement with the owner of the affected solar energy system as is specifically identified in paragraphs (d) of these subsections; and
- Subtitle E § 206.4 to substitute a cross-reference to Subtitle E § 206.3 to replace the erroneous cross-reference to Subtitle E § 206.2;

The corrections to the final rulemaking are made below to read as follows (with additions shown in **bold and underline**; deletions are shown in ~~**bold and strikethrough**~~):

Amendment to Subtitle D, RESIDENTIAL HOUSE (R) ZONES

Subsection 208.1 of § 208, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (R), of Subtitle E, RESIDENTIAL HOUSE (R) ZONES, is amended by adding back in an erroneous deletion to read as follows:

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

- (a) “Time of application” shall mean ...
- ...
- (d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one of the following:
 - (1) An affidavit ...
 - ...
 - (3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

Amendments to Subtitle E, RESIDENTIAL FLATS (RF) ZONES

Subsection 206.3 of § 206, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended by adding back in an erroneous deletion to read as follows:

206.3 Any new building, or alteration or addition to an existing building, including a roof structure or penthouse (the “proposed construction”), at the time of application, shall not be designed or constructed such that it will significantly interfere with the operation of a solar energy system on an abutting property, **unless agreed to by the owner of the solar energy system**, subject to the following:

- (a) “Time of application” shall mean ...
- ...
- (d) All applications for the proposed construction, whether for a building permit or for zoning relief, must include one of the following:
 - (1) An affidavit ...
 - ...
 - (3) A written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system.

Subsection 206.4 of § 206, ROOF TOP OR UPPER FLOOR ELEMENTS, of Chapter 2, GENERAL DEVELOPMENT STANDARDS (RF), of Subtitle E, RESIDENTIAL FLATS (RF) ZONES, is amended by correcting the cross-reference to read as follows:

206.4 Relief from the requirements of Subtitle E §§ 206.1 and ~~206.2~~ 206.3 may be approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the conditions of Subtitle E § 5207.

These corrections by this Errata Notice to the Notice of Final Rulemaking is non-substantive in nature and does not alter the intent, application, or purpose of the proposed rules. The rules are effective upon the original publication date of the Notice of Final Rulemaking of November 13, 2020.

Any questions or comments regarding this notice shall be addressed by mail to Victor L. Reid, Esq. Administrator, Office of Documents & Administrative Issuances, 441 4th Street, N.W., Suite 520S, Washington, D.C. 20001, email at victor.reid@dc.gov, or via telephone at (202) 727-5090.

RENTAL HOUSING COMMISSION**NOTICE OF EXTENDED PUBLIC COMMENT PERIOD FOR SECOND PROPOSED RULEMAKING**

On November 20, 2020, pursuant to the authority set forth in § 202(a)(1) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)(1) (2012 Repl.)) (“Act”), the Rental Housing Commission (“Commission”) gave public notice of the intent to adopt revised rules under the Act: 67 DCR 13598 (“Second Proposed Rulemaking”). In the Second Proposed Rulemaking, the Commission set a public comment deadline of January 15, 2021. The Commission further stated its intent to hold public meetings during the public comment period.

Due to scheduling conflicts of requested participants, the Commission will be unable to hold public meetings prior to the January 15, 2021 written comment deadline. Accordingly, in order to provide greater opportunity for public input and consideration of all views, the Commission hereby extends the written comment deadline for the Second Proposed Rulemaking to February 16, 2021. Notice of public meetings will be forthcoming and published on the Commission’s website, <https://rhc.dc.gov>. All public meetings will be held virtually due to the ongoing COVID-19 state of emergency.

All persons desiring to comment on the Second Proposed Rulemaking should submit comments in writing to:

Daniel Mayer, General Counsel
Rental Housing Commission
441 Fourth Street, N.W., Suite 1140-B North
Washington, D.C. 20001

Or, via email to: daniel.mayer@dc.gov

Due to the ongoing COVID-19 state of emergency, prospective commenters are strongly encouraged to submit comments via email. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8949. To be considered, all comments must be received or postmarked no later than February 16, 2021.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**NOTICE OF PROPOSED RULEMAKING****Z.C. Case No. 20-19****Office of Planning****(Text Amendment to Subtitles B, D, E, and F for Accessory Building Requirements)**

The Zoning Commission for the District of Columbia (Commission), pursuant to its authority under § 1 of the Zoning Act of 1938, approved June 20, 1938 (52 Stat. 797), as amended; D.C. Official Code § 6-641.01 (2018 Repl.), and pursuant to § 6 of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c) (2016 Repl.)), hereby gives notice of its intent to amend the following sections of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all references are made unless otherwise specified), with the specific text at end of this notice:

- Subtitle B, Definitions, Rules of Measurement, and Use Categories - §§ 100, 308
- Subtitle D, Residential House (R) Zones - § 1209, Chapter 50
- Subtitle E, Residential Flat (RF) Zones - Chapter 50
- Subtitle F, Residential Apartment (RA) Zones - Chapter 50

Setdown

On September 4, 2020, the Office of Planning (OP) filed a petition (Petition) to the Commission proposing the amendments to clarify and provide consistency in the regulations governing accessory buildings across zones.

At its September 14, 2020, public meeting, the Commission voted to grant OP's request to set down the proposed text amendment for a public hearing and authorized flexibility for OP to work with the Office of the Attorney General to refine the proposed text and add any conforming language as necessary.

Public Hearing

OP filed a December 11, 2020, report proposing minor technical changes to the Petition, including clarification that penthouses and rooftop structures are not permitted above the matter of right height and number of stories on accessory buildings.

ANC 6C filed a December 18, 2020, letter (ANC 6C Report) that raised concerns about the following aspects of the Petition, in addition to some numbering errors:

- Maximum height of sheds – concerned that the Petition's proposed ten foot (10 ft.) maximum was too high, given that most prefabricated sheds are eight feet (8 ft.) tall and proposing an alternative maximum height of nine feet (9 ft.);
- Lower measuring point for accessory building height – concerned that the Petition's use of "finished grade" as the lower measuring point for calculating height would allow the manipulation of height by changing the grade, and proposing instead to adopt "the lower of

finished or natural grade” as had been adopted by the Commission in Z.C. Case No. 17-18 for principal buildings;

- Upper measuring point for accessory building – concerned that the Petition did not clearly state that parapets and penthouses are included within the maximum building height; and
- Alley centerline setback – concerned that this requirement only applied to accessory buildings, but not fences and rollup gates or to sheds under the Petition.

At its December 21, 2020 public hearing, the Commission heard testimony from OP in support of the Petition, as well as from ANC 6C’s authorized representative. In response to the issues raised in the ANC 6C Report and testimony, and to questions from the Commission, OP:

- Explained that the Petition’s ten-foot (10 ft.) maximum height for sheds was based on the rules of the Department of Consumer and Regulatory Affairs (DCRA) governing replacing a derelict structure, which do not require review if the existing structure is less than 10 feet (10 ft.) tall, but also confirmed that this ten-foot (10 ft.) maximum height was to the highest point of a shed roof;
- Agreed to clarify that the maximum height of accessory buildings includes parapets;
- Agree to adopt the ANC 6C’s proposed lower measuring point for accessory building height as the lower of finished or natural grade at the base of the accessory building, or, per the Commission’s suggestion, at the grade of an alley, if higher; and
- To correct the numbering errors identified by the ANC 6C Report.

“Great Weight” to the Recommendations of OP

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

The Commission finds persuasive OP’s recommendation that the Commission take proposed action to adopt the Petition and concurs in that judgment.

“Great Weight” to the Written Report of the ANCs

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

The Commission finds the ANC 6C Report’s issues and concerns persuasive and concurs that:

- That parapets and penthouses should be included within the maximum height of accessory buildings; and

- The lower measuring point should be based on the lower of finished or natural grade, except if the alley grade is higher.

The Commission did not agree with the ANC 6C Report's proposed maximum nine-foot maximum building height for sheds, based on OP's explanation that the Petition's ten-foot (10 ft.) maximum aligned with DCRA's administrative processes and OP's confirmation that this maximum height was to the highest point of the roof.

Proposed Action

At the close of its December 21, 2020, public hearing, the Commission voted to take **PROPOSED ACTION** to grant the Petition, as amended to respond to the concerns of ANC 6C and the Commission to clarify that the maximum height of accessory buildings includes parapets and is based on the lower of finished or natural of the building or alley grade, to authorize the publication of a Notice of Proposed Rulemaking:

VOTE (December 21, 2020): 5-0-0 (Peter G. May, Robert E. Miller, Anthony J. Hood, Peter A. Shapiro, and Michael G. Turnbull to **APPROVE**)

All persons desiring to comment on the subject matter of this proposed rulemaking action should file comments in writing no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Comments should be filed with Sharon Schellin, Secretary to the Zoning Commission, Office of Zoning, through the Interactive Zoning Information System (IZIS) at <https://app.dcoz.dc.gov/Login.aspx>; however, written statements may also be submitted by mail to 441 4th Street, N.W., Suite 200-S, Washington, D.C. 20001; by e-mail to zcsubmissions@dc.gov; or by fax to (202) 727-6072. Ms. Schellin may be contacted by telephone at (202) 727-6311 or by e-mail at Sharon.Schellin@dc.gov. Copies of this proposed rulemaking action may be obtained at cost by writing to the above address.

Final rulemaking action shall be taken not less than thirty (30) days from the date of publication of this notice of proposed rulemaking in the *D.C. Register*.

The complete record in the case can be viewed at the Office of Zoning's Interactive Zoning Information System (IZIS), at <https://app.dcoz.dc.gov/Content/Search/Search.aspx>.

PROPOSED TEXT AMENDMENT

The proposed amendments to the text of the Zoning Regulations are as follows (text to be deleted is marked in **~~bold and strikethrough~~** text; new text is shown in **bold and underline** text).

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

Subsection 100.2 of § 100, DEFINITIONS, of Chapter 1, DEFINITIONS, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, is proposed to be revised to add a new definition of "Shed", to read as follows:

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

...¹

Sexually-Oriented Business Establishment: An establishment ...

Shed: An accessory building, not used for habitable or automobile purposes, that does not exceed fifty square feet (50 sq. ft.) in area and is less than ten feet (10 ft.) in overall height.

Short-Term Rental: A use as defined by the Short-Term Rental Regulation Act ...

New §§ 308.9 and 308.10 are proposed to be added to § 308, RULES OF MEASUREMENT FOR BUILDING HEIGHT: RESIDENTIAL ZONES AS DEFINED IN SUBTITLE A § 101.9, of Chapter 3, GENERAL RULES OF MEASUREMENT, of Subtitle B, DEFINITIONS, RULES OF MEASUREMENT, AND USE CATEGORIES, to read as follows:

308.9 The building height of accessory buildings shall be measured from (i) the lower of the finished or natural grade at the middle of the side of the accessory building that faces the principal building, or (ii) the midpoint of the alley lot line if required for vehicular access to the alley, to the highest point of the roof of the building including parapets.

308.10 Penthouses and rooftop structures are not permitted above the matter of right height and number of stories on accessory buildings.

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

Section 1209, ACCESSORY BUILDINGS, of Chapter 12, GEORGETOWN RESIDENTIAL HOUSE ZONES – R-19 AND R-20, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised by amending §§ 1209.1 through 1209.4, and by deleting § 1209.5 and adding a new § 1209.5, to read as follows:

1209.1 Accessory buildings ~~in the~~ shall be permitted within an R-19 ~~and or~~ R-20 ~~zones shall be zone~~ subject to the ~~development regulations~~ conditions of this section.

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

- 1209.2 ~~The **Except for a shed, an** accessory building shall be located facing an alley, or private alley to which the owner has access by an easement recorded with the Recorder of Deeds, and shall be set back a maximum of five feet (5 ft.) from the rear property line or a line perpendicular to the façade of the principal building.~~
- 1209.3 In the R-19 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of twenty-~~two~~ **22** feet (~~20~~ **22** ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of two (2) stories.
- 1209.4 In the R-20 zone, an accessory building within five feet (5 ft.) of a public or private vehicular alley may have a maximum height of ~~fifteen~~ **twenty-two** feet (~~15~~ **22** ft.), a maximum building area of four hundred and fifty square feet (450 sq. ft.) and a maximum number of ~~one (1) story~~ **two (2) stories**.
- ~~1209.5 In the R-19 and R-20 zones, an accessory building on a property that is not adjacent to a public or private vehicular alley or that is more than five feet (5 ft.) from a public or private vehicular alley may have a maximum height of ten feet (10 ft.) and a maximum building area of one hundred square feet (100 sq. ft.).~~
- 1209.5 In the R-19 and R-20 zones, a shed may be permitted in a required rear or side yard provided it is at least five feet (5 ft.) from a public or private vehicular alley.
- 1209.6 Roof decks ...

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR R ZONES, of Subtitle D, RESIDENTIAL HOUSE (R) ZONES, is proposed to be revised by revising various sections, deleting §§ 5000.4, 5003, and 5004, and renumbering, to read as follows:

5000 GENERAL PROVISIONS

- 5000.1 Accessory buildings ~~may~~ **shall** be permitted within an R zone subject to the conditions of this section.
- 5000.2 An accessory building shall ~~be:~~
 - (a) Be subordinate to and located on the same lot as the **principal** building, **to which it is accessory; provided, that an accessory building may contain a parking space accessory to, and required for, a use on another lot where specifically permitted under other provisions of this title;**

~~(b) and shall be~~ Be used for purposes ~~that which~~ are incidental to the use of the principal building;~~;~~ provided that no more than one (1) accessory apartment shall be allowed;

~~(c)~~ Be secondary in size compared to the principal building;

~~(d)~~ Be constructed after the construction of a principal building on the same lot; and

~~(e)~~ Not be constructed in front of the principal building.

5000.3 An accessory building shall be ~~secondary in size compared to the principal building~~ included in the calculation of lot occupancy and shall comply with all ~~required~~ yards required for accessory buildings ~~based on in~~ the zone ~~in which they are located.~~

~~5000.4~~ ~~Notwithstanding Subtitle D § 5000.3, an accessory building shall not be located in the front yard of a lot in an R zone developed with a residential building.~~

~~5000.5~~ 5000.4 A private garage permitted in an R zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within ~~twelve~~ seven and one-half feet (7.5 ft.) of the ~~center line~~ centerline of the alley upon which it opens.

5001 DEVELOPMENT STANDARDS

5001.1 The bulk of accessory buildings in the R zones shall be controlled through the development standards in Subtitle D §§ 5002 through 5006.

5002 HEIGHT

5002.1 The maximum height of an accessory building in an R zone shall be two (2) stories and twenty-~~two~~ feet (~~20~~ 22 ft.), ~~including the penthouse. The height of an accessory building permitted by this section shall be measured from the finished grade at the middle of the side of the accessory building that faces the main building to the highest point of the roof of the building.~~

~~5003~~ ~~LOT OCCUPANCY~~

~~5003.1~~ ~~An accessory building in an R zone as a principal use on a lot other than an alley lot shall be exempt from the requirements for minimum lot dimensions, but shall be subject to the limitation on percentage of lot occupancy of the zone in which the lot is located.~~

~~5006~~ 5003 **MAXIMUM BUILDING AREA**

~~5006.1~~ 5003.1 The maximum building area for an accessory building in an R zone shall be the greater of thirty percent (30%) of the required rear yard or four hundred and fifty square feet (450 sq. ft.).

5004 REAR YARD

5004.1 An accessory building ~~in an R zone other than a shed~~ may be located within a rear yard in an R zone provided, ~~where abutting an alley,~~ that the accessory building is:

(a) Not in a required rear yard; and

(b) ~~it shall be set~~ Set back at least ~~twelve~~ seven and one-half feet (~~12~~ 7.5 ft.) from the ~~center line~~ centerline of ~~the~~ any alley.

~~5004.2~~ A shed may be located within a required rear yard of a principal building.

5005 SIDE YARD

5005.1 ~~No minimum side yard is required for an An~~ accessory building ~~in a R zone, other than a shed unless the accessory building is~~ may be located ~~beside the principal building, whereby it shall be~~ in a side yard in a R zone, provided that it is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

~~5005.2~~ A shed may be located within a required side yard of a principal building.

~~5006~~ [RESERVED]

~~5007~~ 5006 **SPECIAL EXCEPTION**

~~5007.1~~ 5006.1 Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle D § 5201.

III. Proposed Amendment to Subtitle E, RESIDENTIAL FLATS (RF) ZONES

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RF ZONES, of Subtitle E, RESIDENTIAL FLAT (RF) ZONES, is proposed to be revised to read as follows:

5000 GENERAL PROVISIONS

5000.1 Accessory buildings shall be permitted within an RF zone subject to the ~~following~~ conditions: of this section.

5000.2 ~~(a)~~—An accessory building shall ~~be~~:

(a) ~~Be~~ subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a required accessory parking space ~~may be permitted~~ accessory to, and required for, a use on another lot, where specifically permitted under other provisions of this title;

(b) ~~An accessory building shall be~~ Be used for purposes ~~that which~~ are incidental to the use of the principal building ~~but may house; provided that~~ no more than one (1) principal dwelling unit shall be allowed;

(c) Be secondary in size compared to the principal building;

~~(e) (d)~~ An accessory building shall not be Be constructed ~~prior to a~~ after the construction of the principal building ~~on the same lot~~; and

~~(d) (e)~~ An accessory building shall not Not be constructed in front of the principal building.

~~5000.2~~ **5000.3** ~~The~~ An accessory ~~buildings~~ building shall be ~~secondary in size compared to the principal building, and shall be considered within the~~ included in the calculation of lot occupancy, pervious surface, and as applicable, the floor area ratio (FAR) of the RF zones, and shall comply with all required yards for accessory buildings in the zone.

~~5000.3~~ **5000.4** A private garage permitted in an RF zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within ~~twelve~~ seven and one-half feet (~~12~~ 7.5 ft.) of the ~~center line~~ centerline of the alley upon which it opens.

5001 DEVELOPMENT STANDARDS

5001.1 The bulk of accessory buildings in the RF zones shall be controlled through the development standards in Subtitle E §§ 5002 through 5006.

5002 HEIGHT

5002.1 The maximum height of an accessory building in an RF zone shall be twenty-~~two~~ two feet (~~20~~ 22 ft.) and two (2) stories, ~~including the penthouse.~~

5003 LOT OCCUPANCY BUILDING AREA

5003.1 The maximum ~~lot occupancy~~ **building area** for an accessory building in an RF zone shall be the greater of thirty percent (30%) of the required rear yard or four-hundred and fifty square feet (450 sq. ft.).

5004 REAR YARD

5004.1 ~~No minimum rear yard is required for an~~ **An** accessory building **other than a shed may be located within a rear yard** in an RF zone **provided that the accessory building is:**

(a) Not in a required rear yard; and

(b) except when abutting an alley, where it shall be set Set back at least ~~twelve~~ **seven and one-half** feet (~~12~~ **7.5** ft.) from the ~~center line~~ **centerline** of the ~~any~~ **any** alley.

~~5004.2 An accessory building shall be permitted in a required rear yard of a principal building pursuant to the following conditions:~~

~~(a) The accessory building is less than ten feet (10 ft.) in height; and~~

~~(b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area.~~

~~5004.3 If the required rear yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve feet (12 ft.) from the center line of the alley.~~

5004.2 A shed may be located within a required rear yard of a principal building.

5005 SIDE YARD

5005.1 ~~No minimum side yard is required for an~~ **An** accessory building **other than a shed may be located within a side yard** in an RF zone **provided that the accessory building is**

~~5005.2 An accessory building shall be permitted in a required side yard of a principal building pursuant to the following conditions:~~

~~(a) The accessory building is less than ten feet (10 ft.) in height;~~

~~(b) The accessory building is less than one hundred square feet (100 sq. ft.) in gross floor area; and~~

~~(c) If the required side yard of the principal building in which the accessory building will be placed abuts an alley, the accessory building shall be set back at least twelve~~ **seven and one-half** feet (~~12~~ **7.5** ft.) from the ~~center line~~ **centerline** of the ~~any~~ **any** alley.

5005.2 A shed may be located within a required side yard of a principal building.

~~5006~~ MISCELLANEOUS ~~[RESERVED]~~

~~5006.1~~ The development standards that permit the following uses are located in Subtitle U, Chapter 3:

- ~~(a)~~ A permitted principal dwelling unit in an RF zone within an accessory building; and
- ~~(b)~~ A private vehicle garage that is an accessory building in an RF zone.

~~5007~~ 5006 SPECIAL EXCEPTION

~~5007.1~~ 5006.1 Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment as a special exception under Subtitle X, Chapter 9, and subject to the provisions and limitations of Subtitle E §§ 5201.

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

The title of Chapter 50, ACCESSORY BUILDING REGULATIONS (RA) ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be revised to read as follows:

CHAPTER 50 ACCESSORY BUILDING REGULATIONS FOR (RA) ZONES

Chapter 50, ACCESSORY BUILDING REGULATIONS FOR RA ZONES, of Subtitle F, RESIDENTIAL APARTMENT (RA) ZONES, is proposed to be revised to read as follows:

5000 GENERAL PROVISIONS

5000.1 Accessory buildings shall be permitted within an RA zone subject to the ~~following~~ conditions: of this section.

5000.2 ~~(a)~~ ~~The~~ An accessory building ~~is~~ shall:

- (a) Be subordinate to and located on the same lot as the building to which it is accessory; provided, that an accessory building may contain a required accessory parking space ~~may be permitted~~ accessory to, and required for, a use on another lot, where specifically permitted under other provisions of this title;
- ~~(b)~~ ~~An accessory building shall be~~ Be used for purposes ~~that~~ which are incidental to the use of the principal building; ~~and~~
- (c) Be secondary in size compared to the principal building;
- ~~(e)~~ (d) ~~An accessory building shall not be~~ Be constructed ~~prior to~~ after the construction of a principal building on the same lot; and

(e) Be constructed behind the principal building.

~~5000.2~~ ~~5000.3~~ ~~The~~ An accessory ~~buildings~~ building shall be ~~secondary in size compared to the principal building, and shall be considered with the~~ included in the calculation of lot occupancy, green area ratio (GAR), and as applicable, the floor area ratio (FAR) of the RA zones; and shall comply with all ~~required~~ yards required for accessory buildings ~~based on in~~ in the zone ~~in which it is located.~~

~~5000.4~~ A private garage permitted in an RA zone as a principal use on a lot other than an alley lot, shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within seven and one-half (7.5 ft.) of the centerline of the alley upon which it opens.

~~5001 DEVELOPMENT STANDARDS FOR ACCESSORY BUILDINGS~~

~~5001.1~~ The bulk of accessory buildings in the RA zones shall be controlled through the development standards in Subtitle F §§ 5001 through 5004.

~~5002 HEIGHT~~

~~5002.1~~ The maximum permitted height for an accessory building shall be twenty-two feet (~~20~~ 22 ft.) and two (2) stories.

~~5003 REAR YARD~~

~~5003.1~~ ~~No rear yard shall be required for an~~ An accessory building other than a shed may be located within a rear yard in an RA zone provided that it is:

(a) Not in a required rear yard; and

(b) except where abutting an alley a minimum rear yard of Set back at least ~~twelve~~ seven and one-half feet (~~12~~ 7.5 ft.) from the ~~center line centerline~~ centerline of the any alley.

~~5003.2~~ A shed may be located in a required rear yard of a principal building.

~~5004 MISCELLANEOUS~~

~~5004.1~~ ~~The lot upon which a private garage is located shall be exempt from the requirements for minimum lot dimensions, but shall be subject to the limitation on percentage of lot occupancy.~~

~~5004.2~~ ~~Accessory buildings on any lot shall be included in the maximum lot occupancy and GAR requirements and if applicable, the FAR, as listed and conditioned in this subtitle and the development standards of the penthouse regulations in Subtitle C, Chapter 15.~~

- 5004.3 ~~— A private garage that is an accessory building in an RA zone:~~
 - (a) ~~— May be located either within a rear yard or beside the main building; provided, if the garage is located beside the main building, it shall be removed from the side lot line a distance equal to the required side yard and from all building lines a distance of not less than ten foot (10 ft.) and~~
 - (a) ~~— Where abutting an alley, it shall be set back at least twelve feet (12 ft.) from the center line of the alley.~~

5004.4 ~~— A private garage permitted in an RA zone as a principal use on a lot other than an alley lot shall open directly onto an alley, and shall not be located within fifty feet (50 ft.) of the front building line or within twelve feet (12 ft.) of the center line of an alley.~~

5004 SIDE YARD

5004.1 An accessory building other than a shed may be located in a side yard in an RA zone provided that the accessory building is removed from the side lot line a distance equal to the required side yard and from the principal building a minimum of ten feet (10 ft.).

5004.2 A shed may be located in a required side yard of a principal building.

5005 SPECIAL EXCEPTION

5005.1 Exceptions to the development standards of this chapter shall be permitted ~~as a special exception~~ if approved by the Board of Zoning Adjustment ~~as a special exception~~ under Subtitle X, **Chapter 9**, and subject to the provisions and limitations of Subtitle F § 5201.

DEPARTMENT OF HEALTH CARE FINANCE

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat. 744; D.C. Official Code § 1-307.02 (2016 Repl. & 2020 Supp.)), and Section 6(6) of the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.05(6) (2018 Repl.)), hereby gives notice of the adoption of, on an emergency basis, and the intent to adopt, on a permanent basis, a new Chapter 90 (Home and Community-Based Services Waiver for Individual and Family Support), of Title 29 (Public Welfare) of the District of Columbia Municipal Regulations (DCMR).

The Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), will operate the new Medicaid Home and Community-Based Services (HCBS) Waiver for Individual and Family Support (IFS Waiver) under the supervision of the Department of Health Care Finance (DHCF). The proposed IFS Waiver was submitted to the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), requesting approval for a five (5) year period beginning November 1, 2020. The IFS Waiver will serve some of the District of Columbia's most vulnerable residents.

The new IFS Waiver establishes a program that will allow District residents with intellectual and developmental disabilities who live in an independent environment, either in their own home or with family or friends, to receive HCBS services and supports tailored to their specific needs. DHCF and DDS are proposing to create a streamlined IFS Waiver to meet the needs of persons who can leverage supports from family or friends and do not need residential services. In this way, the IFS Waiver will offer person-centered services that meet the person's needs in the least restrictive setting needed, applying the highest standards of quality and national best practices. The IFS Waiver has a seventy-five thousand dollar (\$75,000) per person, aggregate spending maximum per Individual Support Plan (ISP) year, and is intended to serve a maximum number of thirty (30) unduplicated participants in its first year, with a projected increase of thirty (30) participants each waiver year thereafter.

Structurally, the new 29 DCMR Chapter 90 (Home and Community-Based Services Waiver for Individual and Family Support) is comprised of thirty-five (35) total sections. The first sixteen (16) sections create the infrastructure and other regulatory requirements that govern the individuals and the providers, the next nineteen (19) sections establish the services that will be available to persons in the IFS Waiver, and the final section includes the definitions of terms and phrases. With the exception of the new Education Supports Services and additional information in the General Provisions, the language and general content of all of these proposed sections are taken from the corresponding provisions in 29 DCMR Chapter 19 (Home and Community-Based Services Waiver for Individuals With Intellectual and Developmental Disabilities) for the HCBS IDD Waiver program. The key differences from the IDD Waiver are:

- (1) There are no residential services included in the array of services covered under the IFS Waiver, so the IFS Waiver may not be the appropriate program for people who require residential services;
- (2) Aggregate spending on covered IFS Waiver services will be limited to seventy-five thousand (\$75,000) per person per Individual Support Plan year. Utilization against this spending limit will be monitored by the DDS Service Coordinator to ensure the spending limit is not exceeded; and
- (3) The IFS Waiver includes coverage of a new HCBS service, Education Supports Services.

The sixteen (16) sections that create the infrastructure and other non-services program requirements, and include the final definitions section, are as follows:

- (1) General Provisions, 29 DCMR § 9000 (*cf.* 29 DCMR§ 1900);
- (2) Covered Services and Rates, 29 DCMR § 9001 (*cf.* 29 DCMR § 1901);
- (3) Eligibility Requirements, 29 DCMR § 9002 (*cf.* 29 DCMR § 1902);
- (4) Level of Care and Freedom of Choice, 29 DCMR § 9003 (*cf.* 29 DCMR §1903);
- (5) Individual Support Plan, 29 DCMR § 9004 (*cf.* 29 DCMR§ 1907);
- (6) Individual Rights, 29 DCMR § 9005 (*cf.* 29 DCMR §1911);
- (7) Records and Confidentiality of Information, 29 DCMR § 9006 (*cf.* 29 DCMR §1909);
- (8) Initiating, Changing, or Terminating Any Approved Services, 29 DCMR § 9007 (*cf.* 29 DCMR 1912);
- (9) Home and Community-Based Setting Requirements, 29 DCMR § 9008 (*cf.* 29 DCMR §1938);
- (10) Provider Enrollment Process, 29 DCMR § 9009 (*cf.* 29 DCMR § 1905);
- (11) Provider Qualifications, 29 DCMR § 9010 (*cf.* 29 DCMR §1904);
- (12) Requirements for Direct Support Professionals, 29 DCMR § 9011 (*cf.* 29 DCMR § 1906);
- (13) Cost Reports and Audits, 29 DCMR § 9012 (*cf.* 29 DCMR § 1937);
- (14) Reporting Requirements, 29 DCMR § 9013 (*cf.* 29 DCMR § 1908);
- (15) Waiting List, 29 DCMR § 9014 (*cf.* 29 DCMR § 1940); and
- (16) Definition, 29 DCMR § 9099 (*cf.* 29 DCMR§ 1999).

The IFS Waiver will offer a full range of health and clinical services necessary to help persons with complex support needs and their families to choose an alternative to institutional service that promotes community inclusion and independence by enhancing and not replacing existing informal networks. The IFS Waiver will offer eighteen (18) services that are identical to those currently available under the Medicaid HCBS IDD Waiver and adds one (1) new service, Education Supports Services, for a total of nineteen (19) services as follows:

- (1) Assistive Technology Services, 29 DCMR § 9015 (*cf.* 29 DCMR § 1941);
- (2) Behavioral Support Services, 29 DCMR § 9016 (*cf.* 29 DCMR §1919);
- (3) Companion Services, 29 DCMR § 9017 (*cf.* 29 DCMR § 1939);
- (4) Creative Arts Therapies Services, 29 DCMR § 9018 (*cf.* 29 DCMR § 1918);
- (5) Day Habilitation Services, 29 DCMR § 9019 (*cf.* 29 DCMR § 1920);

- (6) Education Support Services, 29 DCMR § 9021 (new IFS Waiver service);
- (7) Employment Readiness Services, 29 DCMR § 9022 (*cf.* 29 DCMR § 1922);
- (8) Family Training Services, 29 DCMR § 9023 (*cf.* 29 DCMR § 1924);
- (9) Individualized Day Supports Services, 29 DCMR § 9024 (*cf.* 29 DCMR § 1925);
- (10) In-Home Supports Services, 29 DCMR § 9025 (*cf.* 29 DCMR § 1916);
- (11) Occupational Therapy Services, 29 DCMR § 9026 (*cf.* 29 DCMR § 1926);
- (12) Parenting Supports Services, 29 DCMR § 9027 (*cf.* 29 DCMR § 1942);
- (13) Personal Care Services, 29 DCMR § 9028 (*cf.* 29 DCMR § 1910);
- (14) Physical Therapy Services, 29 DCMR § 9029 (*cf.* 29 DCMR § 1928);
- (15) Respite Services, 29 DCMR § 9030 (*cf.* 29 DCMR § 1930);
- (16) Skilled Nursing Services, 29 DCMR § 9031 (*cf.* 29 DCMR § 1931);
- (17) Speech, Hearing and Language Services, 29 DCMR § 9032 (*cf.* 29 DCMR § 1932);
- (18) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 9033 (*cf.* 29 DCMR § 1933); and
- (19) Wellness Services, 29 DCMR § 9034 (*cf.* 29 DCMR § 1936).

The new Education Supports Services (29 DCMR § 9021) includes tuition and general fees for adult post-secondary classes; on-campus peer supports that are designed to enable the person to function with greater independence, receive post-secondary education, and be integrated in the community; communication classes for a person who is deaf or hard of hearing; and adult education or tutoring for reading or math instruction. These services are only available to the extent the person has fully utilized services available under related services as defined in Sections (22) and (25) of the Individuals with Disabilities Education Act (20 U.S.C. § 1400 *et seq.*).

To facilitate stakeholder input, copies of the application submitted to CMS and this Notice of Emergency and Proposed Rulemaking are available on the DDS website at: <https://dds.dc.gov/ifs-waiver-application>.

The IFS Waiver will serve some of the District’s most vulnerable residents. In order to prevent impediments that adversely affect access to quality Medicaid services delivered by eligible Medicaid providers, DHCF is taking emergency action for the immediate preservation of the health, safety and welfare of persons that will become eligible for IFS services upon initiation of the program.

The emergency rulemaking was adopted on December 23, 2020, and will become effective on the date CMS approves the IFS Waiver application or November 1, 2020, whichever is later. The emergency rules shall remain in effect for no longer than one hundred and twenty (120) days from the adoption date or until April 22, 2021, unless superseded by publication of a Notice of Final Rulemaking in the *D.C. Register*.

The Director of DHCF also gives notice of the intent to take final rulemaking action to adopt these proposed rules in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

A new Chapter 90, HOME AND COMMUNITY-BASED SERVICES WAIVER FOR INDIVIDUAL AND FAMILY SUPPORT, of Title 29 DCMR, PUBLIC WELFARE, is adopted to read as follows:

**CHAPTER 90 HOME AND COMMUNITY-BASED SERVICES
WAIVER FOR INDIVIDUAL AND FAMILY SUPPORT**

- 9000 GENERAL PROVISIONS**
- 9001 COVERED SERVICES AND RATES**
- 9002 ELIGIBILITY REQUIREMENTS**
- 9003 LEVEL OF CARE AND FREEDOM OF CHOICE**
- 9004 INDIVIDUAL SUPPORT PLAN (ISP)**
- 9005 INDIVIDUAL RIGHTS**
- 9006 RECORDS AND CONFIDENTIALITY OF INFORMATION**
- 9007 INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICES**
- 9008 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS**
- 9009 PROVIDER ENROLLMENT PROCESS**
- 9010 PROVIDER QUALIFICATIONS**
- 9011 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS**
- 9012 COST REPORTS, AUDITS, AND OVERSIGHT MONITORING**
- 9013 REPORTING REQUIREMENTS**
- 9014 WAITING LIST**
- 9015 ASSISTIVE TECHNOLOGY SERVICES**
- 9016 BEHAVIORAL SUPPORT SERVICES**
- 9017 COMPANION SERVICES**
- 9018 CREATIVE ARTS THERAPIES SERVICES**
- 9019 DAY HABILITATION SERVICES**
- 9020 [RESERVED]**
- 9021 EDUCATION SUPPORTS SERVICES**
- 9022 EMPLOYMENT READINESS SERVICES**
- 9023 FAMILY TRAINING SERVICES**
- 9024 INDIVIDUALIZED DAY SUPPORTS SERVICES**
- 9025 IN-HOME SUPPORTS SERVICES**
- 9026 OCCUPATIONAL THERAPY SERVICES**
- 9027 PARENTING SUPPORT SERVICES**
- 9028 PERSONAL CARE SERVICES**
- 9029 PHYSICAL THERAPY SERVICES**
- 9030 RESPITE SERVICES**
- 9031 SKILLED NURSING SERVICES**
- 9032 SPEECH, HEARING, AND LANGUAGE SERVICES**
- 9033 SUPPORTED EMPLOYMENT SERVICES – INDIVIDUAL AND SMALL GROUP SERVICES**
- 9034 WELLNESS SERVICES**
- 9099 DEFINITIONS**

9000 GENERAL PROVISIONS

- 9000.1 The purpose of this chapter is to establish criteria governing Medicaid eligibility for services under the Home and Community-Based Services (HCBS) Waiver for Individual and Family Support (IFS Waiver) and to establish conditions of participation for providers of Waiver services.
- 9000.2 The Waiver is authorized pursuant to Section 1915(c) of the Social Security Act, approved by the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services (CMS), and shall be effective through November 1, 2025, and any extensions thereof.
- 9000.3 The Waiver shall be operated by the Department on Disability Services (DDS), Developmental Disabilities Administration (DDA), under the supervision of the Department of Health Care Finance (DHCF).
- 9000.4 Enrollment of people eligible to receive Waiver services shall not exceed the ceiling established by the approved Waiver application.
- 9000.5 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 of the District of Columbia Municipal Regulations (DCMR) during the provider's participation in the program.
- 9000.6 Under the IFS Waiver, the District's aggregate spending will be limited to seventy-five thousand (\$75,000) per person per Individual Support Plan (ISP) year. The DDS Service Coordinator shall monitor utilization of IFS Waiver services throughout the ISP year and spending against the annual aggregate spending limit.
- 9000.7 A person whose service utilization exceeds, or will exceed, the aggregate spending limit shall be given the option to transition into the HCBS Waiver for People with Intellectual and Developmental Disabilities (IDD Waiver).

9001 COVERED SERVICES AND RATES

- 9001.1 Services available under the Waiver shall include the following:
- (a) Assistive Technology Services, 29 DCMR § 9015;
 - (b) Behavioral Support Services, 29 DCMR § 9016;
 - (c) Companion Services, 29 DCMR § 9017;
 - (d) Creative Arts Therapies Services, 29 DCMR § 9018;
 - (e) Day Habilitation Services, 29 DCMR § 9019;

- (f) Education Support Services, 29 DCMR § 9021;
- (g) Employment Readiness Services, 29 DCMR § 9022;
- (h) Family Training Services, 29 DCMR § 9023;
- (i) Individualized Day Supports Services, 29 DCMR § 9024;
- (j) In-Home Supports Services, 29 DCMR § 9025;
- (k) Occupational Therapy Services, 29 DCMR § 9026;
- (l) Parenting Supports Services, 29 DCMR § 9027;
- (m) Personal Care Services, 29 DCMR § 9028;
- (n) Physical Therapy Services, 29 DCMR § 9029;
- (o) Respite Services, 29 DCMR § 9030;
- (p) Skilled Nursing Services, 29 DCMR § 9031;
- (q) Speech, Hearing and Language Services, 29 DCMR § 9032;
- (r) Supported Employment Services – Individual and Small Group Services, 29 DCMR § 9033; and
- (s) Wellness Services, 29 DCMR § 9034.

9001.2 The Medicaid provider reimbursement rate(s) to be paid for the Waiver services identified in § 9001.1 shall be posted on the District of Columbia Medicaid fee schedule at www.dc-medicaid.com. DHCF shall also publish a notice in the *D.C. Register* which reflects the change in the reimbursement rate(s) for Waiver services.

9001.3 No Waiver provider shall provide Waiver services unless in receipt of a Service Authorization from the Department on Disability Services, Developmental Disabilities Administration (DDS/DDA), for that Waiver service. A Service Authorization is an approval for a prescribed Waiver service issued by DDS/DDA to the provider prior to rendering service and is located on MCIS, DDS/DDA's case management information system, or its successor. DDS/DDA will not retroactively authorize services, except in the event of an emergency in which the provider has notified DDS and provided the services in good faith to avoid any service disruptions for the person, and subject to the approval of the Deputy Director for DDA.

9001.4 DHCF shall not reimburse any Waiver provider for services if the provider:

- (a) Fails to comply with any applicable regulation in this chapter;
- (b) Fails to comply with all applicable federal and District of Columbia laws and regulations;
- (c) Fails to comply with all applicable transmittals, rules, manuals and other requirements for payment issued by DHCF;
- (d) Provides services in the absence of an approved prior authorization from DHCF or its designee for payment identifying the authorized service, number of hours or units authorized, duration, and scope of service; or
- (e) Fails to comply with the terms of the Medicaid Provider Agreement.

9001.5 Each Waiver provider shall agree to accept, as payment in full, the amount determined by DHCF as reimbursement for the authorized Waiver services provided to beneficiaries.

9001.6 Each Waiver provider shall agree to bill any and all known third-party payers prior to billing Medicaid.

9001.7 A standard unit of fifteen (15) minutes requires that the provider provide a minimum of eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to be billed as a unit of service.

9002 ELIGIBILITY REQUIREMENTS

9002.1 In order to receive Waiver services a person shall be currently receiving services from DDS/DDA and meet all of the following requirements:

- (a) Have a special income level up to three hundred percent (300%) of the SSI federal benefit or be aged and disabled with income up to one hundred percent (100%) of the federal poverty level or be medically needy as set forth in 42 C.F.R. §§ 435.320, 435.322, 435.324 and 435.330;
- (b) Have an intellectual disability as defined in D.C. Official Code § 7-1301.03(15A), which, when establishing qualifying intelligence quotient (IQ), includes consideration of the standard error of measurement associated with the particular IQ test, and requires adaptive deficits across at least two (2) of the following three (3) domains: conceptual, practical, and social;
- (c) Be eighteen (18) years of age or older;

- (d) Be a resident of the District of Columbia as defined in D.C. Official Code § 7-1301.03(22);
- (e) Have a Level of Care (LOC) determination that the person requires services furnished in an Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) or be a person with related conditions pursuant to the criteria set forth in § 9002.4; and
- (f) Meet all other eligibility criteria applicable to Medicaid recipients including citizenship and alienage requirements.

9002.2 Waiver services shall not be furnished to a person who is an inpatient of a hospital, ICF/IID, or nursing facility.

9002.3 Each person enrolled in the Waiver shall be re-certified annually as having met all of the eligibility requirements as set forth in § 9002.1 for continued participation in the Waiver.

9002.4 A person shall meet the LOC determination set forth in § 9002.1(e) if one of the following criteria has been met, taking into consideration the standard error of measurement for the IQ test:

- (a) The person's primary disability is an intellectual disability with an intelligence quotient (IQ) of fifty-nine (59) or less;
- (b) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has at least one (1) of the following additional conditions:
 - (1) Mobility deficits;
 - (2) Sensory deficits;
 - (3) Chronic health problems;
 - (4) Behavior problems;
 - (5) Autism;
 - (6) Cerebral Palsy;
 - (7) Epilepsy; or
 - (8) Spina Bifida.
- (c) The person's primary disability is an intellectual disability with an IQ of sixty (60) to sixty-nine (69) and the person has severe functional limitations in at least three (3) of the following major life activities:
 - (1) Self-care;
 - (2) Understanding and use of language;
 - (3) Functional academics;
 - (4) Social skills;

- (5) Mobility;
- (6) Self-direction;
- (7) Capacity for independent living; or
- (8) Health and safety.

(d) The person has an intellectual disability, has severe functional limitations in at least three (3) of the major life activities as set forth in § 9002.4(c)(1) through § 9002.4(c)(8), and has one (1) of the following diagnoses:

- (1) Autism;
- (2) Cerebral Palsy;
- (3) Prader Willi; or
- (4) Spina Bifida.

9003 LEVEL OF CARE AND FREEDOM OF CHOICE

9003.1 The DC Level of Need (LON) is a comprehensive assessment tool, initiated by the Service Coordinator and completed with the person, their advocate and other members of their support team who serve as the resource for providing the information that is entered into the LON.

9003.2 The LON is reviewed on an annual basis and/or whenever the person experiences a significant change in their life anytime during the year. The LON documents the person's health, intellectual and developmental health diagnoses, and support needs in all major life activities to determine the LOC determination criteria specified in § 9002.4.

9003.3 The person shall meet the LOC as described under § 9002. The following describes the process for the initial evaluation and re-evaluation:

- (a) A Qualified Intellectual Disabilities Professional (Q/IDP), employed by DDS, shall perform the initial evaluation and re-evaluation of the LOC and make a LOC determination; and
- (b) Re-evaluations of the LOC shall be conducted every twelve (12) months or earlier when indicated.

9003.4 Written documentation of each evaluation and re-evaluation shall be maintained by DDS for a minimum period of three (3) years, except when there is an audit or investigation, in which case, the records shall be maintained by DDS until the review has been completed.

9003.5 Once a person has been determined eligible for services under the Waiver, the person or legal representative shall document the choice of institutional or HCBS Waiver on a Freedom of Choice form.

- 9003.6 The Freedom of Choice form shall consist of choices between:
- (a) Institutional services; and
 - (b) HCBS IDD Waiver and Individual Family Support Waiver services.
- 9003.7 A person who is not given the choice of HCBS as an alternative to institutional care in an ICF/IID as set forth in § 9002.1(e), shall be entitled to a fair hearing in accordance with 42 C.F.R. Part 431, Subpart E.
- 9004 INDIVIDUAL SUPPORT PLAN (ISP)**
- 9004.1 The Individual Support Plan (ISP) is the plan that identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met, based on what is important to and for the person, specifically including identifying the person's interest in employment, identifying goals for community integration and inclusion, and determining the most integrated setting available to meet the person's needs.
- 9004.2 The ISP shall include all Waiver and non-Waiver supports and services the person is receiving or shall receive consistent with his or her needs.
- 9004.3 The ISP shall be developed by the person and his or her support team using Person-Centered Thinking and Discovery tools and skills.
- 9004.4 At a minimum, the composition of the support team shall include the person being served, his or her substitute decision maker, if applicable, the DDS Service Coordinator and other individuals chosen by the person.
- 9004.5 The ISP shall be reviewed and updated annually by the support team. The ISP shall be updated more frequently if there is a significant change in the person's status or any other significant event in the person's life which affects the type or amount of services and supports needed by the person or if requested by the person.
- 9004.6 The Plan of Care shall be derived from the ISP and shall describe the frequency and types of services to be provided to the person, and the providers of those services.
- 9004.7 The provider shall:
- (a) Ensure that the service provided is consistent with the person's ISP and Plan of Care;
 - (b) Participate in the annual ISP and Plan of Care meeting or Support Team meetings when indicated; and

- (c) Develop the documents described under § 9006.2(i), including goals and objectives, within thirty (30) days of the initiation of services, which shall address how the service will be delivered to each person, after notification by DDS that a service has been authorized.

9004.8 DHCF shall not reimburse a provider for services that are not authorized in the ISP, not included in the Plan of Care, furnished prior to the development of the ISP, furnished prior to receiving a service authorization from DDS, or furnished pursuant to an expired ISP.

9004.9 Each provider shall submit to the person's DDS Service Coordinator a quarterly report which summarizes the person's progress made toward achieving the desired goals and outcomes and identification and response to any issue relative to the provision of the service.

9004.10 Each provider shall submit to the DDS Court Liaison and to the person's DDS Service Coordinator an annual court status report not less than fifteen (15) business days prior to the annual review hearing for the person, pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by the Superior Court of the District of Columbia. Each provider shall provide the annual court status report to the person's court appointed attorney not less than ten (10) business days prior to the annual review hearing of the person. Each provider shall cooperate with DDS to ensure that any necessary corrections to the annual court status report are made and submitted promptly and prior to the annual review hearing for the person.

9005 INDIVIDUAL RIGHTS

9005.1 Each Waiver provider shall develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) Be treated with courtesy, dignity, and respect;
- (b) Direct the person-centered planning of his or her supports and services;
- (c) Receive treatment, care, and services consistent with the ISP;
- (d) Receive services by competent personnel who can communicate with the person;
- (e) Refuse all or part of any treatment, care, or service and be informed of the consequences;

- (f) Be free from mental and physical abuse, neglect, and exploitation from staff providing services;
- (g) Be assured that for purposes of record confidentiality, the disclosure of the contents of his or her personal records is subject to all the provisions of applicable District and federal laws and rules;
- (h) Voice a complaint regarding treatment or care, lack of respect for personal property by staff providing services without fear of retaliation;
- (i) Have access to his or her records; and
- (j) Be informed orally and in writing of the following:
 - (1) Services to be provided, including any limitations;
 - (2) The amount charged for each service, the amount of payment received/authorized for him or her and the billing procedures, if applicable;
 - (3) Whether services are covered by health insurance, Medicare, Medicaid, or any other third-party source;
 - (4) Acceptance, denial, reduction, or termination of services;
 - (5) Complaint and referral procedures including how to file an anonymous complaint;
 - (6) The name, address, and telephone number of the provider;
 - (7) The telephone number of the DDS customer complaint line;
 - (8) How to report an allegation of abuse, neglect and exploitation;
 - (9) For people receiving residential supports, the person's rights as a tenant, and information about how to relocate and request new housing.

9006**RECORDS AND CONFIDENTIALITY OF INFORMATION**

9006.1

Each Waiver provider shall allow appropriate personnel of DHCF, DDS, and other authorized agents of the District of Columbia government or of other jurisdictions where services are provided, and the federal government full access, whether the visit is announced or unannounced, to all waiver provider locations, including access to the people receiving supports and all records, in any form. For purposes of this section, the term "records" includes, but is not limited to, all information

relating to the provider, the services and supports being provided, and the people for whom services are provided; any information which is generated by or in the possession of the provider; the information required by the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*) or its successor; and any information required by the regulations implementing the HCBS Waiver program. The release of records shall be in accordance with applicable federal and District privacy laws and regulations.

9006.2 Each Waiver provider entity shall maintain the following records at the site of service delivery, where applicable, for each person receiving services for monitoring and audit reviews.

- (a) General information including each person's name, Medicaid identification number, address, telephone number, date of birth, sex, name and telephone number of emergency contact person, physician's name, address and telephone number, and the DDS Service Coordinator's name and telephone number;
- (b) A copy of the most recent DDS approved ISP and Plan of Care indicating the requirement for and identification of a provider who shall provide the services in accordance with the person's needs;
- (c) A record of all service authorization and prior authorizations for services;
- (d) A record of all requests for change in services;
- (e) The person's medical records;
- (f) The person's financial records;
- (g) A discharge summary;
- (h) A written staffing plan, if applicable;
- (i) A back-up plan detailing who shall provide services in the absence of staff when the lack of immediate care poses a serious threat to the person's health and welfare;
- (j) Documents which contain the following information:
 - (1) The results of the provider's functional analysis for service delivery;
 - (2) A schedule of the person's activities in the community, if applicable, including strategies to execute goals identified in the ISP and the

- date and time of the activity, the staff as identified in the staffing plan;
- (3) Teaching strategies utilized to execute goals in the ISP and the person's response to the teaching strategy as further described in § 9006.12; and
 - (4) A support plan with SMARTER goals and outcomes using the information from the DDS approved person-centered thinking and discovery tools, the functional analysis, the ISP, Plan of Care, and other information as appropriate to assist the person in achieving his or her goals;
- (k) Any records relating to adjudication of claims;
- (l) Any records necessary to demonstrate compliance with all rules and requirements, guidelines, and standards for the implementation and administration of the Waiver;
- (m) Progress notes, as set forth in each service rule, containing the following information:
- (1) The progress in meeting the specific goals in the ISP and Plan of Care that are addressed on the day of service and relate to the provider's scope of service;
 - (2) The health or behavioral events or change in status that is not typical to the person;
 - (3) Evidence of all community integration and inclusion activities attended by the person and related to the person's ISP goals and for each, a response to the following questions: "What did the person like about the activity?" and "What did the person not like about the activity?" DDS recommends the use of the Person-Centered Thinking Learning Log for recording this information;
 - (4) The start time and end time of each shift for any services received including the signature, or if progress notes are written using an electronic record system, the electronic signature, of the Direct Support Professional (DSP);
 - (5) For services that require awake overnight shifts, the progress notes shall include the support provided as indicated in the specific residential schedule; and

- (6) The matters requiring follow-up on the part of the Waiver service provider or DDS.
- (n) Reports on a quarterly basis, which DDS recommends recording using the Person-Centered Thinking 4+1 Tool, containing the following information:
 - (1) An analysis of the goals identified in the ISP and Plan of Care and monthly progress towards reaching the goals;
 - (2) The service interventions provided and the effectiveness of those interventions;
 - (3) A summary analysis of all habilitative support activities that occurred during the quarter;
 - (4) For providers of In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, the quarterly report shall include information on the person's employment, including place of employment, job title, hours of employment, salary/hourly wage, information on fringe benefits, and current checking, savings and burial fund balances, as applicable;
 - (5) Any modifications or recommendations that may be required to be made to the documents described under § 9006.2(j), ISP, and Plan of Care from the summary analysis; and
 - (6) For providers of In-Home Supports, documentation of the review, implementation, and update, if applicable, of the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards.

- 9006.3 For people receiving In-Home Supports, the person and his or her support team make the determination of which records to store in the person's home and which are kept off-site.
- 9006.4 Each Waiver provider shall maintain all records, including but not limited to, progress reports, financial records, medical records, treatment records, and any other documentation relating to costs, payments received and made, and services provided, for six (6) years from service initiation or until all audits, investigations, or reviews are completed, whichever is longer.
- 9006.5 Each Waiver provider agency and independent practitioner shall maintain records to document staff training and licensure requirements, for a period of at least six (6) years.

- 9006.6 Each Waiver provider shall ensure the person's privacy and limit access to the person's records to only authorized individuals, including the person. Waiver providers shall not publicly post mealtime protocols, clinical therapy schedules, or any other health information.
- 9006.7 The disclosure of treatment information by a Waiver provider shall be subject to all provisions of applicable federal and District laws and rules, for the purpose of confidentiality of information.
- 9006.8 Providers shall archive their records annually and ensure that they are available upon request.
- 9006.9 Each Waiver provider shall implement a written strategy that outlines where and how records are stored. For residential programs, the written strategy will be unique to each home and developed in coordination with the people who live there. For non-facility based programs, the written strategy shall identify the location for the records and shall include the process for making them available when audits and other reviews are conducted.
- 9006.10 If the provider maintains electronic records, the electronic records shall be immediately available in an established electronic record keeping system. The electronic record keeping system shall meet the following requirements:
- (a) Have reasonable controls to ensure the integrity, accuracy, authenticity, and reliability of the records kept in electronic format;
 - (b) Be capable of retaining, preserving, retrieving, and reproducing the electronic records;
 - (c) Be able to readily convert paper originals stored in electronic format back into legible and readable paper copies;
 - (d) Be able to create back-up electronic file copies; and
 - (e) Provide the appropriate level of security for records to comply with federal requirements for safeguarding information.
- 9006.11 DHCF shall retain the right to conduct audits at any time. Each Waiver provider shall allow access, during on site audits or review by DHCF or U.S. Department of Health and Human Services auditors, to relevant financial records.
- 9006.12 For purposes of § 9006.2(j)(3), the teaching strategy used to execute goals in the ISP shall include enough information so that any provider staff member or DSP could step in to assist the person in completing the goal. At minimum, the teaching strategy shall contain:

- (a) The goal statement;
- (b) The purpose of the goal/measurable outcome;
- (c) The materials needed to implement the goal;
- (d) The preferred learning/teaching style for the person;
- (e) The learning steps (*i.e.* individual actions that need to be completed for success); and
- (f) The method for measuring success.

9006.13 A staff member, designated by the provider, shall develop and implement an annual supervision plan for each staff member who is classified as a DSP. The annual supervision plan shall contain the following information:

- (a) The name of the DSP and date of hire;
- (b) The DSP's place of employment, including the name of the provider entity or day services provider;
- (c) The name of the DSP's supervisor who shall have at least two (2) years' experience working with persons with intellectual and developmental disabilities;
- (d) A documentation of performance goals for the DSP;
- (e) A description of the DSP's duties and responsibilities;
- (f) A comment section for the DSP's feedback;
- (g) A statement of affirmation by the DSP's supervisor confirming statements are true and accurate;
- (h) The signature, date, and title of the DSP; and
- (i) The signature, date, and title of the DSP's supervisor.

9007 INITIATING, CHANGING, OR TERMINATING ANY APPROVED SERVICES

9007.1 A provider shall hold a support team meeting and provide each person receiving Waiver services at least thirty (30) calendar days advance written notice of intent to initiate, suspend, reduce, or terminate services and shall offer a meeting to

explain the notice. A copy of the notice shall also be provided to DDS and DHCF. If DDS intends to suspend, reduce or terminate services, DDS shall also provide written notice which complies with the requirements set forth in this section.

- 9007.2 In accordance with 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2), a provider shall give people receiving services or the person's representative and the DDS Service Coordinator at least thirty (30) calendar days advance written notice prior to the effective date of the termination or reduction of services, and be responsible for notifying DDS of any person who is undergoing treatment of an acute condition.
- 9007.3 The written notice shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2) and the provider shall transfer the person's original record to the new service provider at the time of the transfer, unless the person is deceased or no longer chooses to participate in the Waiver program.
- 9007.4 The DDS Service Coordinator shall be responsible for initiating, changing, or terminating Waiver services for each person in accordance with the ISP and identifying those people for whom an HCBS is no longer an appropriate alternative.
- 9007.5 The provider shall notify DDS in writing whenever any of the following circumstances occur:
- (a) The person's death;
 - (b) The hospitalization of the person;
 - (c) Any other circumstance in which Waiver services are interrupted for more than seven (7) days;
 - (d) The person is discharged or terminated from services; or
 - (e) Any other delay in the implementation of Waiver services.
- 9007.6 In the event of a person's death, a provider shall comply with all written notice requirements and any policies established by DDA in accordance with DDA's Incident Management and Enforcement Policy and Procedures available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.
- 9007.7 When the health and safety of the person or provider agency personnel is endangered, the thirty (30) calendar days advance notice shall not be required. The provider shall notify the person or the person's representative and the DDS Service Coordinator as soon as possible and send a written notice on the date of termination in accordance with 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55(a)(2).

- 9007.8 Each person enrolled in the Waiver shall be provided a fair hearing in accordance with 42 C.F.R. § 431 and D.C. Official Code § 4-210.01 if the government:
- (a) Fails to offer the person a choice of either institutional care in an ICF/IID or home and community-based waiver services;
 - (b) Denies a waiver service requested by the person;
 - (c) Terminates, suspends, or reduces a waiver service; or
 - (d) Fails to give the person the provider of his or her choice.
- 9007.9 DDS or the provider shall be responsible for issuing each required notice to the person enrolled in the Waiver or their representative regarding the right to request a hearing as described under § 9007.8.
- 9007.10 The content of the notice issued pursuant to § 9007.8 and 9007.9 shall comply with the requirements of 42 C.F.R. § 431.210 and D.C. Official Code § 4-205.55.

9008 HOME AND COMMUNITY-BASED SETTING REQUIREMENTS

- 9008.1 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Companion, Supported Employment, Small Group Supported Employment and Employment Readiness settings shall:
- (a) Be chosen by the person from HCBS settings options including non-disability settings. For residential settings, this includes, but is not limited to, ensuring that:
 - (1) The person selects their home and knows that they have protections against eviction;
 - (2) The person chooses their roommates and knows how to request a roommate change; and
 - (3) When the person has a roommate, they are offered the choice of available residential settings with a private bedroom, if they have the ability to pay.
 - (b) Ensure the person's right to privacy, dignity, and respect, and freedom from coercion and restraint. This includes, but is not limited to, ensuring that:
 - (1) The person is provided personal care assistance in private, as appropriate;

- (2) Information is provided to the person on how to make an anonymous complaint;
 - (3) The person's health and other personal information (e.g., mealtime protocols, therapy schedules) is kept private;
 - (4) Staff do not talk about the person's private information in front of others who do not have a right and/ or need to know; and
 - (5) Staff address the person by her/his name or preferred nickname.
- (c) Be physically accessible to the person and allow the person access to all common areas. For residential settings, this includes, but is not limited to, ensuring that:
- (1) The person has full access to the kitchen, dining area, living room, laundry, and all other common areas of their home; and
 - (2) The home is fully accessible to meet the needs of the person living there, including all common areas and supports as needed, such as grab bars and ramps.
- (d) Support the person's community integration and inclusion, including relationship-building and maintenance, support for self-determination and self-advocacy;
- (e) Provide opportunities for the person to seek employment and meaningful non-work activities in the community. This is evidenced in part by the following:
- (1) A person who desires to work is supported to pursue work in the community; and
 - (2) The person engages in meaningful non-work activities in the community.
- (f) Provide information on individual rights;
- (g) Optimize the person's initiative, autonomy, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- (h) Facilitate the person's choices regarding services and supports, and who provides them;

- (i) Create individualized daily schedules for each person receiving supports, that includes activities that align with the person's goals, interests and preferences, as reflected in his or her ISP, in accordance with DDS guidance;
- (j) Provide opportunities for the person to engage in community life, as evidenced in part by people being able to shop, attend religious services, schedule appointments, have lunch with friends and family, etc. in the community, as they choose;
- (k) Provide opportunities to receive services in the community to the same degree of access as individuals not receiving Medicaid HCBS, as evidenced in part by the person using community resources, such as parks, recreational centers, community health clinics, etc.;
- (l) Control over his or her personal funds and bank accounts, as evidenced in part by the person being able to access their funds, when they want to, and without advanced notice;
- (m) Allow visitors at any time within the limits of the lease or other residency agreement;
- (n) Be integrated in the community and support access to the greater community. This is evidenced in part by the following:
 - (1) The person receives the supports they need to see family and friends and spend time doing activities of their choosing in the community; and
 - (2) The person is encouraged to learn travel skills so that they can use public transportation.
- (o) Allow full access to the greater community.

9008.2 All Day Habilitation, Small Group Day Habilitation, Individualized Day Supports, Supported Employment, Small Group Supported Employment, Companion and Employment Readiness settings must develop and adhere to policies which ensure that each person receiving services has the right to the following:

- (a) A secure place to keep their belongings;
- (b) Access to snacks at any time;
- (c) Privacy for telephone calls, texts and/or emails, or any other form of electronic communication, e.g. FaceTime or Skype, with or without support, based on the person's preference; and

- (d) Meals at the time and place of a person's choosing.

9008.3 Any deviations from the requirements in §§ 9008.1(l) and (m) and § 9008.3 must be supported by a specific assessed need, justified and documented in the person's person-centered ISP, as well as reviewed and approved as a restriction by the Provider's Human Rights Committee (HRC). There must be documentation that the Provider's HRC review and person-centered planning meeting included discussion of the following elements:

- (a) What the person's specific individualized assessed need is that results in the restriction;
- (b) What prior interventions and supports have been attempted, including less intrusive methods;
- (c) Whether the proposed restriction is proportionate to the person's assessed needs;
- (d) What the plan is for ongoing data collection to measure the effectiveness of the restriction;
- (e) When the HRC and the person's support team will review the restriction again;
- (f) Whether the person, or his or her substitute decision-maker, gives informed consent; and
- (g) Whether the HRC and the person's support team has assurance that the proposed restriction or intervention will not cause harm.

9009 PROVIDER ENROLLMENT PROCESS

9009.1 Prospective providers shall send a letter of intent to DDA to enroll as a Medicaid provider of Waiver services to the Letter of Intent mailbox at letterofintent.potentialproviders@dc.gov. DDA will provide a written response of disposition to the prospective provider within three (3) business days of receipt of the letter of intent.

9009.2 With acceptance of a qualified letter of intent, prospective providers will receive an invitation to the DDA Quarterly Prospective Provider's Information Session. Prospective providers shall be notified by DDA of the DHCF contractor schedule for the Provider Data Management Systems (PDMS) training. After the PDMS training, providers shall access the PDMS to initiate the Medicaid provider enrollment application.

- 9009.3 Upon receipt of the Medicaid provider enrollment application by DDA, prospective providers shall receive a denial letter or an invitation to be interviewed. The denial letter shall be issued by DDA within sixty (60) business days from the time a Medicaid provider enrollment application is received by DDA and shall meet the requirements set forth in § 9009.5.
- 9009.4 If the Medicaid provider enrollment application is incomplete, the prospective provider will be notified by the DHCF contractor. DDA may issue a denial letter, in accordance with § 9009.5, within sixty (60) business days from the time a Medicaid provider enrollment application is received.
- 9009.5 The denial letter shall include the following:
- (a) The basis and reasons for the denial of the prospective provider's Medicaid provider enrollment application;
 - (b) The prospective provider's right to dispute the denial of the application and to submit written argument and documentary evidence to support its position; and
 - (c) Specific reference to the particular sections of relevant statutes and/or regulations.
- 9009.6 Prior to enrollment, prospective Waiver providers shall be required to interview with the DDA Provider Review Committee (PRC) Panel. Prospective providers shall receive written notification from DDA to attend a DDA scheduled interview with the PRC Panel.
- 9009.7 Pursuant to the committee's recommendation and the overall merit of the application, DDA shall either issue a denial letter to the prospective provider or send the application of the DDA-recommended provider to DHCF for its review within five (5) business days of the committee's review date. The denial letter shall be issued in accordance with the requirements set forth in § 9009.5. If a denial letter was issued by DDA, the prospective provider may submit a written dispute for reconsideration in no more than five (5) business days and/or appeal the denial of the application to the Office of Administrative Hearings in accordance with Chapter 94 of Title 29 DCMR.
- 9009.8 Upon approval by DDA, the DDA Provider Relationship Specialist shall facilitate the newly enrolled provider's acknowledgement of final approval to DHCF via the DHCF's contractor portal PDMS.
- 9009.9 If a denial letter was issued by DDA and there was no reconsideration requested or granted the prospective provider shall be prohibited from submitting an application to enroll as a provider for a period of one year from the date the denial letter was issued.

9009.10 Each provider shall be subject to the administrative procedures set forth in Chapter 13 of Title 29 DCMR; to the provider certification standards established by DDS, currently known as the Provider Certification Review process; to all policies and procedures promulgated by DDS that are applicable to providers during the provider's participation in the Waiver program; and to participation and cooperation in the reporting requirements pursuant to the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code §§ 7-1301.02 *et seq.*), as implemented by order of the Superior Court of the District of Columbia.

9009.11 Each provider who has been terminated or has voluntarily withdrawn from the Waiver program may not reapply to the Waiver program for a period of at least one (1) year.

9010 PROVIDER QUALIFICATIONS

9010.1 Home and Community-Based Services (HCBS) Waiver provider agencies shall complete an application to participate in the Medicaid Waiver program and shall submit to DDS both the Medicaid provider enrollment application and the following organizational information:

- (a) A resume and three (3) letters of reference demonstrating that the owner(s)/operator(s) have a degree in the Social Services field or a related field with at least three (3) years of experience of working with people with intellectual and developmental disabilities; or a degree in a non-Social Services field with at least five (5) years of experience working with people with intellectual and developmental disabilities, unless waived by the Department on Disability Services Deputy Director for the Developmental Disabilities Administration;
- (b) Documentation proving that the program manager of the HCBS Waiver provider agency has a Bachelor's degree in the Social Services field or a related field with at least five (5) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities or a Master's degree in the Social Services field or a related field with at least three (3) years of experience in a leadership role or equivalent management experience working with people with intellectual and developmental disabilities;
- (c) A copy of the business license issued by the Department of Consumer and Regulatory Affairs (DCRA);
- (d) A description of ownership and a list of major owners or stockholders owning or controlling five percent (5%) or more outstanding shares;

- (e) To the extent its corporate structure includes a Board of Directors, a list of Board members representing a diverse spectrum of the respective community and their affiliations;
- (f) A roster of key personnel, with qualifications, resumes, background checks, local license, if applicable, and a copy of their position descriptions;
- (g) A copy of the most recent audited financial statements of the agency performed by a third-party Certified Public Accountant or auditing company (not applicable for a new organization);
- (h) A copy of the basic organizational documents of the provider, including an organizational chart, and current Articles of Incorporation or partnership agreements, if applicable;
- (i) A copy of the Bylaws or similar documents regarding conduct of the agency's internal affairs;
- (j) A copy of the certificate of good standing from the DCRA;
- (k) Organizational policies and procedures, such as personnel policies and procedures required by DDS and available at:
<http://dds.dc.gov/DC/DDS/Developmental+Disabilities+Administration/Policies?nav=1&vgnextrefresh=1>;
- (l) A continuous quality assurance and improvement plan that includes, but is not limited to, requirements of the applicable Waiver services, and community integration and person-centered thinking principles and values as intentional outcomes for persons supported;
- (m) A copy of professional/business liability insurance of at least one million dollars (\$1,000,000) prior to the initiation of services, or more as required by the applicable Human Care Agreements;
- (n) A sample of all documentation templates, such as progress notes, evaluations, intake assessments, discharge summaries, and quarterly reports;
- (o) For providers of In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness, evidence of fiscal and organizational accountability; and
- (p) Any other documentation deemed necessary to support the approval as a provider.

- 9010.2 Professional service provider applicants who are in private practice as an independent clinician and are not employed by an enrolled HCBS Waiver provider agency of residential or day/vocational services or a Home Health Agency, shall complete and submit to DDS the Medicaid provider enrollment application and the following:
- (a) Documentation to prove ownership or leasing of a private office, even if services are always furnished in the home of the person receiving services;
 - (b) A copy of a professional license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided; and
 - (c) A copy of the insurance policy verifying at least one million dollars (\$1,000,000) in liability insurance.
- 9010.3 Home Health Agencies shall complete and submit to DDS the Medicaid provider enrollment application and the following documents:
- (a) A copy of the Home Health Agency license pursuant to the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules; and
 - (b) If skilled nursing is utilized, a copy of the registered nurse or licensed practical nurse license in accordance with District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*), as amended, and the applicable state and local licenses in accordance with the licensure laws of the jurisdiction where services are provided.
- 9010.4 In order to provide services under the Waiver and qualify for Medicaid reimbursement, DDS approved HCBS Waiver providers shall meet the following requirements:
- (a) Maintain a copy of the approval letter issued by DHCF;
 - (b) Maintain a current District of Columbia Medicaid Provider Agreement that authorizes the provider to bill for services under the Waiver;
 - (c) Obtain a National Provider Identification (NPI) number from the National Plan and Provider Enumeration System website;

- (d) Comply with all applicable District of Columbia licensure requirements and any other applicable licensure requirements in the jurisdiction where services are delivered;
- (e) Maintain a copy of the most recent ISP and Plan of Care that has been approved by DDS for each person;
- (f) Maintain a signed copy of a current Human Care Agreement with DDS for the provision of services, if determined necessary by DDS;
- (g) Ensure that all staff are qualified, properly supervised, and trained according to DDS policy and relevant regulations;
- (h) Ensure that a plan is in place to provide services for non-English speaking people pursuant to DDA's Language Access Policy available at: <http://dds.dc.gov/publication/language-access-policy>;
- (i) Offer the Hepatitis B vaccine to all employees;
- (j) Ensure that staff are trained in infection control procedures consistent with the standards established by the Federal Centers for Disease Control and Prevention (CDC) and the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), as set forth in 29 CFR § 1910.1030;
- (k) Ensure compliance with the provider agency's policies and procedures and DDS policies, procedures, transmittals, District regulations, and issued guidance. This includes, but is not limited to: reporting of unusual incidents, human rights, language access, employee orientation objectives and competencies, individual support plan, most integrated community based setting, health and wellness standards, behavior management, and protection of the person's funds, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>;
- (l) For providers of In-Home Supports, Day Habilitation, Individualized Day Supports, and Employment Readiness services, complete mandatory training in Person-Centered Thinking, Supported Decision-Making, Supporting Community Integration, and any other topics as determined by DDS, and in accordance with the most current DDS Training Policy and Procedure;
- (m) Provide a written staffing schedule for each site where services are provided, if applicable;
- (n) Maintain a written staffing plan, if applicable;

- (o) Develop and implement a continuous quality assurance and improvement system, that includes person-centered thinking, community integration, and compliance with the HCBS Settings Rule, to evaluate the effectiveness of services provided;
- (p) Ensure that a certificate of occupancy is obtained, if applicable;
- (q) Obtain approval from DDS for each site where day, employment readiness, and supported employment services are provided prior to purchasing or leasing property;
- (r) Ensure that, if services are furnished in a private practice office space, spaces are owned, leased, or rented by the private practice and used for the exclusive purpose of operating the private practice;
- (s) Ensure that a sole practitioner shall individually supervise assistants and aides employed directly by the independent practitioner, by the partnership group to which the independent practitioner belongs, or by the same private practice that employs the independent practitioner;
- (t) Complete the DDA abbreviated readiness process, if applicable;
- (u) Participate, and support willing waiver recipients to participate, in the National Core Indicators surveys, or successors surveys, as requested by DDS and/ or its assigned contractors; and
- (v) Adhere to the specific provider qualifications in each service rule.

9010.5 Each service provider under the Waiver for which transportation is included or otherwise provided shall:

- (a) Ensure that each vehicle used to transport a person has a valid license plate;
- (b) Ensure that each vehicle used to transport a person has at least the minimum level of motor vehicle insurance required by law;
- (c) Present each vehicle used to transport a person for inspection by a certified inspection station every six (6) months, or as required in the jurisdiction where the vehicle is registered, and provide proof that the vehicle has passed the inspection by submitting a copy of the Certificate of Inspections to DDS upon request, except in circumstances where transportation is not included in the Waiver service;
- (d) Ensure that each vehicle used to transport a person is maintained in safe, working order;

- (e) Ensure that each vehicle used to transport a person meets the needs of the person;
- (f) Ensure that each vehicle used to transport a person has seats fastened to the body of the vehicle;
- (g) Ensure that each vehicle used to transport a person has operational seat belts;
- (h) Ensure that each vehicle used to transport a person can maintain a temperature conducive to comfort;
- (i) Ensure that each vehicle used to transport a person is certified by the Washington Metropolitan Area Transit Commission, except in circumstances where transportation is not included in the Waiver service;
- (j) Ensure that each person is properly seated when the vehicle is in operation;
- (k) Ensure that each person is transported to and from each appointment in a timely manner;
- (l) Ensure that each person is provided with an escort on the vehicle, when needed;
- (m) Ensure that each vehicle used to transport a person with mobility needs is adapted to provide safe access and use;
- (n) Ensure that each staff/employee/contractor providing services meets the requirements set forth in § 9011 of these rules, except that a staff/employee/contractor who works exclusively as a driver is exempt from § 9011.1(h), but must be trained on use of the vehicle safety restraints and any specific safety needs of the person being transported;
- (o) Ensure that each staff/employee/contractor providing services be certified in Cardiopulmonary Resuscitation (CPR) and First Aid; and
- (p) Encourage the use of community-based transportation, as appropriate and described in the ISP.

9010.6

In order to provide services under the Waiver and qualify for Medicaid reimbursement, a Qualified Intellectual Disabilities Professional (QIDP), also known as a Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), shall oversee the initial habilitative assessment of a person; develop, monitor, and review ISPs; and integrate and coordinates Waiver services. The QIDP shall have at least one (1) of the following qualifications:

- (a) A psychologist with at least a master's degree from an accredited program and with specialized training or one (1) year of experience in intellectual disabilities;
- (b) A physician licensed to practice medicine in the District and with specialized training in intellectual disabilities or with one (1) year of experience in treating persons with intellectual disabilities;
- (c) An educator with a degree in education from an accredited program and with specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (d) A social worker with a master’s degree from an accredited school of social work and with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities;
- (e) A rehabilitation counselor who is certified by the Commission on Rehabilitation Counselor Certification and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities;
- (f) A therapeutic recreation specialist who is a graduate of an accredited program and who has specialized training or one (1) year of experience in working with persons with intellectual disabilities;
- (g) A human service professional with at least a bachelor’s degree in a human services field (including, but not limited to: sociology, special education, rehabilitation counseling, and psychology) and who has specialized training in intellectual disabilities or one (1) year of experience in working with persons with intellectual disabilities; or
- (h) A registered nurse with specialized training in intellectual disabilities or with one (1) year of experience in working with persons with intellectual disabilities.

9010.7 Authorized service providers under the District’s Medicaid HCBS Waiver for People with Intellectual and Developmental Disabilities in accordance with 29 DCMR §§ 1900 *et seq.* are automatically authorized as service providers for the same services under the IFS Waiver.

9011 REQUIREMENTS FOR DIRECT SUPPORT PROFESSIONALS

9011.1 The basic requirements for all employees and volunteers providing direct services, with the exception of peer support employees as set forth in § 9011.3, are as follows:

- (a) Be at least eighteen (18) years of age;
- (b) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (c) Possess a high school diploma, Certificate of Individual Educational Program Completion, general educational development (GED) certificate, or, if the person was educated in a foreign country, its equivalent;
- (d) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (e) Complete pre-service and in-service training as described in DDS policy;
- (f) Have the ability to communicate with the person to whom services are provided;
- (g) Be able to read, write, and speak the English language, with reasonable accommodation as appropriate in accordance with the Americans with Disabilities Act;
- (h) Have participated in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
- (i) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*) for the following employees or contract workers:
 - (1) Individuals who are unlicensed under Chapter 12, Health Occupations Board, of Title 3 of the D.C. Official Code, who assist licensed health professionals in providing direct patient care or common nursing tasks;
 - (2) Nurse aides, orderlies, assistant technicians, attendants, home health aides, personal care aides, medication aides, geriatric aides, or other health aides; and
 - (3) Housekeeping, maintenance, and administrative staff who may foreseeably come in direct contact with Waiver recipients or patients.

(j) Be acceptable to the person for whom they are providing supports.

9011.2 Volunteers who work under the direct supervision of an individual licensed pursuant to Chapter 12 of Title 3 of the D.C. Official Code shall be exempt from the unlicensed personnel criminal background check requirement set forth in § 9011.1(i).

9011.3 The basic requirements for peer support employees providing direct services in Parenting Supports and Family Training services are as follows:

- (a) Be at least eighteen (18) years of age;
- (b) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
- (c) Complete DDS required training for peer support employees;
- (d) Be acceptable to the person for whom they are providing supports; and
- (e) Is a person with a disability, or the family member or other unpaid caregiver of a person with a disability, with at least two of the following:
 - (1) Experience advocating on behalf of people with disabilities;
 - (2) Training in advocacy on behalf of people with disabilities by an advocacy organization;
 - (3) Training and certification in peer counseling by a certified peer counseling organization;
 - (4) Knowledge about the scope of services provided by DDS/DDA and the Child and Family Services Agency;
 - (5) Skills in Engagement, Relationship Building, and Collaboration with Families and Caregivers; and/or
 - (6) Knowledge about Community Systems, Partnerships and Resources

9012 COST REPORTS, AUDITS, AND OVERSIGHT MONITORING

- 9012.1 Each Waiver provider of day habilitation, in-home supports, individualized day supports, respite, employment readiness, and supported employment services shall report costs to DHCF no later than ninety (90) days after the end of the provider's cost reporting period, which shall correspond to the fiscal year used by the provider for all other financial reporting purposes, unless DHCF has approved an exception, on request. Such cost reporting will be for the purpose of informing rate setting parameters to be the most cost-effective for the government and to reimburse allowable costs for the providers. All cost reports shall cover a twelve (12) month cost reporting period.
- 9012.2 A cost report that is not completed shall be considered an incomplete filing, and DHCF shall notify the waiver provider within thirty (30) days of the date on which DHCF received the incomplete cost report.
- 9012.3 All of the facility's accounting and related records, including the general ledger and records of original entry, and all transaction documents and statistical data, shall be permanent records and be retained for a period of not less than five (5) years after the filing of a cost report.
- 9012.4 DHCF shall evaluate expenditures subject to the requirements in this Section through annual review of cost reports.
- 9012.5 DHCF, or its designee, shall review each cost report for completeness, accuracy, compliance, and reasonableness.
- 9012.6 Every five (5) years, for purposes of renewing the Waiver, DHCF shall rely on audited cost reports submitted by Waiver providers to DHCF. In the absence of audited cost reports, Waiver providers may submit unaudited costs reports or financial statements.
- 9012.7 DHCF, Division of Program Integrity shall perform ongoing audits to ensure that the provider's services for which Medicaid payments are made are consistent with programmatic duties, documentation, and reimbursement requirements as required under this chapter.
- 9012.8 The audit process shall be routinely conducted by DHCF to determine, by statistically valid scientific sampling, the appropriateness of services that are rendered to the IFS Waiver program beneficiaries and billed to Medicaid.
- 9012.9 If DHCF denies a claim during an audit, DHCF shall recoup, by the most expeditious means available, those monies erroneously paid to the provider for denied claims, following the process for administrative review as outlined below:

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

9012.10 The recoupment amounts for denied claims shall be determined by the following formula:

- (a) A fraction shall be calculated with the numerator consisting of the number of denied paid claims resulting from the audited sample; and
- (b) The denominator shall be the total number of paid claims from the audit sample. This fraction shall be multiplied by the total dollars paid by DHCF to the Provider during the audit period, to determine the amount recouped.

9012.11 All participant, personnel, and program administrative and fiscal records shall be maintained so that they are accessible and readily retrievable for inspection and review by authorized government officials or their agents, as requested.

9012.12 All records and documents required to be kept under this chapter and other applicable laws and regulations which are not maintained or accessible in the operating office visited during an audit shall be produced for inspection within twenty-four (24) hours, or within a shorter reasonable time if specified, upon the request of the auditing official.

- 9012.13 The failure of a provider to release or to grant access to program documents and records to the DHCF auditors in a timely manner, after reasonable notice by DHCF to the provider to produce the same, may constitute grounds to terminate the Medicaid Provider Agreement, in accordance with the notice and process requirements set forth in 29 DCMR § 9400.
- 9012.14 DHCF shall retain the right to conduct audits or reviews at any time. Each waiver provider shall grant full access, during announced or unannounced on-site audits or review by DHCF, DHCF's designee, other District of Columbia officials, and representatives of the U.S. Department of Health and Human Services auditors, to relevant financial records, statistical data to verify costs previously reported to DHCF, program documentation, and any other documents relevant to the administration and provision of the Waiver service.
- 9012.15 As part of the audit process, providers shall grant access to any of the following documents to DHCF Program Integrity personnel, which may include, but are not limited to the following:
- (a) A record of all service authorization and prior authorizations for services;
 - (b) A record for all request for change in services;
 - (c) A written staffing plan, if applicable;
 - (d) A schedule of the beneficiary's activities in the community, if applicable, including strategies to execute goals in the Individualized Service Plan, the date and time of the activities, and staff, as identified in the staffing plan;
 - (e) Any records relating to adjudication of claims, including, the number of units of the delivered service, the period during which the service was delivered and dates of service, and the name, signature, and credentials of the service provider;
 - (f) Progress notes, as described in 29 DCMR § 9006; and
 - (g) Any record necessary to demonstrate compliance with rules, requirements, guidelines, and standards for implementation and administration of the Waiver.
- 9012.16 DHCF's Long Term Care Administration's Waiver Oversight and Monitoring team shall conduct monitoring reviews as follows:
- (a) Quarterly oversight and monitoring reviews to ensure compliance with established federal and District regulations and applicable laws governing the operations and administration of the Waiver Program; and

- (b) Quarterly oversight and monitoring reviews to monitor progress and performance against quality measures.

9012.17 As part of the oversight monitoring process, providers shall grant access to any of the following documents to the DHCF monitor, which may include, but shall not be limited to the following:

- (a) Programmatic records including Person-Centered Service Plan, Plan of Care/service delivery plan and documents supporting service delivery;
- (b) Employee records including training records;
- (c) A signed, current copy of the Medicaid Provider Agreement;
- (d) Licensure information;
- (e) Policies and procedures;
- (f) Incident reports and investigation reports; and
- (g) Complaint related reports.

9013 REPORTING REQUIREMENTS

9013.1 Each Waiver provider shall submit quarterly reports to the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

9013.2 For purposes of reporting, the first quarter shall begin on the effective date of a person's ISP.

9013.3 Each Waiver provider shall submit assessments, quarterly reports as set forth in § 9006.2(n), documents as described in § 9006.2(i), and physician's orders, if applicable, to the DDS Medicaid Waiver unit for the authorization of services.

9013.4 Each Waiver provider shall complete all documents required for the service(s) as set forth in each service rule and upload the documents into MCIS, DDS/DDA's case management information system, ninety (90) days prior to the person's ISP meeting.

9013.5 Failure to submit all required documents may result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant. The date of the authorization

of services shall be the date of receipt of the required documents by the Medicaid Waiver Unit, if the documents are submitted after the effective date of the ISP.

9013.6 Each Waiver provider shall report on a quarterly basis to the person served, his or her family, as applicable, guardian and surrogate decision maker and the DDS Service Coordinator about the programming and support provided to fulfill the objectives and outcomes identified in the ISP and Plan of Care, and any recommended revisions to the ISP and Plan of Care, when necessary, to promote continued skill acquisition, no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

9013.7 Each Waiver provider shall report all reportable incidents and all serious reportable incidents to DDS pursuant to the timelines established under DDA's Incident Management and Enforcement Policy and Procedures, available at: <http://dds.dc.gov/page/policies-and-procedures-dda>.

9014 WAITING LIST

9014.1 The DDS, through DDA, may establish a waiting list for individuals who are otherwise eligible for and requesting services and supports through enrollment in the IFS waiver, consistent with the approved IFS waiver, and in accordance with the requirements of the Department on Disability Services Establishment Act (D.C. Law 16-264; D.C. Official Code § 7-761.05(7)), and as further amended.

9014.2 An individual is considered "eligible" if he or she meets the requirements for DDA services as set forth in D.C. Official Code §§ 7-1301.01 *et seq.*, and the eligibility criteria for participation in the IFS waiver program, which are found in the approved IFS waiver application, and are linked to the ICF/IID level of care criteria, and are set forth in 29 DCMR §§ 9002.1 to 9002.4.

9014.3 All eligible individuals requesting supports, services, and IFS waiver enrollment shall be treated in a manner that is consistent with the terms of the IFS waiver, in accordance with the order of priority specified below.

9014.4 An eligible individual seeking HCBS supports and services may do so through application to the IFS waiver program. The IFS waiver program is approved by the federal Centers for Medicare and Medicaid Services (CMS) to serve up to a set number of participants each year based on the approved IFS waiver application, as may be amended. If IFS waiver openings are not available because the maximum number of participants is being served, taking into account reserved capacity, DDA will establish a waiting list for deferred IFS waiver enrollment.

9014.5 Consistent with CMS requirements and based on the availability of appropriated funds for these services, DDA will make every reasonable effort to ensure that eligible individuals on the waiting list will be enrolled and begin to receive IFS

waiver supports and services as quickly as feasible given the availability of waiver slots and the order of priority established by the terms of the waiver and these rules.

- 9014.6 The application of each eligible individual who applies for IFS waiver supports and services will be reviewed by DDA using the DDA Level of Need Assessment and Screening Tool (LON), or its successor.
- 9014.7 Individuals on the waiting list for the IFS waiver will be enrolled and begin to receive IFS waiver services in the following priority order, based upon the results of the LON assessment, or its successor:
- (a) An eligible individual determined to have a priority need for IFS waiver services, as defined at § 9014.8, will be enrolled and receive them before all other eligible individuals;
 - (b) An eligible individual determined to have an emergency need for IFS waiver services, as defined at § 9014.9, will be enrolled and receive them after all identified priority needs have been met and before all other remaining eligible individuals;
 - (c) An eligible individual determined to have an urgent need for IFS waiver services, as defined at § 9014.10, will be enrolled and receive them after all identified priority and emergency needs have been met and before all other remaining eligible individuals; and
 - (d) An eligible individual determined to have a non-urgent need for IFS waiver services, as defined at § 9014.11, will be enrolled and receive them only after all identified priority, emergency, and urgent needs have been met; there is available enrollment space in the waiver; and sufficient appropriated resources are available.
- 9014.8 An individual is considered to have a “priority need” for enrollment in the IFS waiver if:
- (a) The individual has no family or other natural support system to meet his/her assessed need; or
 - (b) The individual is a ward of the District of Columbia who has aged out of the D.C. Child and Family Services Agency (CFSA), has been in an out-of-home placement, and returning to a parental/natural home is not an option for the individual.
- 9014.9 An individual is considered to have an “emergency need” for enrollment in the IFS waiver if the health and safety of the individual or others is in imminent danger and the situation cannot be resolved absent the provision of such services available from the IFS waiver program. Criteria for determining an emergency need include, but are not limited to:

- (a) There is clear evidence of abuse, neglect, or exploitation;
 - (b) The individual's primary caregiver is deceased and the individual lacks an alternative primary caregiver; or
 - (c) The individual is homeless or at imminent risk of becoming homeless as these terms are defined in the Homeless Services Reform Act of 2005, effective October 22, 2005 (D.C. Law 16-35; D.C. Official Code § 4-751.01(18) and (23)).
- 9014.10 An individual is considered to have an "urgent need" for enrollment in the IFS waiver if he or she is at significant risk of having his or her basic needs go unmet. Basic needs include the need for shelter, to eat, maintain one's health and to be free from harm, injury or threats to one's person or property.
- 9014.11 An individual is considered to have a "non-urgent need" for enrollment in the IFS waiver if he or she:
- (a) Meets eligibility criteria for supports through the IFS waiver; and
 - (b) Does not meet any of the priority, emergency, or urgent needs criteria.
- 9014.12 For individuals with the same priority status, when there are openings available in the IFS waiver, DDA shall review all candidates and, based upon their needs as determined by the LON, shall make a determination of order of placement. Length of time on the waiting list shall be a factor considered, but is not solely considered to determine order of placement.
- 9014.13 Based on funding availability, DDA will provide immediate non-waiver services to individuals on the waiting list who have been identified as having a priority or emergency need:
- (a) If the individual is homeless or at imminent risk of becoming homeless as these terms are defined in D.C. Official Code §§ 4-751.01(18) and (23); or
 - (b) If there is reasonable belief that the individual is in imminent danger, or would be subject to abuse or neglect if the individual does not receive immediate support or services.
- 9014.14 The application of each individual on the waiting list will be reviewed by DDA at least quarterly to determine any change in the support needs of the individual, the individual's family, and other relevant circumstances affecting the support needs of the individual. A review of a change in priority status will also be initiated within five (5) business days of the request by the individual, or any member of his or her support team.

- 9014.15 Once an individual's application has been approved for IFS waiver enrollment, the individual will be assigned a service coordinator, who shall assist the individual with completing his/her IFS waiver application and with development of their ISP and IFS waiver Plan of Care.
- 9014.16 If the individual is seeking out of home residential services through enrollment in the IFS waiver program, the individual must be Medicaid-eligible and the individual and his or her caregiver must be willing to accept available residential opportunities if necessary that meet the individual's primary needs at the time of assessment.
- 9014.17 DDA will refer and assist individuals on the waiting list to identify, apply for and, when appropriate, obtain services from other District of Columbia or community based agencies for which they might be eligible, including services through the Medicaid State Plan.
- 9014.18 An individual may be removed from the waiting list for IFS waiver service for any of the following reasons:
- (a) The individual or his or her substitute decision-maker requests removal;
 - (b) The individual is no longer eligible for services from DDA; or
 - (c) If, as part of the quarterly review of the individual's priority status, the individual's service coordinator is unable to reach the individual or his or her family after three (3) documented attempts each at least one week apart. However, the service coordinator must first send a written notice by certified mail to the last known address notifying the individual/family of DDA's intent to remove the individual's name from the waiting list. For purposes of this provision, DDA need not make contact in order to remove the individual from the waiting list but need only send written notice to the last address provided by the individual/family.
- 9014.19 Each individual on the waiting list and his or her legal representative shall be provided sufficient information and opportunity to request an agency review of any DDA decision with which they disagree relating to the individual's placement on the waiting list, priority status or removal from the waiting list for reasons other than enrollment and initiation of IFS waiver services.
- 9014.20 The agency review contemplated by this provision is an informal process by which the individual and his or her legal representative may seek reconsideration of a DDA decision by the DDS Deputy Director for DDA, or his or her designee, and requires a written request for reconsideration setting forth the factual and legal basis for the disagreement relating to the individual's placement on the waiting list, determination of order of priority status, or removal from the waiting list. Request for agency review must be made within thirty (30) days plus five (5) for mailing.

from the date the written notice in §§ 9014.22 and 9014.23 was mailed, unless there is good cause for a late request.

- 9014.21 Each individual placed on the waiting list or removed from the waiting list for reasons other than enrollment and initiation of IFS waiver services shall be entitled to a fair hearing at the Office of Administrative Hearings (OAH) in accordance with 42 CFR 43, D.C. Official Code §§ 4-210.01 *et seq.*, and 29 DCMR §§ 9006.1 to 9006.3. Each individual on the waiting list and their legal representative shall have thirty (30) calendar days from receipt of the written notice in §§ 9014.22 and 9014.23 to demand a fair hearing.
- 9014.22 DDA shall provide to each individual on the waiting list and their legal representative timely and adequate written notice of the DDA decision to place the individual on the waiting list or to remove the individual from the waiting list (for reasons other than enrollment and initiation of IFS waiver services) as follows:
- (a) Timely notice means that the written notice is sent by first-class U.S. Mail, postage prepaid, within five (5) business days of the decision to the last known address for the individual and their legal representative as included in the completed application or entered in the DDA database for the individual.
 - (b) Adequate notice means that the written notice includes:
 - (1) A statement of the action taken by DDA;
 - (2) The reason for the action and, if the action is placement on the waiting list, the individual's rank on the waiting list and estimate of how long the individual can expect to wait for IFS waiver supports and services;
 - (3) That the individual can contact his or her service coordinator at any time to report a change in his or her circumstances and request a review of his or her priority status;
 - (4) An explanation of the individual's right to an informal agency review and/ or fair hearing at the OAH;
 - (5) The method by which the individual may request an informal agency review or demand a fair hearing;
 - (6) That the informal agency review is not required and does not toll the time that a individual has to file with OAH; and that the individual may immediately file a fair hearing request with OAH;

- (7) That the individual may represent himself or herself, or use legal counsel, a relative, a friend or other individual for assistance; and
- (8) Referral information for area legal services organizations.

9014.23 In addition to the written notice provided under § 9014.21, DDA shall send each individual on the waiting list and their legal representative written notice of the DDA’s decision to continue the individual’s placement on the waiting list beyond the first six (6) months, and twice annually thereafter.

9014.24 DDS shall publish an annual report on the waiting list during the prior fiscal year, which shall include a demographic profile of individuals on the waiting list; aggregate information on the level of need and requested supports and services of individuals on the waiting list; information about the length of time individuals have been on the waiting list; provide projected annual costs to meet the aggregate needs of all individuals on the waiting list; and discuss methods to reduce the waiting list and maximum waiting period.

9014.99 DEFINITIONS

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

Aged Out – Refers to the threshold age when people receiving services from certain agencies are no longer eligible for those services, and may then become eligible for services and supports from DDA. These include wards of the state that are residentially funded by the Children and Family Services Agency and, upon turning the age of twenty two (22), if they choose to continue to receive supports and meet the eligibility criteria for DDA, DDA provides those supports.

CMS - The Centers for Medicare and Medicaid Services is the federal agency under Title XIX of the Social Security Act responsible for approving HCBS waiver applications and monitoring the operation of waiver programs in the states and the District of Columbia.

Department on Disability Services (DDS) - The agency that provides services to District of Columbia residents with intellectual and other disabilities through its Developmental Disabilities Administration and Rehabilitation Services Administration.

Home and Community-Based Services Waiver for Individual and Family Support (IFS waiver) - The IFS waiver is a District of Columbia Medicaid program as approved by the Council of the District of Columbia and CMS that funds home and community-based services and supports as an alternative to receiving services in an Intermediate Care Facility for

Individuals with Intellectual Disabilities (ICF/IID).

IFS Waiver Waiting List - The list of individuals who have been reviewed and assessed by DDA, have been assigned a priority ranking, and are waiting for an opening in the DDA HCBS IFS waiver program to be enrolled and receive services.

Intermediate Care Facility for Individuals With Intellectual Disabilities (ICF/IID) - ICFs/IID are Medicaid State Plan funded residential settings that provide all residential (room and board), day/vocational, therapeutic, habilitative, supervision and transportation services as specified in the person's Person Support Plan. ICF/IID homes are certified and licensed by the D.C. Department of Health.

ICF/IID Level of Care Criteria – These criteria establish the diagnostic and functional eligibility criteria for IFS waiver services and are set forth in 29 DCMR §§ 9002.1 to 9002.4, as amended.

Reserved Capacity - Reserve capacity is a number of waiver slots set aside as a commitment to wards of the State who are transitioning from the Children and Family Services Agency (CFSA) to adult services in DDS/DDA that are placed in out-of-home services to assure a seamless transfer to adult services.

9015 ASSISTIVE TECHNOLOGY SERVICES

9015.1 The purpose of this section is to establish standards governing eligibility for assistive technology services for persons enrolled in the Home and Community-Based Services Waiver for Individual and Family Support (IFS Waiver), and to establish conditions of participation for professionals and providers of assistive technology services to receive reimbursement.

9015.2 Assistive technology services include both goods and services that are designed to enable the person to function with greater independence, avoid institutionalization, and reduce the need for human assistance as follows:

- (a) Assistive technology goods are an item, piece of equipment, service animal or product system, whether acquired commercially, modified, or customized, that is used to increase, maintain, or improve functional capabilities and can also support increased community inclusion, including in employment settings. Assistive technology goods must not be otherwise available through another funding source.
- (b) Assistive technology service means a service that directly assists a person in the selection, acquisition, or use of an assistive technology device and includes, but is not limited to:

- (1) The evaluation of assistive technology needs, including a functional evaluation of the impact of the provision of appropriate assistive technology and appropriate services to the person in his/her customary environment;
 - (2) Services consisting of purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices for persons served through the waiver;
 - (3) Services consisting of selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;
 - (4) Coordination and use of necessary therapies, interventions, or services with assistive technology devices, such as therapies, interventions, or services associated with other services in the service plan;
 - (5) Training or technical assistance for the person or, where appropriate, his/her family members, guardians, advocates, or authorized representatives who provide unpaid support, training, companionship or supervision; and
 - (6) Training or technical assistance for professionals or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of the person served.
- (c) Assistive technology specifically includes Personal Emergency Response System (PERS), an electronic device that enables persons who are at high risk of institutionalization to secure help in an emergency in accordance with the following:
- (1) The person may also wear a portable “help” button to allow for mobility;
 - (2) The system is connected to the person’s phone and programmed to signal a response center once the “help” button is activated;
 - (3) Trained professionals staff the response center;
 - (4) PERS is available to those persons who live alone, who are alone for significant parts of the day, or who would otherwise require extensive routine supervision;

- (5) Coverage of the PERS is limited to the rental of the electronic device;
- (6) PERS services shall include maintenance costs, training the recipient to use the equipment, and twenty-four (24) hour, seven (7) day a week response center services;
- (7) Reimbursement shall be made for an installation fee for the PERS unit; and
- (8) A monthly fee shall be paid for the maintenance of the PERS.

9015.3 A person qualifies for assistive technology services when he or she requests the service and/or it is recommended by the person's support team to enhance or maintain the person's independence, increase, maintain, or improve functional capabilities, and/or support increased community inclusion; or there is a physician's order for the service. Assistive technology services must be included in the person's Individual Support Plan (ISP) and Plan of Care.

9015.4 In order to be eligible for Medicaid reimbursement, each professional providing assistive technology services shall:

- (a) Conduct a comprehensive assessment within the first four (4) hours of service delivery, which shall include the following:
 - (1) A background review and current functional review of the person's capabilities in different environments;
 - (2) An environmental review in places of employment, residence, and other sites as necessary; and
 - (3) A needs assessment for the use of assistive technology.
- (b) Develop and implement an assistive technology plan within the first four (4) hours of service delivery that describes strategies, including recommended assistive technology goods, coordination with professional services, training of caregivers, monitoring requirements and instructions, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.

9015.5 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21) years old, the DDS Service Coordinator shall ensure that Early Periodic Screening and Diagnostic Treatment (EPSDT) services under the District of Columbia State Plan for Medical Assistance are fully utilized before accessing assistive technology services under the Waiver.

- 9015.6 Assistive technology services may be provided by the following professionals:
- (a) Approved Waiver providers of occupational therapy, physical therapy, and speech, hearing and language services, who are licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*) and implementing rules; and
 - (b) Assistive technology professionals who are certified through the Rehabilitation Engineering and Assistive Technology Society of North America, or another comparable national accreditation body, as approved by DDS.
- 9015.7 Assistive technology services may be provided by the following agency provider types:
- (a) An Assistive Technology Professional Agency or Supplier that is an approved vendor for the Rehabilitation Services Administration; or
 - (b) A licensed provider agency of occupational therapy, physical therapy, and speech, hearing and language pathology.
- 9015.8 A provider who is enrolled as an In-Home Supports Services provider with a current Medicaid provider agreement is automatically qualified as an Assistive Technology Services provider for people who receive services from that provider.
- 9015.9 Each provider of Medicaid reimbursable assistive technology services shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.
- 9015.10 Each provider of Medicaid reimbursable assistive technology services shall maintain the following documents for monitoring and audit reviews:
- (a) A copy of the assistive technology assessment and treatment plan;
 - (b) A copy of the physician's order, if applicable;
 - (c) A copy of receipts documenting the date, item, amount expended, and any related warranty; and
 - (d) Any other applicable documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR, where applicable.

- 9015.11 In order to be eligible for Medicaid reimbursement, each provider shall comply with Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.
- 9015.12 In order to be eligible for reimbursement, each Medicaid provider of assistive technology services must obtain a written Service Authorization from the Department on Disability Services (DDS) before providing assistive technology services.
- 9015.13 Assistive technology services are subject to the following limitations:
- (a) There is a maximum dollar amount per participant over a five-year period for this service. A person may be able to exceed this limitation on a case-by-case basis with the approval of DDS, based upon documented need, but shall be authorized prior to rendering the Waiver service; and
 - (b) Assistive technology provided through the Waiver is available only after the person has fully utilized services available under the Medicaid State Plan, or programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*), and the assistive technology is not the obligation of the individual's employer.
- 9015.14 The Medicaid reimbursable billable unit of service for assistive technology services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service that is reimbursable by Medicaid.

9016 BEHAVIORAL SUPPORT SERVICES

- 9016.1 The purpose of this section is to establish standards governing Medicaid eligibility for behavioral support services for persons enrolled in the Home and Community-Based Services Waiver for Individual and Family Support (IFS Waiver), and to establish conditions of participation for providers of behavioral support services.
- 9016.2 Behavioral support services are designed to assist people who exhibit behavior that inhibits their ability to live safely in the community or who need support to:
- (a) Build alternative and more communication skills;
 - (b) Achieve positive personal outcomes including their Individual Support Plan (ISP) goals, based on what is important to and important for people; and
 - (c) Interact more effectively in the community.

- 9016.3 Medicaid reimbursable behavioral support services shall be:
- (a) Recommended by the person's support team;
 - (b) Identified in the person's ISP and Plan of Care;
 - (c) Approved by the Department on Disability Services (DDS) Restrictive Controls Review Committee or Health and Wellness Unit for one-to-one behavioral supports;
 - (d) Recommended by a physician or Advanced Practice Registered Nurse (APRN) if the services are one-to-one behavioral supports related to a medical condition; and
 - (e) Prior authorized by DDS before the commencement of services.
- 9016.4 Medicaid reimbursable behavioral support services may include the following activities, as needed by the person:
- (a) Development of a Diagnostic Assessment Report (DAR) in accordance with the requirements described under § 9016.22 to 9016.23;
 - (b) Development of a Behavior Support Plan (BSP) in accordance with the requirements described under § 9016.24 to 9016.26;
 - (c) Implementation of positive behavioral support strategies and principles based on the DAR and BSP;
 - (d) Training of the person, his or her family, support team, and providers of their residential services and day services, to implement the BSP;
 - (e) Evaluation of the effectiveness of the BSP by monitoring the plan at least monthly, or more often as necessary, developing a system for collecting BSP-related data, and revising the BSP;
 - (f) Consultation services for the person, his or her family and/or support team;
 - (g) Counseling services for the person, if pre-approved by DDS; and
 - (h) Participating in the person's quarterly psychotropic medication review.
- 9016.5 Behavioral support services shall be provided in one of three (3) tiers, based upon the assessed needs of the person:

- (a) Tier 1, or Low Intensity Behavioral Support, shall assist a person with behavior that is not dangerous to himself or herself or others but whose behavior may interfere with the person's ability to achieve ISP goals;
- (b) Tier 2, or Moderate Behavioral Support, shall assist a person whose behavior impacts his or her ability to retain a baseline level of independence or that interferes with the person's quality of life; and
- (c) Tier 3, or Intensive Behavioral Support, shall assist a person who exhibits behavior that is extremely challenging and may be complicated by medical or mental health factors.

9016.6 Medicaid reimbursement for Tier 1 Low Intensity Behavioral Support Services shall provide up to twelve (12) hours of support per year for the services listed below. Services provided that exceed the limitations shall not be reimbursed except as provided in § 9016.10.

- (a) Training of the person, his or her family, the support team, and residential and day staff; and
- (b) On-site consultation and observations.

9016.7 Medicaid reimbursement for Tier 2 Moderate Behavioral Support Services shall provide up to fifty (50) hours of support per year for the services listed below; and Medicaid reimbursement for Tier 3 Intensive Behavioral Support Services shall provide up to one hundred (100) hours of support per year for the services listed below. Services provided that exceed these limitations shall not be reimbursed except as provided in § 9016.10.

- (a) Development of a new BSP;
- (b) Reviewing and updating the existing BSP, which shall be limited to up to three (3) hours for Tier 2 and eight (8) hours for Tier 3;
- (c) Training of the person, his or her family, the support team, and residential and day staff;
- (d) On-site consultation and observations;
- (e) Participation in behavioral review or treatment team meetings, delivering notes including emergency case conferences, hospital discharge meetings, interagency meetings, pre-ISP and ISP meetings, and human rights meetings;
- (f) Completion of quarterly reports, diagnostic updates and monitoring monthly data; and

- (g) Participation in psychotropic medication review meetings to deliver notes.
- 9016.8 In order to be eligible for Medicaid reimbursement, requests for more than seventy-five (75) hours of behavior support services must be reviewed and approved by a DDS designated staff member.
- 9016.9 In addition, a person receiving Tier 2 Moderate Behavioral Support Services may receive up to twenty-six (26) hours of counseling per year, if approved by DDS; and a person receiving Tier 3 Intensive Behavioral Support Services may receive up to fifty-two (52) hours of counseling per year, if approved by DDS.
- 9016.10 In order to be eligible for Medicaid reimbursement, requests for additional hours beyond the annual limits may be approved by DDS upon the submission of a diagnostic update to amend the DAR and accompanying worksheet.
- 9016.11 In order to be eligible for Medicaid reimbursement, requests for counseling as a behavioral support service shall be approved by a DDS designated staff member and shall be limited to counseling services that are not available under the District of Columbia State Plan for Medical Assistance.
- 9016.12 To qualify for Medicaid reimbursable one-to-one behavioral supports, a person shall meet at least one (1) of the following criteria:
- (a) Exhibit elopement resulting in serious risk to the safety of self or others;
 - (b) Exhibit behavior that is life threatening to self and others;
 - (c) Exhibit destructive behavior causing serious property damage;
 - (d) Exhibit sexually predatory behavior;
 - (e) Exhibit self-injurious behavior that poses a serious risk to the person's safety; or
 - (f) Have a medical condition that requires one-to-one services.
- 9016.13 Medicaid reimbursable one-to-one behavioral supports related to a medical condition shall be approved by DDS, and shall be based upon a physician or APRN order for one-to-one behavioral supports associated with a medical condition that meets the requirements of DDS's policies and procedures. The order shall include, at a minimum, the following information:
- (a) A specific time period or duration for the delivery of services;

- (b) A description of the medical condition that causes the person's health or safety to be at risk;
 - (c) The responsibilities of each staff person delivering supports; and
 - (d) A justification of the need for one-to-one behavioral supports.
- 9016.14 Medicaid reimbursable one-to-one behavioral support services provided by a DSP shall not be provided concurrently with in-home supports, day habilitation, companion or individualized day supports one-to-one services unless authorized by DDS, required by court order or otherwise necessary to support a person or persons who have complex behaviors or medical needs that involve a risk to the health, safety or well-being of the person based on the intensity of the person's behavioral or medical needs.
- 9016.15 Within the service authorization period, a provider of Medicaid reimbursable behavioral supports services shall:
- (a) Complete the diagnostic assessment;
 - (b) Complete the DAR and the accompanying behavioral support referral worksheet ("worksheet") based on the results of the diagnostic assessment; and
 - (c) Complete the BSP when recommended by the DAR.
- 9016.16 The DAR shall be effective for three (3) years except as indicated in § 9016.17, or for a person receiving one-to-one behavioral supports, which shall be updated annually. Reauthorization of behavioral support services within the three (3) year period shall be requested in a diagnostic update with accompanying referral worksheet submitted to the DDS Service Coordinator.
- 9016.17 When a person experiences changes in psychological or clinical functioning, the behavioral supports provider shall submit a diagnostic update with an accompanying worksheet to amend the DAR to the DDS Service Coordinator at any time during the three (3) year period, upon the recommendation of the support team.
- 9016.18 The worksheet accompanying the DAR shall include the number of hours requested for professional services, paraprofessional services, and one-to-one behavioral support services to address recommendations in the DAR.
- 9016.19 The diagnostic update shall include a written clinical justification supporting the reauthorization of services.

- 9016.20 The diagnostic update shall be reviewed by the person and his or her support team in consultation with behavioral supports staff.
- 9016.21 The BSP shall be effective for up to two (2) calendar years, which shall correspond with the person's ISP year unless revised, updated or discontinued when no longer necessary in accordance with the recommendations of the DAR and accompanying worksheet.
- 9016.22 To be eligible for Medicaid reimbursement, the diagnostic assessment shall include the following activities:
- (a) Direct assessment techniques such as observation of the person in the setting in which target behaviors are exhibited, and documentation of the frequency, duration, and intensity of challenging behaviors;
 - (b) Indirect assessment techniques such as interviews with the person's family members and support team, written record reviews, and questionnaires; and
 - (c) An explanation of how existing environmental, psychological, and/or medical influences impact the occurrence of behavioral problems.
- 9016.23 To be eligible for Medicaid reimbursement, the DAR shall include the following:
- (a) The names of individuals to contact in the event of a crisis;
 - (b) A summary of the person's cognitive and adaptive functioning status;
 - (c) A full description of the person's behavior including background, and environmental contributors;
 - (d) The counseling and problem-solving strategies used to address behavioral problems and their effectiveness;
 - (e) A list of positive, non-restrictive or less restrictive interventions utilized, the results, and an explanation of why the interventions were unsuccessful;
 - (f) A list of proposed goals for achieving changes in target behaviors; and
 - (g) The recommendations to initiate, continue, or discontinue behavioral support services.
- 9016.24 In order to be eligible for Medicaid reimbursement, the BSP shall be developed utilizing the following activities:
- (a) Interviews with the person and their support team;

- (b) Observations of the person at his or her residence and in the community, if applicable; and
- (c) Review of the person's medical and psychiatric history including laboratory and other diagnostic studies, and behavioral data.

9016.25 In order to be eligible for Medicaid reimbursement, the behavioral supports staff that develops the BSP shall be responsible for:

- (a) The coordination of the delivery of behavioral support services in the person's residential and day activity settings; and
- (b) Obtaining the person's written informed consent and the approval of the person's substitute decision-maker, the support team, the provider's human rights committee, and DDS, when required by DDS's policies and procedures.

9016.26 In order to be eligible for Medicaid reimbursement, the BSP shall include the following:

- (a) A clear description of the targeted behavior(s) that is consistent with the person's diagnosis;
- (b) The data reflecting the frequency of target behaviors;
- (c) A functional behavioral analysis of each target behavior;
- (d) A description of techniques for gathering information and collecting data;
- (e) The proactive strategies utilized to foster the person's positive behavioral support;
- (f) The measurable behavioral goals to assess the effectiveness of the BSP;
- (g) If restrictive techniques and procedures are included, the rationale for utilizing the procedures and the development of a fade-out plan; and
- (h) Training requirements for staff and other caregivers to implement the BSP.

9016.27 Each provider of behavioral support services shall comply with Sections 9010 (Provider Qualifications) and 9009 (Provider Enrollment) of Chapter 90 of Title 29 DCMR and consist of one (1) of the following provider types:

- (a) A professional service provider in private practice as an independent clinician, as described in Section 9010 (Provider Qualifications) of Chapter 90 of Title 29 DCMR;

- (b) A Mental Health Rehabilitation Services agency (MHRS) certified in accordance with the requirements of Chapter 34 of Title 22-A DCMR;
- (c) A home health agency as described in Section 9010 (Provider Qualifications), of Chapter 90 of Title 29 DCMR; or
- (d) A HCBS Provider, as described under Section 9010 (Provider Qualifications), of Chapter 90 of Title 29 DCMR.

9016.28 In order to be eligible for Medicaid reimbursement, each MHRS agency shall serve as a clinical home by providing a single point of access and accountability for the provision of behavioral support services and access to other needed services.

9016.29 Individuals authorized to provide professional behavioral support services without supervision shall consist of the following professionals:

- (a) A psychiatrist;
- (b) A psychologist;
- (c) An APRN or a Nurse Practitioner (NP); and
- (d) A Licensed Independent Clinical Social Worker (LICSW).

9016.30 Individuals authorized to provide paraprofessional behavioral support services under the supervision of qualified professionals described under § 9016.29 shall consist of the following behavior management specialists:

- (a) A licensed Professional Counselor;
- (b) A licensed Social Worker (LISW);
- (c) A licensed Graduate Social Worker (LGSW);
- (d) A board Certified Behavior Analyst;
- (e) A board Certified Assistant Behavior Analyst; and
- (f) A registered Nurse.

9016.31 In order to receive Medicaid reimbursement, the person who drafts the BSP shall be a psychologist with at least a master's level degree working under the supervision of a licensed psychologist or an LICSW.

- 9016.32 In order to receive Medicaid reimbursement, the minimum qualifications for a person providing consultation are: a master's level degree in psychology, an APRN, an LICSW, an LGSW, or a licensed professional counselor, with at least one (1) year of experience in serving people with developmental disabilities. Knowledge and experience in behavioral analysis shall be preferred.
- 9016.33 In order to receive Medicaid reimbursement, an LGSW may only provide counseling under the supervision of an LICSW or a LISW in accordance with the requirements set forth in Section 3413 of Chapter 34 of Title 22-A DCMR.
- 9016.34 In order to receive Medicaid reimbursement, each DSP providing behavioral support services or one-to-one behavioral supports shall meet the following requirements:
- (a) Comply with Section 9011 (Requirements for Persons Direct Support Professionals) of Chapter 90 of Title 29 DCMR; and
 - (b) Possess specialized training in physical management techniques where appropriate, and all other training required for implementing the person's specific BSP.
- 9016.35 Each provider of Medicaid reimbursable behavioral support services shall meet the requirements established under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.
- 9016.36 In order to be eligible for Medicaid reimbursement, each provider of Medicaid reimbursable behavioral supports services shall maintain the following documents for monitoring and audit reviews, as applicable:
- (a) A copy of the DARs and accompanying worksheets;
 - (b) A copy of the BSPs;
 - (c) A current copy of the behavioral support clinician's professional license to provide clinical services;
 - (d) The documentation and data collection related to the implementation of the BSP;
 - (e) The records demonstrating that the data was reviewed by appropriate staff; and
 - (f) The documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

- 9016.37 The Medicaid reimbursement rate for each diagnostic assessment shall be a flat fee rate and the assessment shall be at least three (3) hours in duration and include the development of the DAR and accompanying worksheet.
- 9016.38 There shall be a Medicaid reimbursement rate for behavioral support services provided by professionals identified in § 9016.29, which shall be billed at the unit rate of fifteen (15) minutes. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.
- 9016.39 There shall be a Medicaid reimbursement rate for behavioral support services provided by paraprofessionals identified in § 9016.30, which shall be billed at the unit rate of fifteen (15) minutes. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.
- 9016.40 There shall be a Medicaid reimbursement rate for one-to-one behavioral support services provided by DSPs, which shall be billed at the unit rate of fifteen (15) minutes. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.

9017 COMPANION SERVICES

- 9017.1 The purpose of this section is to establish standards governing the eligibility for Medicaid reimbursement of companion services for people enrolled in the Home and Community-Based Services Waiver for Individual and Family Support (IFS Waiver) and to establish the conditions of participation for providers of companion services.
- 9017.2 Companion services provide non-medical assistance and supervision to support a person's goals, desires, and needs as identified in the person's Individual Support Plan (ISP), and reflected in his or her Person-Centered Thinking and Discovery tools. Goals may be related to the person's safety, promotion of independence, community integration, and/or retirement.
- 9017.3 To be eligible for Medicaid reimbursement of companion services, the services shall be identified in the person's ISP, Plan of Care and Summary of Supports for each person enrolled in the Waiver, and each person shall:
- (a) Demonstrate a need for non-medical support and supervision at home or in the community; and
 - (b) Have the service recommended by the person's support team, after having considered the appropriateness of other waiver services and the staffing ratio, if any, in the person's home.
- 9017.4 Companion services may be provided in a person's home or in the community.

- 9017.5 To be eligible for Medicaid reimbursement, companion services cannot be provided at the same time as In-Home Supports, Personal Care Services, Respite, and/or Behavioral Supports Non-Professional.
- 9017.6 To be eligible for Medicaid reimbursement, companion services may be provided outside of regular Monday to Friday daytime hours when supervision or other non-medical support is necessary to ensure the person's safety.
- 9017.7 To be eligible for Medicaid reimbursement, companion services shall not:
- (a) Exceed eight (8) hours per twenty-four (24) hour day;
 - (b) Exceed forty (40) hours per week when used-in combination with Personal Care Services or any other Waiver day or vocational support services, including but not limited to Day Habilitation, Employment Readiness, Supported Employment, Small Group Supported Employment, or Individualized Day Supports as part of a person's traditional Monday to Friday day/vocational programming time;
 - (c) Include the provider/employee's transportation time to or from the person's home, or the provider employee's break time; and
 - (d) Be provided to a person who requires a 24-hour medical one-to-one for supervision at home or in the community.
- 9017.8 In order to be reimbursed by Medicaid, companion services may be provided in a residential setting at the same ratio as is required of a DSP for that setting.
- 9017.9 In order to be reimbursed by Medicaid, each provider of companion services shall:
- (a) Be a Waiver provider agency;
 - (b) Be certified by the Department on Disability Services (DDS) as a Companion Provider Agency per the DDS Provider Certification Review (PCR) Policy;
 - (c) Provide verification of passing the DDS PCR for in-home support, supported living, or respite services for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing residential or respite services to the IFS waiver population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia if applicable; and

- (d) Comply with Sections 9010 (Provider Qualifications) and 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9017.10 To be eligible for Medicaid reimbursement, the provider shall:

- (a) Use the DDS-approved Person-Centered Thinking and Discovery tools to develop a support plan, based upon what has been identified as important to and for the person. For people who receive companion services during waking hours, this should include a flexible list of proposed leisure and recreational activities at home and in the community, based upon the person's interests. The support plan must be completed within first week of service, and reviewed and revised quarterly, or more frequently, as needed; and
- (b) Participate in the person's support team meeting, at the person's preference.

9017.11 In order to be eligible for Medicaid reimbursement each provider/ employee rendering companion services shall:

- (a) Be at least eighteen (18) years of age;
- (b) Be acceptable to the person for whom they are providing supports;
- (c) Obtain annual documentation from a physician or other health professional that he or she is free from tuberculosis;
- (d) Complete competency-based training in:
 - (1) Communication with people with intellectual disabilities;
 - (2) Infection control procedures consistent with the requirement of the Occupational Safety and Health Administration, U.S. Department of Labor regulations at 29 C.F.R. § 1910.1030; and
 - (3) Emergency procedures; and incident management;
- (e) Possess a high school diploma, GED certificate, or, if the person was educated in a foreign country, its equivalent;
- (f) Possess an active CPR and First Aid certificate and ensure that the CPR and First Aid certifications are renewed every two (2) years, with CPR certification and renewal via an in-person class;
- (g) Have the ability to communicate with the person to whom services are provided;

- (h) Be able to read, write, and speak the English language;
- (i) Participate in competency based training needed to address the unique support needs of the person, as detailed in his or her ISP; and
- (j) Have proof of compliance with the Health-Care Facility Unlicensed Personnel Criminal Background Check Act of 1998, effective April 20, 1999 (D.C. Law 12-238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).

9017.12 An employee may not provide Medicaid reimbursable companion services to a person if he or she is the person's relative; legal guardian; or is otherwise legally responsible for the person.

9017.13 Medicaid reimbursable companion services shall be authorized in accordance with the following provider requirements:

- (a) The DDS shall provide a written service authorization before the commencement of services;
- (b) The service name and provider delivering services shall be identified in the ISP;
- (c) The ISP shall document the amount and frequency of services to be received; and
- (d) The provider shall submit each quarterly review to the person's DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

9017.14 In order to be eligible for Medicaid reimbursement each provider of companion services shall comply with Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR, except that progress notes as described in § 9006.2(m) shall be kept on a daily basis.

9017.15 In order to be eligible for Medicaid reimbursement each provider shall comply with the requirements under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.

9017.16 Medicaid reimbursable companion services shall be billed at the unit rate. Companion services shall not exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. Medicaid reimbursement shall be

limited to those time periods in which the provider is rendering services directly to the person. There shall be a Medicaid reimbursement rate for:

- (a) Companion services provided at a one-to-one ratio; and
- (b) Companion services provided in a small group of no more than one-to-three per person.

9018 CREATIVE ARTS THERAPIES SERVICES

9018.1 The purpose of this section is to establish standards governing Medicaid eligibility for Creative Arts Therapies services for persons enrolled in the IFS Waiver, and to establish conditions of participation for providers of these services.

9018.2 Creative Arts Therapies services utilize art, dance, drama, and music therapy to provide therapeutic supports to help a person with disabilities express and understand emotions through artistic expression and the creative process. Creative Arts Therapies shall be based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP.

9018.3 Creative Arts Therapies services are available as a one-to-one service for a person.

9018.4 To be eligible for reimbursement, the services shall be:

- (a) Ordered by a physician or a practitioner listed in § 9018.7;
- (b) Reasonable and necessary for the treatment of social and emotional difficulties related to a number of mental health issues including disability, illness, trauma, loss, and physical and cognitive problems; and
- (c) Recommended by a person’s support team, and included in the person's ISP and Plan of Care.

9018.5 The types of services eligible for reimbursement shall be:

- (a) Art therapy;
- (b) Dance therapy;
- (c) Drama therapy; and
- (d) Music therapy.

9018.6 Each person providing Creative Arts Therapies services shall:

- (a) Conduct an assessment within the first two (2) hours of delivering the service;
- (b) Develop and implement an individualized art, dance, drama, or music plan for the person that is in keeping with their choices, goals and prioritized needs that includes the following:
 - (1) Treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and anticipated outcomes; and
 - (2) Identification of specific anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP.
- (c) Deliver the completed plan to the person, family, guardian or other caregiver, and DDS Service Coordinator prior to the Support Team meeting;
- (d) Participate in the ISP and Support Team meetings, when invited by the person, to provide consultative services and recommendations specific to the expert content with the focus on how the person is doing in achieving the functional goals that are important to him or her;
- (e) Provide necessary information to the individual, family, guardian or caregivers, and team, to assist in planning and implementing the approved ISP and Plan of Care;
- (f) Record progress notes on each visit;
- (g) Submit quarterly reports in accordance with the requirements in Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR;
- (h) Conduct periodic examinations and modify treatments for the person receiving services as necessary; and
- (i) Meet all of the requirements in Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR.

9018.7 Services shall be provided by a certified practitioner in an independent practice or a practitioner employed by a Waiver provider.

9018.8 Creative Arts Therapies services shall be delivered by the following practitioners:

- (a) Art therapists certified to practice art therapy by the American Art Therapy Association, Inc. or credentialing of the Art Therapy Credentialing Board;
- (b) Dance therapists authorized to practice dance therapy pursuant to Chapter 71 (Dance Therapy) of Title 17 DCMR (Business, Occupations, and Professionals);
- (c) Drama therapists certified by the National Association for Drama Therapy; and
- (d) Music therapists certified by the Certification Board for Music Therapists, which is managed by the American Music Therapy Association.

9018.9 Each Waiver provider or certified practitioner in an independent practice shall meet the requirements as set forth in Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9018.10 Creative Arts Therapies practitioners, without regard to their employer of record, shall be selected by the person or his/her authorized representative and shall be answerable to the person receiving services.

9018.11 Any Waiver provider substituting practitioners for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Service Coordinator to evaluate continuation of services.

9018.12 Services shall be authorized for reimbursement in accordance with the following provider requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The provider shall conduct an assessment and develop a Creative Arts Therapies treatment plan with training goals and techniques that will assist the caregivers, within the first two (2) hours of service delivery;
- (c) The service name and provider delivering services shall be identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under § 9018.15.

9018.13 Each certified practitioner or Waiver provider shall maintain records required under Section 9013 (Reporting Requirements) and Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

- 9018.14 Each certified independent practitioner or Waiver provider shall comply with Section 9005 (Individual Rights) under Chapter 90 of Title 29 DCMR.
- 9018.15 Any combination of Creative Arts Therapies services shall be limited to a maximum dollar amount per person, per calendar year, and delivered in accordance with the person's ISP and Plan of Care.
- 9018.16 The Medicaid reimbursement rate for Creative Arts Therapies services shall be billed per person per forty-five (45) minutes for art, dance, drama or music therapy as an individual service.
- 9018.17 The Medicaid reimbursable billable unit of service for Creative Arts Therapies services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service. Creative Arts Therapies may be billed on the same day, but cannot be billed concurrently with day vocational services, including Day Habilitation and Employment Readiness services.

9019 DAY HABILITATION SERVICES

- 9019.1 The purpose of this section is to establish standards governing Medicaid eligibility for day habilitation for persons enrolled in the IFS Waiver, and to establish conditions of participation for providers of day habilitation services.
- 9019.2 Day habilitation services are aimed at developing meaningful adult activities and skills acquisition to: support or further community integration, inclusion, and exploration, improve communication skills; improve or maintain physical, occupational or speech and language functional skills; foster independence, self-determination and self-advocacy and autonomy; support persons to build and maintain relationships; facilitate the exploration of employment or integrated retirement opportunities; help a person achieve valued social roles; and to foster and encourage persons on their pathway to community integration, employment and the development of a full life in the person's community.
- 9019.3 Day habilitation services are intended to be different and separate from residential services. These services are delivered in group settings or can be provided as day habilitation one-to-one services.
- 9019.4 Medicaid reimbursable day habilitation services may also be delivered in small group settings at a ratio of 1:3 for persons who are medically or behaviorally complex, as verified by the DDA LON Assessment and Screening Tool, or its successor tool, or the person's BSP, and who would benefit from day habilitation services in a smaller setting. Small group day habilitation settings must include integrated skills building in the community and support access to the greater community. In order to be Medicaid reimbursable, small group day habilitation:

- (a) Shall not be provided in the same building as a large day habilitation facility setting;
- (b) Shall be located in places that facilitate community integration and inclusion;
- (c) Shall fully comply with the requirements of the HCBS Settings Rule; and
- (d) Shall not be delivered in settings that have a daily census larger than fifteen (15) persons;

9019.5 To be eligible for day habilitation services:

- (a) The person shall request the service and the service shall be recommended by the person's Support Team and included in the ISP and Plan of Care; and
- (b) A person shall have a demonstrated personal or social adjustment need that can be addressed through participation in a habilitation program that is individualized to meet their goals, preferences, and needs.

9019.6 Day habilitation one-to-one services shall consist of:

- (a) Intense behavioral supports that require a behavioral support plan; or
- (b) Services for a person who has medical needs that require intensive staffing and supports.

9019.7 To be eligible for day habilitation one-to-one services, a person shall meet at least one of the following requirements:

- (a) Exhibit elopement which places the health, safety, or well-being of the person at risk;
- (b) Exhibit behavior that poses serious bodily harm to self or others;
- (c) Exhibit destructive behavior that poses serious property damage, including fire-setting;
- (d) Have any other intense behavioral problem that has been deemed to require one-to-one supervision;
- (e) Exhibit sexually predatory behavior; or
- (f) Have a medical history of, or high risk for, falls with injury, be physically fragile or have physical needs that do not require professional nursing but require intensive staffing, and have a physician's order for one-to-one staffing support.

- 9019.8 Day habilitation one-to-one services shall be authorized and approved in accordance with DDS/DDA policies and procedures available at <http://dds.dc.gov/page/policies-and-procedures-dda>.
- 9019.9 Day habilitation services shall be provided pursuant to the following service delivery criteria:
- (a) The service may be provided in a group setting. However, persons within the group shall also receive individualized services to meet their goals, preferences and needs;
 - (b) The services provided in a community-based venue shall offer skill-building activities to enhance the person's habilitation needs; and
 - (c) The service shall be provided in the most integrated setting appropriate to the needs of the person.
- 9019.10 In order to be reimbursed by Medicaid, day habilitation services shall consist of the following age-appropriate learning or habilitative activities that are based on what is important to and for the person as documented in his or her Individualized Support Plan and reflected in his or her Person-Centered Thinking and Discovery tools:
- (a) Training and skills development that increase participation in community activities, enhance community inclusion, and foster greater independence, self-determination and self-advocacy;
 - (b) A diversity of activities that allow the person the opportunity to choose and identify his or her own areas of interest and preferences;
 - (c) Activities that provide opportunities for socialization and leisure activities in the community, community explorations, and activities that support the person to build and maintain relationships;
 - (d) Training in the safe and effective use of one or more modes of accessible public transportation;
 - (e) Coordination of transportation to enable the person to participate in community activities;
 - (f) Activities to support community integration and inclusion:
 - (1) These must occur in the community in groups not to exceed four (4) participants for regular day habilitation or three (3) participants for persons in small group day habilitation;

- (2) The activities, frequency and duration of these activities shall be based on a person’s interests and preferences as reflected in his or her ISP and Person-Centered Thinking and Discovery tools;
- (3) There shall be a system to match persons together in community outings based on common interests, goals, and friendships, including that a person is given a choice as to whom he or she would like to spend time with during these activities;
- (4) Except when a person’s ISP indicates a lower frequency, each person must be offered the opportunity to engage in community integration and inclusion activities at least once per week, and more if indicated by the ISP;
- (5) DDS recommends the use of learning logs for documentation of community integration and inclusion activities;
- (6) At least quarterly, there must be a community integration activity for each person in which a Day Habilitation Program Coordinator, Assistant Director, or a Qualified Intellectual and Developmental Disabilities Professional participates to ensure: proper matching of participants; that the community outings reflect each person’s interests, goals, or friendships; that each person receiving supports has opportunities to engage with people while in the community and to coach DSPs on the skills needed to successfully connect persons receiving supports with the broader community, progress being made and this must be fully documented in the quarterly report; and
- (7) Each day habilitation provider must have, and must train their DSP staff on, written protocols regarding how DSPs are expected to support persons in the community and requirements for documenting progress notes regarding community engagement activities; and
- (g) Individualized or group services that enable the person to attain his/her maximum functional level based on the ISP and Plan of Care.

9019.11 Day habilitation services shall include a Registered Nurse for the purposes of:

- (a) Medication administration;
- (b) Staff training in components of the Health Care Management Plan (regardless of the author of the plan); and

- (c) Oversight of Health Care Management Plans (regardless of the author of the plan).

9019.12 Day habilitation services shall include a nutritionally adequate meal for participants who live independently or in the family home and who select to receive a meal. The meal shall be provided during lunch hours, meet one-third of a person's daily Recommended Dietary Allowance, be based on the person's preferences, and not be medically contraindicated.

9019.13 Each day habilitation provider shall develop a day habilitation plan for each person in accordance with the following:

- (a) In order to develop the day habilitation plan, the provider shall first develop a Positive Personal Profile (PPP) and Job Search and Community Participation Plan within thirty (30) days of the initiation of services and shall update at least annually.
- (b) The day habilitation plan shall correspond with the person's ISP and Plan of Care and support the interests, choices, goals and prioritized needs of the person;
- (c) Activities set forth in the day habilitation plan shall be functional, chosen by the person, correspond with habilitation needs and provide a pattern of life experiences common to other persons of similar age and the community-at-large.
- (d) To develop the person's day habilitation plan, the provider shall:
 - (1) Use observation, conversation, and other interactions, including assessments such as a vocational assessment, as necessary, to develop a functional analysis of the person's capabilities within the first month of participation and annually thereafter;
 - (2) Use the functional analysis, the ISP and Plan of Care, Person-Centered Thinking and Discovery tools, and other information available to identify what is important to and for the person and to develop a plan with measurable outcomes that develops to the extent possible the skills necessary to allow the person to reside and work in the community while maintaining the person's health and safety; and
 - (3) Focus on enabling each person to attain his or her maximum functional level by coordinating Waiver services with other services provided by any licensed professionals listed in the person's ISP and Plan of Care.

- 9019.14 Each provider of Medicaid reimbursable day habilitation services shall develop, with the person, an individualized schedule of daily activities that meets all requirements in the DDS guidance on daily schedules, including that it is based upon the person's goals and activities as identified in his or her ISP, and consistent with what is in his or her Person-Centered Thinking and Discovery tools, of meaningful adult activities that support the person on his or her pathway to employment and community integration and inclusion.
- 9019.15 Day habilitation providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.
- 9019.16 Each day habilitation provider shall meet the following provider qualification and enrollment requirements:
- (a) Comply with the requirements described under Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR;
 - (b) Maintain the required staff-to-person ratio, indicated on the person's ISP and Plan of Care, to a maximum staffing ratio of 1:4 for regular day habilitation or 1:3 for persons in small group day habilitation;
 - (c) Shall have at least one individual on staff as a full-time employee or consultant basis that has experience developing adult education programs for a person with intellectual disabilities, to ensure outcome-based learning is taking place; and
 - (d) Shall have one individual on staff as a full-time employee or consultant basis that has experience developing adult senior curriculums for persons with intellectual disabilities, to ensure outcome-based learning is taking place.
- 9019.17 In addition to the requirements at § 9019.16, each small group day habilitation provider shall meet the following provider qualifications and enrollment requirements:
- (a) Fully comply with all requirements of the HCBS Settings Rule as that phrase is defined in Section 9099 (Definitions); and
 - (b) Provide documentation that the program manager of the HCBS Waiver provider agency has at least three (3) years of experience working with persons with intellectual and developmental disabilities who have complex medical or behavioral needs.

- 9019.18 Each DSP providing day habilitation services for a provider shall comply with Section 9011 (Requirements of Direct Support Professionals) of Chapter 90 of Title 29 DCMR.
- 9019.19 To receive Medicaid reimbursement, day habilitation services shall be provided in the community or in a facility-based setting that provides opportunities for community engagement, inclusion and integration. There shall be no increase in the number of facility-based settings authorized for current providers. No facility-based settings will be authorized for newly enrolling providers, with the exception of small group day habilitation.
- 9019.20 Each provider of Medicaid reimbursable day habilitation services shall comply with the requirements under Section 9008 (Home and Community-Based Settings Requirements) of Chapter 90 of Title 29 DCMR.
- 9019.21 All day habilitation services shall be authorized in accordance with the following requirements:
- (a) DDS shall provide a written service authorization before the commencement of services;
 - (b) The day habilitation DSP providing one-to-one services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's health care management plan and behavioral support plan, as applicable;
 - (c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received;
 - (e) Completion of the person's day habilitation plan;
 - (f) Approval of the behavioral support plan or the physician's order for one-to-one staffing support for persons receiving day habilitation one-to-one services; and
 - (g) When required by a person's BSP, accurate completion by the DSP of the behavioral data sheets for persons receiving day habilitation one-to-one services.
- 9019.22 Each provider shall comply with the requirements described under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR. Additionally, quarterly reports shall include a description of the person's activities in the community that support community integration and

inclusion using the Person-Centered Thinking Learning Log, available on-line at: <https://dds.dc.gov/publication/person-centered-thinking-tools-procedure>.

- 9019.23 Each provider shall comply with the requirements described under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.
- 9019.24 There shall be a Medicaid reimbursement rate for regular day habilitation services. Services shall be provided for a maximum of eight (8) hours per day. The billable unit of service for regular day habilitation services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.
- 9019.25 There shall be a Medicaid reimbursement rate for day habilitation one-to-one services. The billable unit of service for day habilitation one-to-one services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.
- 9019.26 There shall be a Medicaid reimbursement rate for small group day habilitation services. The billable unit of service for small group day habilitation shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to be able to bill a unit of service.
- 9019.27 For persons who live independently or with family and select to receive a meal, the rate shall be increased by a dollar amount per day that the person receives a meal, and an additional dollar amount per day that the person receives a meal, if that meal is delivered by a third-party vendor.
- 9019.28 Small group day habilitation services shall be provided for a maximum of eight (8) hours a day, not to exceed forty (40) hours per week and two thousand eighty hours (2,080) hours annually.
- 9019.29 Day habilitation services shall not be provided concurrently with Individualized Day Supports, Companion, Supported Employment, or Employment Readiness services.
- 9019.30 No payment shall be made for care and supervision normally provided by the family or natural caregivers, residential provider, or employer.
- 9019.31 Provisions shall be made by the day habilitation provider for persons who arrive early and depart late.
- 9019.32 Time spent in transportation to and from the program shall not be included in the total amount of services provided per day.
- 9019.33 Any day habilitation setting must fully comply with the requirements of the HCBS Settings Rule. The daily census of any new setting may not exceed fifty (50)

people. The daily census includes people who receive support through the IFS Waiver, the IDD Waiver, and people who receive ICF/IID supports and are engaged in active treatment at the setting. However, the daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

9019.34 Non-small group day habilitation settings established prior to the effective date of these regulations that have a daily census under fifty (50) people may only receive authorizations for services for new participants up to a daily census of fifty (50) people in the setting. Current non-small group day habilitation settings that have a daily census of fifty (50) people or more in the setting will not be eligible for authorizations for services for new participants until their daily census is less than fifty (50) people in the setting.

- (a) The daily census includes people who receive support through the IFS Waiver and people who receive ICF/IID supports and are engaged in active treatment at the setting; and
- (b) The daily census does not include people who are in the setting only for morning arrival and afternoon departure and who spend the remainder of their day in the community.

9019.35 The following service limitations apply to new enrollees in non-small group day habilitation services:

- (a) No new enrollee may attend non-small group day habilitation for more than twenty-four (24) hours per week;
- (b) People who are sixty-four (64) years old and younger and have a LON Day Composite score of two (2) or less would not be eligible to attend day habilitation services, unless approved by DDA due to extenuating circumstances or barriers that are expected to be resolved within six (6) months:
 - (1) This limitation is applicable to small group day habilitation services;
 - (2) Exceptions may only be granted by DDA for six (6) month periods and must be accompanied by an ISP goal aimed at addressing the barrier to participation in other day or employment Waiver supports; and
 - (3) Alternative services, including Employment Readiness, Small Group Supported Employment, Individualized Day Supports, and Companion services that are offered during regular day service hours, shall be available, in combination, for up to forty (40) hours per week.

- (c) People who are sixty-four (64) years old and younger and have a LON Day Composite score of three (3) or higher shall not be eligible to attend day habilitation services, unless they already have tried other day and employment options for at least one year:
 - (1) This limitation is not applicable to small group day habilitation services;
 - (2) DDS may approve an exception to this prohibition due to extenuating circumstances or barriers that are expected to be resolved within six (6) months. Any exceptions shall be accompanied by an ISP goal aimed at addressing the barrier to participation in other day or employment Waiver supports;
 - (3) Alternative services including Supported Employment, Individualized Day Supports, Employment Readiness and Companion would be available, in combination, for up to forty (40) hours per week.

9019.36 The following service limitations apply to people who are currently attending non-small group day habilitation services:

- (a) Within one (1) year from the Waiver effective date, any person with a LON Day Composite score of one (1) or two (2) shall no longer be eligible for day habilitation services and services may no longer be authorized:
 - (1) For any person with a LON Day Composite score of one (1) or two (2), the person shall be offered employment services, either through the Waiver, the Rehabilitation Services Administration, or other community-based options;
 - (2) The transition from day habilitation services shall be implemented on a rolling basis over the course of the year, with the new service limitation discussed and choice of alternative options offered at the person's next ISP meeting, subject to the exception described in subparagraph (3) of this subsection; and
 - (3) For a person with an ISP meeting that is scheduled within ninety (90) days of the Waiver effective date, DDA may authorize day habilitation services for up to ninety (90) days following the ISP meeting to ensure a smooth transition.
- (b) Within one (1) year from the effective date of the Waiver, non-small group day habilitation services may not be authorized for any Waiver participant

with a LON Day Composite score above two (2) for more than twenty-four (24) hours per week, subject to the exception described below:

- (1) Wrap around services are available, including Supported Employment, Individualized Day Supports, Employment Readiness and Companion, in combination, for up to forty (40) hours per week;
 - (2) For people with an ISP meeting that is scheduled within ninety (90) days of the Waiver effective date, DDA may authorize up to forty (40) hours of day habilitation services per week for up to ninety (90) days following the ISP meeting to ensure a smooth transition; and
 - (3) This limitation is not applicable to small group day habilitation services.
- (c) For any person who is currently receiving non-small group day habilitation services who will be subject to a reduction in authorized service hours due to the service limitations identified in these provisions, DDA shall provide timely and adequate due process notice of the change in services and the person’s appeal rights, using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

9020 [RESERVED]

9021 EDUCATION SUPPORTS SERVICES

9021.1 The purpose of this section is to establish standards governing Medicaid eligibility for education supports services for persons enrolled in the IFS Waiver, and to establish conditions of participation for providers of education supports services in order to receive Medicaid reimbursement.

9021.2 Education supports services include tuition and general fees for adult post-secondary classes; on-campus peer supports that are designed to enable the person to function with greater independence, receive post-secondary education, and be integrated in the community; communication classes for a person who is deaf or hard of hearing; and adult education or tutoring for reading or math instruction.

9021.3 Education supports services will be authorized when:

- (a) The person requests the service or is recommended by the person’s support team;
- (b) The person has a demonstrated need for the service to enhance or maintain independence; to increase, maintain, or improve education; or to support increased community inclusion;

- (c) The person has an employment outcome or outcome-related goals for skill attainment or development that is documented in the service plan and is related to the need for education supports services;
- (d) Education supports services is included in the person's ISP and Plan of Care;
- (e) The person demonstrates that a previous application for Rehabilitation Services Administration (RSA) funded post-secondary education was made, by the submission of a letter documenting either ineligibility for RSA services or documenting that the person has fully utilized services available under related services as defined in Sections (22) and (25) of the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 *et seq.*);
- (f) The person submits a financial aid application annually to the following:
 - (1) The post-secondary institution the individual is attending or to which the individual has applied;
 - (2) The D.C. Tuition Assistance Grant, if applicable;
 - (3) All other District or state funded educational assistance programs and school grants or financial aid;
 - (4) The U.S. Department of Education (The Free Application for Federal Student Aid (FAFSA));
 - (5) All federal grant programs, including the Pell Grant; and
 - (6) The Leverage Educational Assistance Program (LEAP);
- (g) The person provides DDA with a copy of the FAFSA Student Aid Report (SAR) and any other aid award from each source; and
- (h) The person signs DDA's form authorizing the post-secondary institution to provide DDA with information relating to the person's training or educational program, including, but not limited to:
 - (1) A copy of the person's official transcript;
 - (2) A copy of the person's grades at the conclusion of each quarter or semester;
 - (3) Attendance records;
 - (4) Financial awards;

- (5) Notice of any disciplinary or adverse action; and
- (6) A copy of the person's Americans with Disabilities Act (ADA) accommodation plan.

9021.4 Medicaid-eligible reimbursement for education supports services shall be limited to the following:

- (a) Payment of tuition for adult education classes offered by a college, community college, technical school or university (*i.e.* institution of post-secondary education), which includes classes for which the person receives credit, classes that a person audits, classes that support paid or unpaid internships, remedial classes and comprehensive transition programs. At least seventy-five (75) percent of the time the person spends on campus must be integrated with the general student population.
- (b) Payment to those institutions of post-secondary education for general fees charged to all students, which includes but is not limited to fees such as technology fees, student facilities fees, university services fees and laboratory fees.
- (c) Reimbursement for on-campus peer support, which is provided by staff of the institution of post-secondary education, and not contracted staff, or by other students attending the institution of post-secondary education. These supports assist the person to learn roles or tasks that are related to the campus environment such as homework assistance, interpersonal skills and residential hall independent living skills.
- (d) Payment for classes to teach people who are deaf American Sign Language, Visual Gestural Communication, or another form of communication, which shall be in one-to-one classes with a communication education professional or group classes of no more than four (4) persons taught by communication education professional. In order to participate in these communication classes, the person shall:
 - (1) Be twenty-one (21) years of age or older (or have a high school diploma if under twenty-one (21) years of age); and
 - (2) Have been assessed as benefitting from learning American Sign Language, Visual Gestural Communication, or another form of communication.
- (e) Payment for adult education or tutoring program for reading or math instruction.

- 9021.5 Medicaid-eligible reimbursable education supports services shall be services that are delivered in the District of Columbia, Maryland, and Virginia within a twenty-five (25) mile radius of the District of Columbia.
- 9021.6 Medicaid-eligible reimbursement for education supports services shall not include:
- (a) Room and board;
 - (b) Payment for books or supplies;
 - (c) Payment for recreational classes, activities and programs offered through recreational commissions, townships, boroughs, or other governmental entities;
 - (d) Tuition for adult education classes offered by online universities;
 - (e) Tuition for online classes; or
 - (f) Tuition for adult education classes provided on disability-specific campuses.
- 9021.7 Medicaid-eligible reimbursement for education supports services shall not be authorized concurrently with the following Waiver services:
- (a) Companion;
 - (b) Creative Arts Therapies;
 - (c) Day Habilitation and Day Habilitation (small group);
 - (d) Employment Readiness;
 - (e) Individualized Day Supports;
 - (f) In-Home Supports;
 - (g) Respite;
 - (h) Supported Employment; and
 - (i) Wellness.
- 9021.8 Medicaid reimbursable education supports services shall not be authorized concurrently when on-campus peer support is offered by the institution of post-secondary education and authorized in the ISP.

- 9021.9 In order to be eligible for Medicaid reimbursement, each provider of education supports services shall comply with Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.
- 9021.10 In order to be eligible for Medicaid reimbursement, each provider of education supports services must first obtain a written Service Authorization from DDS before providing education supports services. DDS shall not be responsible for the payment of any post-secondary educational institution costs that the person may incur before receiving DDS's written commitment to fund the eligible costs at the post-secondary educational institution.
- 9021.11 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirement procedures:
- (a) DDS shall provide a written service authorization before the commencement of services;
 - (b) The service name and Waiver provider delivering services shall be identified in the ISP and Plan of Care;
 - (c) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
 - (d) The services to be provided shall not conflict with the service limitations described under § 9021.12.
- 9021.12 Education supports services are subject to the following limitations:
- (a) Education supports services provided through the IFS Waiver are available only to the extent that the person has fully utilized services available under related services as defined in Sections (22) and (25) of the Individuals with Disabilities Education Act (20 U.S.C. §§ 1400 *et seq.*), or available for funding by the Rehabilitation Services Administration;
 - (b) If used in combination with other day services or vocational support services (including day habilitation, employment readiness, small group supported employment, and individualized day supports), the combined hours for education supports services and these other services shall not exceed forty (40) hours per week, including the amount of time spent in classes and on-campus receiving on-campus peer supports;
 - (c) The maximum amount of reimbursement for education supports services a person may receive may not exceed either thirty-five thousand dollars (\$35,000) toward tuition or one hundred twenty (120) credit hours for post-secondary education in the person's lifetime; and

- (d) A person receiving education supports services may not exceed five thousand dollars (\$5,000) per semester of on-campus peer support for a person taking at least six (6) credit hours of classes per semester. On-campus peer support cannot be reimbursed through education supports services when the person takes fewer than six (6) credit hours of classes per semester.
- 9021.13 In order to be eligible for Medicaid reimbursement, an institution of post-secondary education providing education supports services shall be a post-secondary institution or program accredited by the United States Department of Education.
- 9021.14 In order to be eligible for Medicaid reimbursement, each adult education program providing education supports services shall:
- (a) Have a Waiver service location in the District of Columbia, Maryland, or Virginia;
- (b) Have a signed Waiver provider agreement on file with DDS;
- (c) Have at least one staff person with a four (4) year degree and state teaching credentials; and
- (d) Comply with DDS standards related to provider qualifications.
- 9021.15 Staff providing on-campus peer supports, as well as volunteers utilized in providing education supports services if they will spend any time alone with the person, must meet the following minimum standards:
- (a) Be acceptable to the person;
- (b) Be at least eighteen (18) years of age; and
- (c) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).
- 9021.16 In order to be eligible for Medicaid reimbursement, each communication education agency providing education supports services to teach communications to people who are deaf or hard of hearing must:
- (a) Have a Waiver service location in the District of Columbia, Maryland, or Virginia;

- (b) Have a signed Waiver provider agreement on file with DDS;
- (c) Complete standard DDS-required provider orientation and training;
- (d) Demonstrate compliance with DDS standards through completion of a self-assessment and validation of required documentation, policies and procedures;
- (e) Comply with DDS standards related to provider qualifications; and
- (f) Utilize teachers who, at a minimum, possess Qualified Level Certification from the American Sign Language Teachers Association (ASLTA).

9021.17

In order to be eligible for Medicaid reimbursement, each communication education professional employed by a communication education agency providing education supports services, as well as volunteers utilized in providing education supports services if they will spend any time alone with the person, must meet the following minimum standards:

- (a) Be acceptable to the person;
- (b) Be at least eighteen (18) years of age;
- (c) Have at least advanced or higher Sign Language Skills as determined by the Sign Language Proficiency Interview (SLPI); and
- (d) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).

9021.18

In order to be eligible for Medicaid reimbursement, each communication education professional providing education supports services to teach communications to people who are deaf or hard of hearing must:

- (a) Be acceptable to the person;
- (b) Be at least eighteen (18) years of age;
- (c) Have a Waiver service location in the District of Columbia, Maryland, or Virginia;
- (d) Have a signed Waiver provider agreement on file with DDS;

- (e) Complete standard DDS-required provider orientation and training;
- (f) Demonstrate compliance with DDS standards through completion of a self-assessment and validation of required documentation, policies and procedures;
- (g) Comply with DDS standards related to provider qualifications;
- (h) Have at least advanced or higher Sign Language Skills as determined by the SLPI; and
- (i) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*).

9021.19 Each provider of Medicaid reimbursable education supports services shall comply with Section 9009 (Provider Enrollment Process) and Section 9010 (Provider Qualifications) of Chapter 90 of Title 29 DCMR.

9021.20 Education supports services may be offered in individual one-to-one or in small group one-to-three (or one-to-four).

9021.21 There shall be a total of four (4) Medicaid reimbursement rates for education supports services for communication classes for people who are deaf or hard of hearing: for 1:1 services and for small group services (*i.e.* 1:2, 1:3 and 1:4 staffing ratios).

9021.22 There shall be a Medicaid reimbursement rate for education supports on-campus peer support services. The billable unit of service for education supports on-campus peer supports services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

9022 EMPLOYMENT READINESS SERVICES

9022.1 This section establishes standards governing Medicaid eligibility for employment readiness services for persons enrolled in the IFS Waiver and establishes conditions of participation for providers of employment readiness services.

9022.2 Employment readiness services occur over a defined period of time with specific outcomes to be achieved, and provide learning and work experiences, including volunteer work, where a person enrolled in the Waiver can develop general, non-job-task-specific strengths and new employment related skills that contribute to

employability in paid employment in an integrated community setting. A person receiving employment readiness services may pursue employment opportunities at any time to enter the general work force.

9022.3 To be eligible for Medicaid reimbursable employment readiness services, the services shall be identified in the ISP, Plan of Care, and Summary of Supports for each person enrolled in Waiver, and each person shall:

- (a) Demonstrate a need for employment readiness services; and
- (b) Have employment related goals included in the ISP.

9022.4 To be eligible for Medicaid reimbursement, employment readiness services shall support a person on his/her pathway to competitive, integrated employment and shall consist of the following:

- (a) Providing opportunities for persons enrolled in the Waiver to develop general, non-job, task-specific strengths and skills that contribute to employability and are consistent with the person's goals;
- (b) Assessment activities that occur annually or more frequently based upon the needs of the person, which require, at a minimum, a Positive Personal Profile and Job Search and Community Participation Plan, and may also include a customized employment assessment, and/or conducting a person-centered vocational and situational assessment and employment readiness assessments provided at community businesses and other community settings;
- (c) Social and soft skills training, including, but not limited to, the following:
 - (1) Following and interpreting instructions;
 - (2) Interpersonal skills, including building and maintaining relationships;
 - (3) Communication skills for communicating with supervisors, co-workers, and customers;
 - (4) Travel skills;
 - (5) Respecting the rights of others and understanding personal rights and responsibilities;
 - (6) Decision-making skills and strategies;
 - (7) Support for self-determination and self-advocacy; and

- (8) Budgeting and money management;
- (d) Developing work skills which shall include, at a minimum, teach the person the following:
 - (1) Appropriate workplace attire, attitude, and conduct;
 - (2) Work ethics;
 - (3) Attendance and punctuality;
 - (4) Task completion;
 - (5) Job safety;
 - (6) Attending to personal needs, such as personal hygiene or medication management; and
 - (7) Interviewing skills;
- (e) Coordinating transportation to community activities utilizing the Medicaid Non-Emergency Transportation Broker;
- (f) Employment exploration and employment preparation in the community; and
- (g) Coordinating community-based, integrated, volunteer experiences as set forth in § 9022.5.

9022.5 Volunteer experiences, as part of employment readiness, shall be time limited and shall allow the person to develop experience and build skills to further the person's employment goal, as identified in his or her ISP. A person enrolled in the Waiver may volunteer at a for-profit private sector entity, a not-for-profit organization or an approved government agency, but may not volunteer for the provider agency or another business affiliated with the provider. Volunteering at a for-profit business shall meet any requirements released by the U.S. Department of Labor. Guidance for those requirements can be found at: <http://www.dol.gov/whd/regs/compliance/whdfs71.pdf>.

9022.6 To be eligible for Medicaid reimbursement, a Positive Personal Profile and Job Search and Community Participation Plan shall be developed within thirty (30) days of the date when the person began receiving services. An additional vocational assessment, completed by a qualified professional, shall be conducted within the first ninety (90) days of participation, and shall include an assessment of the following:

- (a) Employment-related goals based on a person's strengths, interests, and areas for improvement;
- (b) Available natural or community supports;
- (c) Personal concerns and preferences, based upon what is important to and for the person;
- (d) Work and career interests based on exploration and/or discovery; and
- (e) Accommodations and supports, including an assessment of assistive technology, which may be required once the person is employed.

9022.7 To be eligible for Medicaid reimbursement, a Positive Personal Profile, Job Search and Community Participation Plan, and additional vocational assessment shall be conducted at least annually by the provider to evaluate each person enrolled in the Waiver's acquisition of employment-related skills based on the person's career preferences and goals as specified in their ISP and Plan of Care.

9022.8 Each provider of Medicaid reimbursable employment readiness services shall develop an individualized service delivery plan reflecting the person enrolled in the Waiver's interests, career preferences, choices, goals and prioritized needs. The plan shall:

- (a) Define the specific outcomes to be achieved over a specified period of time;
- (b) Describe the activities in the plan that are developed with the person and support the person on his or her pathway to competitive, integrated employment;
- (c) Describe how the plan shall support a person in the development of employment related skills, including social skills such as interviewing skills, professionalism, building and maintaining relationships, self-determination and self-advocacy, and attending to the person's needs; and
- (d) Describe community-based employment preparation experiences that are related to the person's employment goals.

9022.9 Each provider of Medicaid reimbursable employment readiness services shall submit reports to the DDS service coordinator on a quarterly basis, consistent with the record maintenance requirements described under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR. These reports shall also include the following information:

- (a) Volunteer activities provided;

- (b) Employment exploration and preparation in the community; and
- (c) Other employment readiness service activities provided.

9022.10 Each provider of Medicaid reimbursable employment readiness services shall develop, with the person, an individualized schedule of daily activities based upon the person's goals and activities as identified in his or her ISP, and consistent with what is in his or her Person-Centered Thinking and Discovery tools, of meaningful adult activities that support the person on his or her pathway to integrated, competitive employment.

9022.11 Each provider of Medicaid reimbursable employment readiness services shall maintain the following documents for monitoring and review, in addition to the record maintenance requirements described under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR:

- (a) A copy of the Positive Personal Profile, Job Search and Community Participation Plan, and additional comprehensive vocational assessment; and
- (b) A written daily schedule identifying the utilization of employment readiness services.

9022.12 To receive Medicaid reimbursement, employment readiness services shall provide opportunities for community engagement, inclusion and integration.

9022.13 To receive Medicaid reimbursement, each provider of employment readiness services shall be a HCBS Provider agency and shall meet the following requirements:

- (a) Comply with the requirements described under Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR;
- (b) Demonstrate, through experience or academic attainment of the executive staff, the ability and qualification to provide employment readiness services for persons with intellectual and developmental disabilities with varying habilitation needs; and
- (c) Have at least one (1) staff member with a bachelor's degree in vocational rehabilitation or a similar discipline, and one (1) year of combined supervisory and "job coaching" experience or experience providing employment services to person with disabilities.

- 9022.14 Each provider of Medicaid reimbursable employment readiness services shall comply with the requirements under Section 9008 (Home and Community-Based Settings Requirements) of Chapter 90 of Title 29 DCMR.
- 9022.15 When employment readiness services are provided in a facility, each facility shall comply with all applicable federal, District, or state and local laws and regulations in order to receive Medicaid reimbursement. Effective November 1, 2020, no increase in the number of facility-based settings shall be authorized. Current providers shall be prohibited from increasing the number of facility-based settings at which services are provided; and newly enrolling providers shall be prohibited from providing services at any facility-based settings.
- 9022.16 All payment for employment related training services shall be in accordance with the United States Fair Labor Standards Act of 1985.
- 9022.17 The employment readiness Medicaid reimbursement rate shall include coverage for any personal care services provided by an employment readiness services provider.
- 9022.18 To be eligible for Medicaid reimbursement, each DSP shall meet the following requirements:
- (a) Comply with Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR; and
 - (b) Have at least one (1) year of experience working with people with intellectual and developmental disabilities, or one year of comparable experience.
- 9022.19 Employment readiness services shall be authorized for Medicaid reimbursement if:
- (a) DDS provided a written service authorization before the commencement of services;
 - (b) The provider develops a Positive Personal Profile and Job Search and Community Participation Plan, conducts an additional initial vocational assessment and then an annual Positive Personal Profile and Job Search and Community Participation Plan and additional vocational assessment thereafter; and develops an employment readiness plan with training goals and techniques that will assist the person to achieve employment readiness goals and outcomes based upon the person's interests and preferences. The initial Positive Personal Profile and Job Search and Community Participation Plan shall be completed within the first thirty (30) days of service delivery and the additional vocational assessment shall be completed within the first ninety (90) days of service delivery;

- (c) The service name and provider delivering services are identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
- (e) Services shall not conflict with the service limitations described under § 9022.20.

9022.20 Medicaid reimbursement shall only cover services furnished to a person enrolled in the Waiver for up to eight (8) hours per day, not to exceed forty (40) hours per week, which will not include reimbursement for travel time spent in transportation to and from the program.

9022.21 Medicaid reimbursable employment readiness services shall not be provided, or billed at the same time as the following services:

- (a) Day Habilitation;
- (b) Supported Employment;
- (c) In-Home Supports;
- (d) Companion;
- (e) Personal Care Services; and
- (f) Individualized Day Supports.

9022.22 Employment readiness providers shall not pay a stipend to a person for attendance or participation in activities at the employment readiness program.

9022.23 An employment readiness provider shall not concurrently employ a person and be his or her provider of Medicaid employment readiness services.

9022.24 Employment readiness services are not available to people who are eligible to participate and are fully supported in programs funded under Section 110 of the Rehabilitation Act of 1973, enacted September 26, 1973, as amended (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Sections 602(16) and (17) of the Individuals with Disabilities Education Act, enacted April 13, 1970, as amended (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, employment readiness services may be used to provide additional supports for employment for persons eligible for and participating in those programs.

9022.25 Each provider of employment readiness services shall maintain the required staff-to-person ratio, as indicated in the person's ISP and Plan of Care, with a maximum

staffing ratio of 1:4. For a person that requires 1:1 supports (behavioral and/or medical) in an Employment Readiness setting:

- (a) The DSP providing 1:1 employment readiness services shall be trained in physical management techniques, positive behavioral support practices and other training required to implement the person's health care management plan and behavioral support plan (BSP), in accordance with DDS's Training policy and procedure;
- (b) There shall be an approved BSP or physician's order for 1:1 staffing support; and
- (c) When required by a person's BSP, the DSP shall accurately complete the behavioral data sheets.

9022.26 The billable unit of service for Medicaid reimbursable employment readiness services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to be able to bill a unit of service.

9022.27 No Employment Readiness setting may have a daily census that exceeds fifty (50) people who are in the setting for more than twenty (20) percent of the day, inclusive of people who receive supports through the Waiver and people who live in intermediate care facilities for individuals with intellectual disabilities and are engaged in active treatment at the setting.

9022.28 The following time limitations apply to the use of employment readiness services:

- (a) For people who are not currently enrolled in employment readiness services, the service shall only be authorized for up to one (1) year, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services;
- (b) For people who are currently enrolled in employment readiness services, the service shall only be reauthorized for up to one (1) year from the person's next ISP effective date, except that DDS may approve up to a one-year extension if there is documentation that the person is making progress towards competitive integrated employment and would benefit from extended services. For people who have an ISP meeting scheduled within ninety (90) days of the Waiver renewal effective date, DDS may authorize an additional ninety (90) days of employment readiness services if needed to ensure a smooth transition;
- (c) If a person has exhausted employment readiness services and has had at least one (1) year since the end of that service; expresses an interest in

employment; and the support team has identified specific goals around building employment skills that are reflected in the ISP, then DDS may authorize employment readiness services one time for up to one (1) year;

- (d) Any time that a person loses his or her job, voluntarily leaves employment, or is employed and is seeking to learn new job skills, DDS may authorize employment readiness services for up to one (1) year; and
- (e) For any person who is currently receiving employment readiness services who will be subject to a reduction in authorized service hours due to the service limitations listed above, DDS will provide timely and adequate due process notice of the change in services and the person’s appeal rights in accordance with 90 DCMR § 9007 (Initiating, Changing, or Terminating Any Approved Service) and using the process described in the DDS Person-Centered Planning Process and Individual Support Plans policy and procedures, or the successor documents.

9022.29 As of the effective date of this regulation, any new Employment Readiness setting shall be fully compliant with the requirements of the HCBS Settings Rule.

9022.30 Within one (1) year of the effective date of this § 9022.30, all existing Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services. Any new Employment Readiness providers must become enrolled as a provider for Rehabilitation Services Administration services within one (1) year of becoming an HCBS Waiver Employment Readiness provider.

9023 FAMILY TRAINING SERVICES

9023.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 9023.9 (“Medicaid Providers”) and family training services professionals and peer employees enumerated in § 9023.8 to provide family training services to caregivers of persons enrolled in the IFS Waiver.

9023.2 Medicaid reimbursable family training services are training, counseling, and other professional support services offered to uncompensated caregivers who provide support, training, companionship, or supervision to persons enrolled in the IFS Waiver, in accordance with the following:

- (a) Family training services includes instruction about treatment regimens and other services included in the plan of care, use of equipment specified in the plan of care, and includes updates as necessary to safely maintain the individual at home;
- (b) Counseling may be aimed at assisting the unpaid caregiver in meeting the needs of the individual;

- (c) All training and counseling must be included in the individual's plan of care;
- (d) Family training services are available as a one-to-one (1:1) service for a person, based upon the recommendation of the person's support team as reflected in the person's ISP;
- (e) Family training services may be provided by professionals or peer employees who meet the qualifications at § 9011.3; and
- (f) A person served through the IFS Waiver may utilize both one-to-one (1:1) family training services and services provided by professionals and qualified peer employees, subject to the limitations in § 9023.14.

9023.3 Uncompensated caregivers include any family member, neighbor, friend, companion, or co-worker who regularly provides uncompensated care to the person.

9023.4 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the DDS prior to providing, or allowing any professional to provide, family training services. In its request for prior authorization, the Medicaid provider shall document the following:

- (a) The person's need for additional, uncompensated support;
- (b) The family training services professional who will provide the family training services; and
- (c) The individual caregivers who will receive the family training services.

9023.5 In order to be eligible for Medicaid reimbursement, each family training services professional shall conduct an assessment of family training needs within the first four (4) hours of service delivery, and shall develop a training plan with training goals and techniques that will assist the unpaid caregivers of the person in the IFS Waiver. The training plan shall include measurable outcomes and a schedule of approved family training services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.

9023.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's ISP and Plan of Care:

- (a) The date and amount of family training services provided;
- (b) The nature of the family training services provided;
- (c) The professional who provided the family training services; and
- (d) The individual caregivers who received the family training services.

9023.7 Medicaid reimbursable family training services shall include the following activities:

- (a) Instruction about treatment regimens and other services included in the person’s ISP and Plan of Care;
- (b) Instruction on the use of equipment specified in the person’s ISP and Plan of Care;
- (c) Counseling aimed at assisting the unpaid caregiver in meeting the needs of the person; and
- (d) Follow up training necessary to safely maintain the person at home.

9023.8 Medicaid reimbursable family training services shall be provided by either professionals or peer employees as follows:

- (a) Professionals shall be qualified as at least one (1) of the following:
 - (1) Special Education Teacher;
 - (2) Licensed Graduate Social Worker;
 - (3) Licensed Clinical Social Worker;
 - (4) Physical Therapist;
 - (5) Occupational Therapist;
 - (6) Registered Nurse; or
 - (7) Speech Pathologist.
- (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 9011.3.

9023.9 In order to be eligible for Medicaid reimbursement, each family training services professional shall be employed by the following Medicaid providers:

- (a) An IFS Waiver Provider enrolled by DDS; or
- (b) A Home Health Agency as defined in Section 9099 of Chapter 90 of Title 29 of the DCMR.

9023.10 Each Medicaid provider shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 of the DCMR.

9023.11 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) A copy of the most recent DDS approved ISP and Plan of Care, which shall include the documentation required by § 9023.6;
- (b) The training plan developed in accordance with the requirements of § 9023.5; and
- (c) The documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 of the DCMR.

9023.12 Each Medicaid provider shall comply with Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 of the DCMR.

9023.13 Medicaid reimbursable family training services shall not exceed a total of four (4) hours per day and one hundred (100) hours per year. Any hours in excess of these limits must be pre-approved by DDS pursuant to § 9023.14.

9023.14 In order to be eligible for Medicaid reimbursement, professionals requesting pre-approval from DDS to provide family training services in excess of four (4) hours per day and one hundred (100) hours per year must demonstrate the need for such services. The decision of DDS to approve or disapprove the request for additional services, in whole or in part, shall be final.

9023.15 The billable unit of service for Medicaid reimbursable family training services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes in order to be able to bill a unit of service.

9024 INDIVIDUALIZED DAY SUPPORTS SERVICES

9024.1 This section establishes standards governing Medicaid eligibility for individualized day supports services for persons enrolled in the IFS Waiver, and shall establish conditions of participation for providers of individualized day supports services seeking Medicaid reimbursement.

9024.2 The following rules pertain only to Medicaid reimbursable individualized day supports services to be received by a person enrolled in the IFS Waiver, hereinafter referred to as “person” or “persons”.

- 9024.3 In order to receive Medicaid reimbursement for individualized day supports services, the person's ISP and Plan of Care must document that the need for the service is consistent with the person's assessed needs and personally chosen goals including what is important to and for the person as documented in his or her Person-Centered Thinking and Discovery Tools and recorded in the ISP and Plan of Care, and show at least one of the following:
- (a) That the person chooses to participate in habilitation services in a variety of integrated and inclusive community-based settings which enable the person to attain or maintain his or her maximum functional level and gain greater independence;
 - (b) That the person is transitioning into retirement or is retired and chooses to continue habilitation services in a variety of integrated and inclusive community-based settings;
 - (c) That the person has person-centered ISP goals for community integration and participation including building, strengthening and maintaining relationships with persons not paid to be with the person or vocational exploration that may lead to further employment services and supports;
 - (d) That the person is likely to be successful in achieving one or more of his or her ISP goals through individualized day supports; or
 - (e) That the person has a documented need for individualized day supports due to medical or safety issues that are consistent with the Health Care Management Plan (HCMP) and Behavioral Support Plan.
- 9024.4 Medicaid reimbursable individualized day supports services shall:
- (a) Be habilitative in nature;
 - (b) Be delivered in integrated, inclusive community settings; and
 - (c) Be provided in a group consisting of no more than two (2) persons.
- 9024.5 Medicaid reimbursable individualized day supports (IDS) services shall provide:
- (a) Highly individualized, pre-planned activities and opportunities that occur within integrated and inclusive community settings and that emphasize the development of skills to support community participation and involvement, self-determination, community membership, community contribution, retirement or vocational exploration, and life skills training;

- (b) Activities that maximize the person's functional abilities for successful participation in integrated community activities and opportunities that match a person's interests and goals;
- (c) Activities that support the person's informed choice in identifying his or her own areas of interest and preferences, including but not limited to community mapping, employment exploration and discovery where appropriate;
- (d) Activities that provide community-based opportunities for personal and adult skill development through socialization, participation in membership-based community groups and associations, and forming and maintaining relationships with other community members;
- (e) Training in the safe and effective use of one or more modes of accessible public transportation and/or coordination and provision of transportation by the individualized day supports provider to support participation in community activities consistent with the intent of this service; and
- (f) For persons who live in their own home or with their family and who select this, IDS may include provision of one (1) nutritionally adequate meal including preparation, packaging, and delivery, as needed. The provision of meals shall take place during typical lunchtime hours (11 a.m. to 1 p.m.), prepared based on the person's specific needs as per the Level of Need Assessment (LON), and when necessary, the nutritionist/doctor's recommendation. This meal must be one-third (1/3) of a person's Recommended Dietary Allowance (RDA) and must be comprised of foods the person enjoys eating when not medically contraindicated.

9024.6 In order to be eligible for Medicaid reimbursement, each individualized day supports provider entity shall:

- (a) Comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR;
- (b) For current providers, provide verification of passing the Department on Disability Services (DDS) Provider Certification Review (PCR) for the last three (3) years. For providers with less than three (3) years of PCR certification, provide verification of a minimum of three (3) years of experience providing day, employment, residential or respite services to the IFS waiver population, evidence of certification or licensure from the jurisdiction in which the service was delivered, and evidence of PCR certification for each year that the provider was enrolled as a waiver provider in the District of Columbia, if applicable;

- (c) Provide oversight, supervision and training of all DSP providing individualized day supports; and
- (d) Maintain a staff-to-person ratio as indicated in the ISP and Plan of Care up to a maximum ratio of one to two (1:2), while always ensuring that services meet the person's needs and are provided appropriately and safely.

9024.7 Services shall only be authorized for Medicaid reimbursement if the following conditions are met:

- (a) DDS provides a written service authorization before service delivery begins;
- (b) The IDS service name and enrolled provider are identified in the ISP, Plan of Care, and Summary of Support Services;
- (c) The amount and frequency of services to be received is documented in the ISP, Plan of Care, and Summary of Support Services;
- (d) Services shall not conflict with the service limitations described under § 9024.12;
- (e) The staffing plan and initial community integration plan described under § 9024.10 are submitted within five (5) business days of the start of services using the template required by DDS;
- (f) An on-going community integration plan, using the template required by DDS, and described under § 9024.10 is submitted thirty (30) calendar days, plus seven (7) business days, from the start date of the individualized day supports service and then within seven (7) business days after the conclusion of each ISP quarter; and
- (g) A quarterly report, using the template required by DDS, is submitted within seven (7) business days after the conclusion of each ISP quarter.

9024.8 Each DSP providing individualized day supports shall meet all of the requirements in Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR, and requirements in § 9024.9 in order to be eligible for Medicaid reimbursement.

9024.9 In order to be eligible for Medicaid reimbursement, each DSP providing IDS services shall meet the following requirements:

- (a) To the extent the DSP is providing 1:1 individualized day supports services based upon the person's medical or behavioral support needs, have at least

one year of experience supporting people with Intellectual and Developmental Disabilities;

- (b) Meet additional training requirements for an Individualized Day Supports DSP, as required by DDS policy and procedure, within one year of the effective date of the waiver amendment;
- (c) Assist with the development of the initial and on-going community integration plans to implement the individualized day supports services;
- (d) Coordinate the scheduled activities specified under the initial and on-going community integration plans;
- (e) Assist with the writing of quarterly reports;
- (f) Utilize positive behavioral support strategies and crisis interventions as described in the approved Behavioral Support Plan to address emergency situations; and
- (g) Support persons enrolled in the Waiver to learn to use public transportation.

9024.10

Each provider approved to provide IDS services shall, in order to be eligible for Medicaid reimbursement, maintain documents for monitoring and audit reviews as described under Section 9006 (Records and Confidentiality of Information) of Chapter 90, of Title 29 DCMR, and maintain the following additional records:

- (a) A contingency plan that describes how the IDS will be provided when the primary DSP is unavailable; and, if the lack of immediate support poses a serious threat to the person's health and welfare, how the support will be provided when back-up DSPs are also unavailable;
- (b) An initial community integration plan, during the first thirty (30) days a person is receiving IDS, utilizing the template required by DDS and containing the following information:
 - (1) The name of the person receiving the service;
 - (2) Service start date;
 - (3) The names of the primary and back-up DSPs that will be delivering the service during the first thirty (30) days of service;
 - (4) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;

- (5) Goals in ISP that trigger authorization for individualized day supports;
 - (6) Schedule of service and calendar of activities for the first thirty (30) days;
 - (7) Back-up activities for the first thirty (30) days that relate to the person's individualized day supports goals and/or exploration and discovery; and
 - (8) Goals to be achieved in the first thirty (30) days of service and methods that will be used to achieve the goals.
- (c) After a person has received IDS for thirty (30) calendar days, an on-going community integration plan utilizing the template required by DDS and containing the following information:
- (1) The name of the person receiving the services;
 - (2) The names of the primary and back-up DSPs delivering services;
 - (3) The back-up staffing plan if neither the primary or back-up DSPs are available to deliver the service;
 - (4) Goals for the service falling under any of the following categories: Community Membership; Relationships & Natural Supports; Career Exploration & Employment; Retirement (for individuals 61 or older); Community Contribution; Self-Determination; Community Navigation; Wellness/Fitness, or others as listed in the community integration plan template;
 - (5) The highly individualized, integrated community activity/activities or opportunity/opportunities that will support achievement of the goals;
 - (6) Specific skills the person will be assisted to learn that can help with achievement of his/her goals and help the person participate successfully, and as independently as possible, in the Activities/Opportunities;
 - (7) Measurable outcomes promoting community integration which are expected and will indicate the goals have been achieved;
 - (8) Calendar of activities for the quarter and back-up activities for the quarter; and

- (9) Teaching objectives, strategies and measurable outcomes for skill development goals;
- (d) Within seven (7) business days of the conclusion of each ISP quarter, submit to the DDS service coordinator a quarterly report, utilizing the template required by DDS and containing the following information:
 - (1) Description of person’s attendance and participation;
 - (2) Description of person’s relationship with the assigned DSPs;
 - (3) Description of the person’s relationships with others paired with the person to receive the service, if applicable;
 - (4) Description of how the activities and opportunities offered through individualized day supports contributed to the achievement of the person’s service goals;
 - (5) Description of skill development gains and next steps to continue progress on skill development; and
 - (6) Description of career and vocational exploration activities and outcomes for working-age participants in individualized day supports.
- (e) A Positive Personal Profile and Job Search and Community Participation Plan shall be developed annually and reviewed at least quarterly, and that is updated as needed, based upon what is being learned about the person’s needs and interests by the individualized day supports provider. Positive Personal Profile and Job Search and Community Participation Plan shall be used to inform, and attached to, the initial and on-going community integration plans.

9024.11 In order to be eligible for Medicaid reimbursement, each Provider approved to provide individualized day supports services shall comply with Section 9013 (Reporting Requirements); Section 9006 (Records and Confidentiality of Information), except that quarterly reports shall meet the requirements within § 9024.10 above; and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.

9024.12 Medicaid shall only reimburse individualized day supports services for a minimum of two (2) and a maximum of six (6) hours per day; and a minimum of four (4) and a maximum of thirty (30) hours per week. This service may be offered in combination with Day Habilitation, Employment Readiness, Supported Employment services as a wraparound service in combination with any of the

aforementioned services. When two or more of these services are offered, a person may not receive more than a combined total of forty (40) hours per week of services.

- 9024.13 Individualized day supports are an alternative to facility-based day programs and shall take place during regular Monday to Friday day program hours; except that individualized day supports may occur during non-traditional hours for persons who are employed during the day and would benefit from the service. Additional variances may be approved by the DDS Director, or his or her designee, based upon the person's assessed needs, schedule of other activities, and recommendations of the person's support team.
- 9024.14 Time spent in transportation to and from IDS generally shall not be included in the total amount of services provided per day. However, IDS may include the time a DSP spends accompanying the person on public transportation (excluding Medicaid funded non-emergency transportation) for the purposes of training the person to travel using public transportation, including when the person's IDS day begins and ends at the person's residence. IDS and Medicaid funded non-emergency transportation may not be billed during the same period of time. Medicaid funded non-emergency transportation may not be used during the provision of IDS. Medicaid funded non-emergency transportation may be used to transport the person to and from IDS; however, it should not preclude opportunities for the person to learn to use public transportation as part of participation in IDS.
- 9024.15 Personal care/assistance may be a component of individualized day supports as necessary to meet the needs of a person but may not comprise the entirety of the service.
- 9024.16 This service shall not provide reimbursement to Senior Centers funded by the federal Older Americans Act authorized to provide services to older adults.
- 9024.17 The Individualized Day Program does not include activities that are the responsibility of the In-Home Supports provider, such as cooking or laundry activities.
- 9024.18 A person receiving individualized day supports may meet his or her DSP at a facility-based day habilitation or employment readiness setting, but only if this is necessary and appropriate for the person receiving the services. Individualized day services shall not occur in a facility-based setting. On site attendance at the facility-based day habilitation or employment readiness program is not a requirement to receive services that originate from that setting.
- 9024.19 A DSP may be the person's relative, but may not be legally responsible for the person, or the person's legal guardian.

- 9024.20 A person receiving IDS may start and end his or her day at his or her place of residence, if that is the person's preference and/or is recommended by the person's support team and reflected in his or her IDS Community Participation Plan.
- 9024.21 Each provider of Medicaid reimbursable individualized day supports services shall comply with the requirements under Section 9008 (Home and Community-Based Settings Requirements) of Chapter 90 of Title 29 DCMR.
- 9024.22 Individualized day supports may be authorized as either a one-to-one service for a person, or in in small group settings not to exceed 1:2 based upon the person's assessed needs; and for limited times, as approved by DDS, based on the ability to match the participant with an appropriate peer to participate with for small group IDS.
- 9024.23 Individualized day supports shall be billed at the unit rate established for the staffing ratio noted in the service authorization. There shall be a Medicaid reimbursement rate for 1:1 staffing ratio and 1:2 staffing ratio. For persons who live independently or with family and select to receive a meal, the rate is increased by a dollar amount per day that the person receives a meal. This service shall not exceed one thousand, five hundred and sixty (1,560) hours per year or six thousand two hundred and forty (6,240) units annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of services to bill for one (1) unit of service.
- 9024.24 The individualized day supports rate includes funding for transportation and activities for the person and the DSP. When the person and/or his support team identifies activities with costs that would create a hardship for the individualized day supports provider, and the person has the ability to pay, the provider may submit a written request for approval from the DDS Director, or his or her designee, to have the person contribute to the cost of the individualized day supports activities.
- 9024.25 Persons receiving individualized day supports services may receive two (2) or more types of non-residential habilitation services, (*e.g.*, Supported Employment, Small Group Supported Employment, Employment Readiness, Companion, and/or Day Habilitation); however, more than one (1) service may not be billed during the same period of time (*e.g.*, the same fifteen (15) minute unit).

9025 IN-HOME SUPPORTS SERVICES

- 9025.1 The purpose of this section is to establish standards governing Medicaid eligibility for in-home supports services for persons enrolled in the Home and Community-Based Services Waiver for Individual and Family Support (IFS Waiver), and to establish conditions of participation for providers of these services.

9025.2 In order to be reimbursed by Medicaid, in-home supports are services that may only be provided to people enrolled in the Waiver who have an assessed need for assistance with acquisition, retention or improvement in skills related to activities of daily living that are necessary to enable the person to reside successfully at home in his or her community and participate in community activities based upon what is important to and for the person as documented in his or her ISP and reflected in his or her Person-Centered Thinking and Discovery tools.

- (a) Services may be provided to people in the home or community, with the place of residence as the primary setting. A person may receive in-home supports services when his or her place of residence is his or her own home, a family home, a friend's home, or transitional housing.
- (b) Services may be provided in person, by phone or by any other technology device that supports the use of video-audio communication, such as Skype, FaceTime, etc., as approved by the person and his or her support team and documented in the ISP. In-home supports services using technology to communicate with the person shall not exceed twenty (20) percent of the total hours of in-home supports services that the person receives each week.
- (c) For people with higher intensity support needs, high acuity in-home supports services are available with the additional supports described below in § 9025.4.

9025.3 To be eligible for reimbursement, in-home supports services shall be:

- (a) Included in a person's ISP and Plan of Care and related to the person's ISP goals;
- (b) Habilitative in nature; and
- (c) Provided to a person living independently or with family or friends and not receiving other residential supports.

9025.4 In order to be reimbursed by Medicaid, in-home supports services shall include a combination of hands-on care, habilitative supports, skill development and assistance with activities of daily living. Supports provided shall be aimed at teaching the person to increase his or her skills and self-reliance. In addition to the direct in-home supports eligible for reimbursement below in § 9025.5, high acuity in-home supports shall also include the following:

- (a) Assistance in the coordination of behavioral, health and wellness services that a person may receive, including working with the person's natural supports, if any, to ensure that each person enrolled in the Waiver receives the professional services required to meet his or her goals as identified in the person's ISP and Plan of Care;

- (b) Development and implementation of the person's Health Care Management Plan, in accordance with the DDS Health and Wellness Standards;
- (c) Training on the Health Care Management Plan for high acuity in-home supports DSPs and any other residents of the person's home who provide natural (unpaid) supports; and
- (d) Supports to ensure that staff delivering day habilitation, individualized day supports, companion, employment readiness, or supported employment services shall receive training about the person's health care needs as identified in the person's Health Care Management Plan, and are informed about those needs that are relevant to the person in those settings and that are identified in the person's Health Care Management Plan and Behavior Support Plan, if applicable.

9025.5 In-home supports eligible for reimbursement shall include the following:

- (a) Training and support in activities of daily living and independent living skills;
- (b) Support to enhance opportunities for meaningful adult activities and skills acquisition that support community integration and a person's independence, including management of financial and personal affairs and awareness of health and safety precaution;
- (c) Support to enhance opportunities for community exploration aimed at discovery of new and emerging interests and preferences, including activities aimed at supporting the person to have one or more new relationships;
- (d) Support to build community membership;
- (e) Training on, and assistance in the monitoring of health, nutrition, and physical wellness;
- (f) Implementation of a home therapy program under the direction of a licensed clinician;
- (g) Training and support to coordinate or manage tasks outlined in the Health Care Management Plan, if applicable;
- (h) Assistance in performing personal care, household, and homemaking tasks that are specific to the needs of the person, except that this may not comprise the entirety of the service;

- (i) Assistance with developing the skills necessary to reduce or eliminate behavioral episodes by implementing a Behavioral Support Plan (BSP) or positive strategies;
- (j) Opportunities for the person to seek employment and vocational supports to work in the community in a competitive and integrated setting;
- (k) Assistance with the acquisition of new skills or maintenance of existing skills based on individualized preferences and goals identified in the In-Home Supports Plan, ISP, and Plan of Care; and
- (l) Coordinating transportation to participate in community events consistent with this service.

9025.6 Each provider rendering in-home supports services shall:

- (a) Be a Waiver provider agency; and
- (b) Comply with Sections 9010 (Provider Qualifications) and 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9025.7 Each DSP rendering in-home supports services shall comply with Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR.

9025.8 In-home support services shall be authorized in accordance with the following provider requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The service name and provider delivering services shall be identified in the ISP and Plan of Care;
- (c) The ISP and Plan of Care shall document the amount and frequency of services to be received;
- (d) The In-Home Supports Plan, ISP, and Plan of Care shall be submitted to and authorized by DDS annually or as needed; and
- (e) The provider shall submit each quarterly review to the person's DDS Service Coordinator no later than seven (7) business days after the end of the first quarter, and each subsequent quarter thereafter.

9025.9 Each provider shall comply with the requirements under Section 9013 (Reporting Requirements), Section 9006 (Records and Confidentiality of Information), and

Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR, except that the progress notes as described in § 9006.2(m) shall be maintained on a per visit basis.

9025.10 Each provider of Medicaid reimbursable in-home support services shall assist each person in the acquisition, retention, and improvement of skills related to activities of daily living, such as personal grooming, household chores, eating and food preparation, and other social adaptive skills necessary to enable the person to reside in the community. To accomplish these goals, the provider shall:

- (a) Use the DDS-approved person-centered thinking tools and the person's Positive Personal Profile and Job Search and Community Participation Plan to develop a functional assessment that includes what is important to and for the person, within the first thirty (30) calendar days of providing services. This assessment shall be reviewed and revised annually or more frequently as needed;
- (b) Assist with and actively participate in the development of the person's In-Home Supports Plan, ISP, and Plan of Care, at the person's preference;
- (c) Review the person's In-home Supports Plan, ISP and Plan of Care goals, DDS-approved person-centered thinking tools, Positive Personal Profile and Job Search and Community Participation plan, objectives, and activities at least quarterly, and more often as necessary and submit quarterly reports to the person, family or representative, as appropriate, guardian, and the DDS Service Coordinator no later than seven (7) business days after the end of the first quarter or each subsequent quarter thereafter and in accordance with the requirements described under Section 9013 (Reporting Requirements) and Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

9025.11 In order to be reimbursed by Medicaid, an In-Home Supports Plan shall be developed by the provider within thirty (30) days of the start of the service authorization and shall be revised as needed and on an annual basis. The In-Home Supports Plan shall be maintained in the home where services are provided with a copy also maintained at the Provider's main office. The In-Home Supports Plan shall include:

- (a) Activities and supports that will be provided during the service, based upon what is important to and important for the person, as identified in the Person-Centered Thinking and Discovery tools and reflected in the person's ISP;
- (b) A staffing plan and schedule;
- (c) A list of licensed non-medical professionals who will be providing services, if applicable; and

- (d) Emergency and contingency plans to address potential behavioral, health or emergency events.
- 9025.12 In-home supports services shall only be provided for up to eight (8) hours per day unless there is a temporary emergency. In the event of a temporary emergency, DDS may authorize up to sixteen (16) hours per day for up to one hundred and eighty (180) days, during the person's ISP year.
- 9025.13 In the event of a temporary emergency, a written justification for an increase in hours shall be submitted with the In-Home Supports Plan, ISP, and Plan of Care by the provider to DDS. The written justification must include:
- (a) An explanation of why no other resource is available;
 - (b) A description of the temporary emergency;
 - (c) An explanation of how the additional hours of in-home supports services will support the person's habilitative needs;
 - (d) A revised copy of the in-home Supports Plan, ISP, and Plan of Care reflecting the increase in habilitative supports to be provided; and
 - (e) The service authorization from the Medicaid Waiver Supervisor or other Department on Disability Services Administration designated staff.
- 9025.14 All DSPs, including family members, who provide in-home supports services shall comply with Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR.
- 9025.15 Family members who provide in-home supports services and reside in the same home as the person receiving services may only be paid for in-home support services that are in accordance with the person's ISP goals.
- 9025.16 In-home supports services shall not be provided to persons receiving residential services.
- 9025.17 In-home supports services may be used on the same day, or in combination with Medicaid State Plan Personal Care Aide (PCA) services, IFS waiver PCA services, and Companion services, provided the services are not rendered at the same time.
- 9025.18 In-home supports services shall not be used to provide supports that are normally provided by medical professionals.
- 9025.19 In-home supports services, including those provided in the event of a temporary emergency, shall be billed at the unit rate of fifteen (15) minutes and shall not

exceed eight (8) hours per twenty-four (24) hour day. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed. There shall be a Medicaid reimbursement rate for both the in-home supports identified in § 9025.5 and the high acuity in-home supports identified in § 9025.4. Reimbursement shall be limited to those time periods in which the provider is rendering services directly to the person.

9025.20 Reimbursement for in-home supports services shall not include:

- (a) Room and board costs;
- (b) Routine care and general supervision normally provided by the family or unpaid individuals who provide supports, or for services furnished to a minor by the child's parent or step-parent or by a person's spouse;
- (c) Services or costs for which payment is made by a source other than Medicaid;
- (d) Travel or training of travel skills to Supportive Employment, Day Habilitation, Individualized Day Supports, or Employment Readiness; and
- (e) Costs associated with the DSP engaging in community activities with the people they support.

9026 OCCUPATIONAL THERAPY SERVICES

9026.1 This section shall establish conditions of participation for Medicaid providers enumerated in § 9026.9 (Medicaid Providers) and occupational therapy professionals enumerated in § 9026.8 (professionals) to provide occupational therapy services to persons enrolled in the Home and Community-Based Services Waiver for Individual and Family Support (IFS Waiver).

9026.2 Occupational therapy services are services that are designed to maximize independence, prevent further disability, and maintain health.

9026.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from the Department on Disability Services (DDS) before providing, or allowing any professional to provide, occupational therapy services. In its request for prior authorization, the Medicaid provider shall document the following:

- (a) The person's need for occupational therapy services as demonstrated by a physician's order; and
- (b) The name of the professional who will provide the occupational therapy services.

- 9026.4 In order to be eligible for Medicaid reimbursement, each occupational therapy professional shall conduct a comprehensive assessment of occupational therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 9026.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person's caregiver, and a schedule for ongoing services. The therapy plan shall include:
- (a) The anticipated and measurable functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP;
 - (b) A schedule of approved occupational therapy services to be provided; and
 - (c) Shall be submitted by the Medicaid provider to DDS before services are delivered.
- 9026.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's ISP and Plan of Care:
- (a) The date, amount, and duration of occupational therapy services provided;
 - (b) The scope of the occupational therapy services provided; and
 - (c) The name of the professional who provided the occupational therapy services.
- 9026.7 Medicaid reimbursable occupational therapy services shall consist of the following activities:
- (a) Consulting with the person, their family, caregivers and support team to develop the therapy plan;
 - (b) Implementing therapies described under the therapy plan;
 - (c) Recording progress notes and quarterly reports during each visit. Progress notes shall contain the following:
 - (1) Progress in meeting each goal in the ISP;
 - (2) Any unusual health or behavioral events or changes in status;
 - (3) The start and end time of any services received by the person; and

- (4) Any matter requiring follow-up on the part of the service provider or DDS;
- (d) Routinely assessing (at least annually and more frequently as needed) the appropriateness, quality and functioning of adaptive equipment to ensure it addresses the person’s needs;
- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission;
- (f) Participating in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her; and
- (g) Conducting periodic examinations and modified treatments for the person, as needed.

9026.8 Medicaid reimbursable occupational therapy services shall be provided by a licensed occupational therapist.

9026.9 Occupational therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, their guardian, or legal representative.

9026.10 In order to be eligible for Medicaid reimbursement, an occupational therapist shall be employed by the following providers:

- (a) An IFS Waiver provider enrolled by DDS; and
- (b) A Home Health Agency as defined in Section 9099 of Title 29 DCMR.

9026.11 Each Medicaid provider shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9026.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:

- (a) The physician’s order;
- (b) A copy of the occupational therapy assessment and therapy plan in accordance with the requirements of §§ 9026.4 and 9026.5; and

- (c) Any documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 or Title 29 DCMR, that are applicable to this service.

9026.13 If the person enrolled in the IFS Waiver is between the ages of eighteen (18) and twenty-one (21) years, the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the IFS Waiver service is neither replacing nor duplicating EPSDT services.

9026.14 Medicaid reimbursable occupational therapy services shall be limited to four (4) hours per day and one-hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional occupational therapy services and approved by a DDS staff member designated to provide clinical oversight.

9026.15 There shall be a Medicaid reimbursement rate for occupational therapy services. The billable unit of service shall be fifteen (15) minutes. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.

9027 PARENTING SUPPORT SERVICES

9027.1 The purpose of this section is to establish standards governing eligibility for parenting support services for persons enrolled in the IFS Waiver, and to establish conditions of participation for professionals and providers of parenting support services to receive Medicaid reimbursement.

9027.2 Parenting support services assist people who are or will be parents in developing appropriate parenting skills. Parents will receive training that is individualized and focused on the health and welfare and developmental needs of their child, as well as building necessary parenting skills. Close coordination will be maintained with informal and other formal supports.

- (a) Parenting support services may include training of individuals who provide unpaid support, training, companionship or supervision to persons served through the waiver to reinforce strategies provided to the person served;
- (b) Parenting support services is available both as a 1:1 service for a person, and in small group settings not to exceed 1:4. For persons enrolled in small group parenting support services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests;
- (c) Parenting support services may be provided by professionals or qualified peer employees;

- (d) Parenting support services shall be provided in the person's home or in a variety of community based settings, based upon the person's needs and choices; and
- (e) A person served through the IFS Waiver may utilize both 1:1 and small group parenting support, and services provided by professionals and qualified peer employees and both services combined are subject to the limitations in § 9027.10.

9027.3 Parenting support services will be authorized when:

- (a) The person is an expectant parent, a parent with physical custody or visitation with his or her child, or a parent who is pursuing reunification with his or her child;
- (b) The person requests the service and/or it is recommended by the person's support team; and
- (c) Parenting support services is included in the person's ISP and Plan of Care.

9027.4 In order to be eligible for Medicaid reimbursement, each parenting support services provider shall comply with the following service delivery requirements:

- (a) Conduct an assessment, within the first four (4) hours of service delivery, which shall include the following:
 - (1) A background review and current functional review of the person's parenting capabilities in different environments;
 - (2) An environmental review in the person's home, and other community site as necessary; and
- (b) Develop and implement a parenting support plan, within the first four (4) hours of service delivery, that describes strategies, and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and Plan of Care.

9027.5 Parenting support services may be provided by In-Home Supports agency providers.

9027.6 Medicaid reimbursable parenting support services shall be provided by either professionals or peer employees:

- (a) Professionals shall meet the following qualifications:

- (1) Comply with the requirements of the Health Care Facility Unlicensed Personnel Criminal Background Check Act of 1998 effective April 20, 1999 (D.C. Law 12- 238; D.C. Official Code §§ 44-551 *et seq.*); as amended by the Health-Care Facility Unlicensed Personnel Criminal Background Check Amendment Act of 2002, effective April 13, 2002 (D.C. Law 14-98; D.C. Official Code §§ 44-551 *et seq.*);
 - (2) Documented completion of required training in accordance with the DDS Training policy;
 - (3) Master's degree in field related to supporting people with disabilities, including but not limited to social services, education, and psychology;
 - (4) At least five (5) years of experience working with people with intellectual disabilities and/or their families; and
 - (5) Demonstrated ability, experience and education to teach adult learners; conduct support needs assessments; implement service/ support plans; assist parent in specific areas of support described in the plan; serve as an advocate; and work with people of varied ethnic and cultural backgrounds.
- (b) Peer employees shall meet the basic requirements set forth in 29 DCMR § 9011.3 and may be the person's relative, but may not be legally responsible for the person, or the person's legal guardian.

9027.7 Each Medicaid provider of parenting support services shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9027.8 Each Medicaid provider of parenting support services shall maintain the following documents for monitoring and audit reviews:

- (a) A copy of the most recent DDS approved ISP and Plan of Care, which shall include the documentation required by § 9027.4;
- (b) The parenting support plan developed in accordance with the requirements of § 9027.4; and
- (c) The documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

9027.9 Each Medicaid provider of parenting support services shall comply with Section

9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.

9027.10 There shall be a total of four (4) Medicaid reimbursement rates for parenting support services: for 1:1 services and for small group services (*i.e.* 1:2, 1:3 and 1:4 staffing ratios) based on whether the services are provided by a professional or peer employee. Parenting support services shall not exceed one thousand four hundred sixty (1,460) hours per ISP year. Support is available from the first trimester until the eligible participant's child transitions from high school.

9027.11 The billable unit of service for parenting support services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

9028 PERSONAL CARE SERVICES

9028.1 The purpose of this section is to establish standards governing Medicaid eligibility for personal care services for individuals enrolled in the IFS Waiver and to establish conditions of participation for providers of personal care services.

9028.2 Personal care services are identical in scope to those described in 29 DCMR § 5000. Personal care services may be delivered at home, in the day setting, at school or work, or in the community.

9028.3 To be eligible for Medicaid reimbursement for personal care services under the IFS Waiver, the person shall:

- (a) Exhaust all available personal care services provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving personal care services under the IFS Waiver;
- (b) Be unable to independently perform one or more activities of daily living for which personal care services are needed;
- (c) Be in receipt of a written order for PCA services by a physician in accordance with § 5006.1 and 5006.2 of Title 29 DCMR; and
- (d) Be authorized for personal care services based on a comprehensive assessment of the person's support needs and risk screening using the DDA Level of Need Assessment and Screening Tool (LON), or its successor, and reflected in the person's ISP and Plan of Care.

9028.4 Persons eligible for personal care services under the IFS Waiver shall be exempt from the requirement to obtain an authorization for services from DHCF or its agent under Section 5003 of Chapter 50 of Title 29 DCMR.

- 9028.5 Personal care services eligible for Medicaid reimbursement shall include, but not be limited to the activities identified under § 5006.7 of Chapter 50 of Title 29 DCMR.
- 9028.6 Medicaid reimbursable personal care services shall not include:
- (a) Services that require the skills of a licensed professional as defined by the District of Columbia Health Occupations Revision Act of 1985, as amended, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201.01 *et seq.*);
 - (b) Tasks usually performed by chore workers or homemakers, such as cleaning of areas not occupied by the beneficiary and shopping for items not used by the person receiving services; and
 - (c) Money management.
- 9028.7 Personal care services delivered by a personal care aide shall be supervised by a registered nurse. The registered nurse shall review the person's health management care plan, if available, in order to make the initial assessment for personal care services
- 9028.8 The registered nurse shall conduct an initial assessment with the person enrolled in the IFS Waiver within seventy-two (72) hours of receiving authorization for personal care services from DDS.
- 9028.9 A plan of care for the delivery of personal care services shall be developed in accordance with § 5005.2 of Chapter 50 of Title 29 DCMR.
- 9028.10 In order to be eligible for Medicaid reimbursement for personal care services, the provider shall review the plan of care at least once every sixty (60) days, and shall update or modify the plan of care as needed. The registered nurse shall notify the person's physician of any significant change in the beneficiary's condition.
- 9028.11 If an update or modification to the plan of care requires any change in the frequency, duration, or scope of personal care services provided to the person enrolled in the IFS Waiver, the provider shall obtain an updated authorization for personal care services from DDS in accordance with § 9028.3(d).
- 9028.12 To be eligible for Medicaid reimbursement for personal care services, a provider shall:
- (a) Be a home care agency licensed pursuant to the requirements for home care agencies as set forth in the Health Care and Community Residence Facility, Hospice and Home Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law

5-48; D.C. Official Code §§ 44-501 *et seq.* (2012 Repl.)), and implementing rules;

- (b) Be enrolled as a Medicare home health agency qualified to offer skilled services as set forth in Sections 1861(o) and 1891(e) of the Social Security Act and 42 CFR § 484;
- (c) Comply with the requirements under Section 9010 (Provider Qualifications) and 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR; and
- (d) Comply with all of the requirements for Medicaid State Plan personal care service providers.

9028.13 A home care agency shall meet the requirements described under Section 5008 (Staffing) and Section 5010 (Staffing Agencies) of Chapter 50 of Title 29 of the DCMR.

9028.14 In order to be eligible for Medicaid reimbursement, each DSP including personal care aides providing personal care services shall comply with Section 9011 (Requirements of Direct Support Professionals) of Chapter 90 of Title 29 DCMR.

9028.15 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the requirements described under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.

9028.16 In order to be eligible for Medicaid reimbursement, each personal care services provider shall comply with the record maintenance requirements described under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR, and Section 5013 of Chapter 50 of Title 29 DCMR.

9028.17 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall comply with the denial, suspension, reduction or termination of services requirements under Section 5007 of Chapter 50 of Title 29 DCMR.

9028.18 In order to be eligible for Medicaid reimbursement, each provider of personal care services shall develop contingency staffing plans to provide coverage for a person receiving personal care services if the assigned personal care aide cannot provide the service or is terminated by the provider.

9028.19 If person receiving personal care services seeks to change providers, the DDS service coordinator shall assist the person in selecting a new provider. In order to be eligible for Medicaid reimbursement for personal care services, the current provider shall continue to provide services until the transfer to the new provider has been completed.

- 9028.20 Personal care services shall not be provided in a hospital, nursing facility, intermediate care facility, or other living arrangement that includes personal care as part of the reimbursed service.
- 9028.21 Personal care services may be provided by family members other than the person's spouse, parent, guardian, or any other individual legally responsible for the person receiving services who ordinarily would perform or be responsible for performing services on the person's behalf.
- 9028.22 Family members who provide personal care services, with the exception of those listed under § 9028.21, shall meet the requirements for DSPs referenced under § 9028.14.
- 9028.23 The Medicaid reimbursement rate for personal care services shall be the same as the rate listed in § 5015.1 (Reimbursement) of Chapter 50 (Medicaid Reimbursement for Personal Care Aide Services) of Title 29 (Public Welfare) of the DCMR.

9029 PHYSICAL THERAPY SERVICES

- 9029.1 This section establishes the conditions for Medicaid providers enumerated in § 9029.10 ("Medicaid Providers") and physical therapy services professionals enumerated in § 9029.8 ("professionals") to provide physical therapy services to persons enrolled in the IFS Waiver.
- 9029.2 Physical therapy services are services that are designed to treat physical dysfunctions or reduce the degree of pain associated with movement, prevent disability and regression of functional abilities, promote mobility, maintain health and maximize independence. These services are delivered in a location of the person's choice, including his or her home, day service setting, or community.
- 9029.3 In order to be eligible for reimbursement, each Medicaid provider must obtain prior authorization from DDS before providing, or allowing any professional to provide physical therapy services. In its request for prior authorization, the Medicaid provider shall document the following:
- (a) The IFS Waiver participant's need for physical therapy services as demonstrated by a physician's, physician's assistant's, or nurse practitioner's order; and
 - (b) The name of the professional who will provide the physical therapy services.

- 9029.4 In order to be eligible for Medicaid reimbursement, each physical therapy professional shall conduct an assessment of physical therapy needs within the first four (4) hours of service delivery, and develop a therapy plan to provide services.
- 9029.5 In order to be eligible for Medicaid reimbursement, the therapy plan shall include therapeutic techniques, training goals for the person's caregiver, and a schedule for ongoing services. The therapy plan shall include the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP and a schedule of approved physical therapy services to be provided, and shall be submitted by the Medicaid provider to DDS before services are delivered.
- 9029.6 In order to be eligible for Medicaid reimbursement, each Medicaid provider shall document the following in the person's ISP and Plan of Care:
- (a) The date, amount, and duration of physical therapy services provided;
 - (b) The scope of the physical therapy services provided; and
 - (c) The name of the professional who provided the physical therapy services.
- 9029.7 Medicaid reimbursable physical therapy services shall consist of the following activities:
- (a) Consulting with the person, his or her family, caregivers, and support team to develop the therapy plan;
 - (b) Implementing therapies described under the therapy plan;
 - (c) Recording progress notes on each visit and submitting quarterly reports. Progress notes shall contain the following:
 - (1) Progress in meeting each goal in the ISP;
 - (2) Any unusual health or behavioral events or change in status;
 - (3) The start and end time of any services received by the person; and
 - (4) Any matter requiring follow-up on the part of the service provider or DDS.
 - (d) Routinely assess (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the person's needs;

- (e) Completing documentation required to obtain or repair adaptive equipment in accordance with insurance guidelines and Medicare and Medicaid guidelines, including required timelines for submission; and
 - (f) Conducting periodic examinations and modified treatments for the person, as needed.
- 9029.8 Medicaid reimbursable physical therapy services shall be provided by a licensed physical therapist or a Physical Therapy Assistant working under the direct supervision of a licensed physical therapist.
- 9029.9 Physical therapy service providers, without regard to their employer of record, shall be selected by and be acceptable to the person receiving services, his or her guardian, or legal representative.
- 9029.10 In order to be eligible for Medicaid reimbursement, a physical therapist shall be employed by the following providers:
 - (a) An IFS Waiver Provider enrolled by DDS; and
 - (b) A Home Health Agency as defined in Section 9099 of Title 29 DCMR.
- 9029.11 Each Medicaid provider shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.
- 9029.12 Each Medicaid provider shall maintain the following documents for monitoring and audit reviews:
 - (a) The physician's, physician's assistant's, or nurse practitioner's order;
 - (b) A copy of the physical therapy assessment and therapy plan in accordance with the requirements of § 9029.4 and 9029.5; and
 - (c) Any documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.
- 9029.13 Each Medicaid provider shall comply with the requirements described under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.
- 9029.14 In order to be eligible for Medicaid reimbursement, each individual providing physical therapy services shall participate in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her.

- 9029.15 If the person enrolled in the IFS Waiver is between the ages of eighteen (18) and twenty-one (21) years, the DDS Service Coordinator shall ensure that Early and Periodic Screening, Diagnostic and Treatment (EPSDT) benefits under the Medicaid State Plan are fully utilized and the IFS Waiver service is neither replacing nor duplicating EPSDT services.
- 9029.16 Medicaid reimbursable physical therapy services shall be limited to four (4) hours per day and one hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician's order documenting the need for additional physical therapy services and approved by a DDS staff member designated to provide clinical oversight.
- 9029.17 There shall be a Medicaid reimbursement rate for physical therapy services. The billable unit of service shall be fifteen (15) minutes. A standard unit of fifteen (15) minutes requires a minimum of eight (8) minutes of continuous service to be billed.

9030 RESPITE SERVICES

- 9030.1 The purpose of this chapter is to establish standards governing Medicaid eligibility for respite services for persons enrolled in the IFS Waiver and to establish conditions of participation for respite providers.
- 9030.2 Respite services provide relief to a person's family or primary caregiver to enable them to participate in scheduled or unscheduled time away from the person, and to prevent gaps in the delivery of the person's services.
- 9030.3 Medicaid-eligible respite services shall:
- (a) Consist of daily or hourly respite;
 - (b) Be authorized by the person's support team and provided in accordance with the ISP and Plan of Care; and
 - (c) Be provided to persons who live in their own home, or their families' home.
- 9030.4 To be eligible for Medicaid reimbursement, providers shall ensure that each person receives hands-on supports including, but not be limited to, the following areas:
- (a) Assistance with activities of daily living;
 - (b) Ensuring access to community activities, including coordination and provision of transportation to participate in community activities consistent with the person's ISP and Plan of Care to allow the person's routine not to be interrupted; and
 - (c) Monitoring of the person's health and physical condition, as well as assistance with medication administration or other medical needs.

- 9030.5 Medicaid reimbursable daily respite services shall be provided in:
- (a) A Group Home for a Person with an Intellectual Disability (GHPID) meeting the requirements set forth in Chapter 35 of Title 22 of the DCMR and certified as an ICF/IID in accordance with the federal conditions of participation;
 - (b) A DDS certified Residential Habilitation Services facility unless the respite placement will cause the setting to have greater than four (4) people in the home; or
 - (c) A DDS certified Supported Living Residence operated by a provider who has an approved human care agreement with DDS that stipulates the conditions for accepting respite placements.
- 9030.6 Medicaid reimbursable hourly respite services shall:
- (a) Be provided by a home care agency licensed pursuant to the Health Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code § 44-501 *et seq.*) in accordance with the requirements of Chapter 39 of Title 22-B of the DCMR; and
 - (b) In a person's home or another residential setting that would meet the requirements of certifications issued by DDS.
- 9030.7 To be eligible for Medicaid reimbursement all respite providers shall:
- (a) Be certified by DDS as a Respite Provider Agency pursuant to the DDS Provider Certification Review Policy; and
 - (b) Comply with Sections 9010 (Provider Qualifications) and 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 of the DCMR.
- 9030.8 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.
- 9030.9 Each provider of Medicaid reimbursable respite services shall comply with the requirements under Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR, except that no quarterly report is required for respite hourly services.

- 9030.10 To be eligible for Medicaid reimbursement, each DSP providing respite services shall comply with Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 of the DCMR.
- 9030.11 Medicaid reimbursement shall not be available if respite services are provided by the following individuals or provider:
- (a) The person's primary caregiver; or
 - (b) A spouse, parent of a minor child, or legal guardian of the person receiving respite services.
- 9030.12 A relative not listed under Section 9030.11(b), including the person's sibling, aunt, uncle, or cousin, may deliver respite services if they meet the DSP requirements referenced under Section 9030.10 and are employed and trained by the respite provider.
- 9030.13 Medicaid reimbursement for hourly respite services shall be limited to seven hundred twenty (720) hours per calendar year.
- 9030.14 The limitation set forth in § 9030.14 may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.
- 9030.15 Any request for reimbursement of hours in excess of seven hundred and twenty (720) shall be submitted to DDS for approval and include a justification and supporting documentation.
- 9030.16 To be eligible for Medicaid reimbursement, hourly respite services billed on the same day cannot exceed the reimbursement rate for daily respite services.
- 9030.17 Medicaid reimbursement for daily respite services shall be limited to thirty (30) days per calendar year.
- 9030.18 Daily respite service may be extended in situations when the primary caretaker is hospitalized or otherwise unable to continue as a primary caretaker and may only be extended until other arrangements are made for the person.
- 9030.19 Any request for hours in excess of thirty (30) calendar days shall be submitted to DDS for approval and include a justification and supporting documentation.
- 9030.20 Each provider of Medicaid reimbursable respite daily services shall comply with the requirements under Section 9008 (Home and Community-Based Settings Requirements) of Chapter 90 of Title 29 DCMR.

9031 SKILLED NURSING SERVICES

- 9031.1 The purpose of this section is to establish standards governing Medicaid eligibility for skilled nursing services under the IFS Waiver and to establish conditions of participation for providers of skilled nursing services.
- 9031.2 Skilled nursing services are medical and educational services that address healthcare needs related to prevention and primary healthcare activities. These services include health assessments and treatment, health related trainings and education for persons receiving Waiver services and their caregivers. Skilled nursing services may be delivered in the home and/or in the community.
- 9031.3 To be eligible for Medicaid reimbursement, the person shall first exhaust all available skilled nursing visits provided under the State Plan for Medical Assistance (Medicaid State Plan) prior to receiving skilled nursing services under the Waiver.
- 9031.4 To be eligible for Medicaid reimbursement, the person shall have a condition of circulatory or respiratory function complications, gastrointestinal complications, neurological function complications, or the existence of another severe medical condition that requires monitoring or care at least every other hour.
- 9031.5 To be eligible for Medicaid reimbursement, skilled nursing services shall:
- (a) Be ordered by a physician when it is reasonable and necessary to the treatment of the person's illness or injury, and include a letter of medical necessity, a summary of the person's medical history and the duties that the skilled nurse would perform; and a skilled nurse checklist.
 - (b) Be authorized in accordance with each person's ISP and Plan of Care after all Medicaid State Plan skilled nursing visits have been exhausted.
- A Prior Authorization Form - 719A from the Department of Health Care Finance will suffice as the physician's order in accordance with the requirements set forth in this section.
- 9031.6 The physician's order described in § 9031.5 shall include the scope, frequency, and duration of skilled nursing services; shall be updated at least every sixty (60) calendar days; and shall be maintained in the person's records.
- 9031.7 In order to be eligible for Medicaid reimbursement, the duties of a registered nurse (RN) delivering skilled nursing services shall be consistent with the scope of practice standards for registered nurses set forth in § 5414 of Title 17 of the District of Columbia Municipal Regulations (DCMR). They may include, at a minimum, but are not limited to the following duties:

- (a) Performing a nursing assessment in accordance with the Developmental Disabilities Administration's Health and Wellness Standards;
- (b) Assisting in the development of the Health Care Management Plan (HCMP);
- (c) Coordinating the person's care and referrals;
- (d) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia or consistent with the requirements in the jurisdiction where services are provided;
- (e) Administering medication or oversight of licensed medication administration personnel;
- (f) Providing oversight and supervision to the licensed practical nurse (LPN), when delegating and assigning nursing interventions;
- (g) Providing updates to Department on Disability Services (DDS) quarterly and more frequently as needed, if there are any changes to the person's needs or physician's order;
- (h) Training the person, licensed practical nurse (LPN), family, caregivers, and any other individual, as needed; and
- (i) Recording progress notes during each visit that meet standards of nursing care and include the following:
 - (1) Any unusual health or behavioral events or changes in status;
 - (2) Any matter requiring follow-up on the part of the service provider or DDS; and
 - (3) Clearly written records that contain a statement of the person's progress or lack of progress, medical conditions, functional losses, and treatment goals that demonstrate that the person's services are and continue to be reasonable and necessary.
- (j) Submit summary notes at least quarterly and submit quarterly reports in accordance with the requirements in Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

9031.8

In order to be eligible for Medicaid reimbursement, the duties of an LPN delivering skilled nursing services shall be consistent with the scope of practice standards for

a licensed practical nurse set forth in Chapter 55 of Title 17 DCMR. They may include, at minimum, but are not limited to the following duties:

- (a) Immediately reporting, any changes in the person's condition, to the supervising registered nurse;
- (b) Providing wound care, tube feeding, diabetic care, and other treatment regimens prescribed by the physician; and
- (c) Administering medications and treatment as prescribed by a legally authorized healthcare professional licensed in the District of Columbia. If services are provided in another jurisdiction, the services shall be consistent with that jurisdiction's requirements.

9031.9 Medicaid reimbursable skilled nursing services shall be provided by an RN or LPN under the supervision of an RN, in accordance with the standards governing delegation of nursing interventions set forth in Chapters 54 and 55 of Title 17 DCMR.

9031.10 In order to be eligible for Medicaid reimbursement, each person providing skilled nursing services shall be employed by a home health agency that has a current District of Columbia Medicaid Provider agreement authorizing the service provider to bill for skilled nursing services.

9031.11 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall comply with Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR. All IFS Waiver providers of skilled nursing services must comply with all of the requirements for Medicaid State Plan skilled nursing providers.

9031.12 To be eligible for Medicaid reimbursement, skilled nursing services shall have prior authorization from DDS.

9031.13 In order to be eligible for Medicaid reimbursement, the RN shall monitor and supervise the provision of services provided by the licensed practical nurse, including conducting a site visit at least once every thirty (30) days, or more frequently, if specified in the person's ISP.

9031.14 In order to be eligible for Medicaid reimbursement, each provider shall maintain records pursuant to the requirements described under Section 9013 (Reporting Requirements) and Section 9006 (Records and Confidentiality of Information) under Chapter 90 of Title 29 DCMR.

9031.15 In order to be eligible for Medicaid reimbursement, each home health agency providing skilled nursing services shall ensure that the LPN receives ongoing supervision and that the service provided is consistent with the person's ISP.

- 9031.16 Each skilled nursing provider shall review and evaluate skilled nursing services provided to each person, at least every sixty (60) days.
- 9031.17 The skilled nursing provider shall maintain a contingency plan that describes how skilled nursing will be provided when the scheduled nurse is unavailable; and, if the lack of immediate care poses a serious threat to the person's health and welfare, how the service will be provided when back-up staff are unavailable.
- 9031.18 Services shall only be authorized for Medicaid reimbursement in accordance with the following provider requirements:
- (a) The person has exhausted all nursing visits allowable under the Medicaid State Plan;
 - (b) DDS provides a written service authorization before the commencement of services;
 - (c) The service name and home health agency delivering services must be identified in the ISP and Plan of Care;
 - (d) The ISP, Plan of Care, and Summary of Supports and Services documents the amount and frequency of services to be received; and
 - (e) Services shall not conflict with the service limitations described under § 9031.
- 9031.19 Upon exhaustion of the number of hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for additional skilled nursing services based upon medical need when required to support a person to live in the community, for persons who would otherwise be required to live in a nursing facility.
- 9031.20 Upon exhaustion of the hours available for skilled nursing services under the Medicaid State Plan, Medicaid reimbursement may be available for one-to-one extended skilled nursing services for twenty-four (24) hours a day, for up to three hundred and sixty-five (365) days, with prior approval from DDS, for persons on a ventilator or requiring frequent tracheal suctioning.
- 9031.21 Prior approval for one-to-one extended skilled nursing services shall be obtained from the Medicaid Waiver Supervisor or designated DDS staff person after submission of documentation demonstrating the need for the extended services.
- 9031.22 Medicaid reimbursement governing the provision of skilled nursing and extended skilled nursing services shall be based on whether the Waiver services are being delivered by an RN or an LPN under the supervision of an RN.

9031.23 The Medicaid reimbursement rates for skilled nursing services and extended skilled nursing services shall be the same as the rates for skilled nursing services under the Medicaid State Plan as set forth in the Medicaid fee schedule. The Medicaid reimbursement rate for an initial assessment is a flat fee rate. The initial assessment for skilled nursing services shall be used for new admissions and any significant health condition changes that may warrant changes in a person's supports and services. The Medicaid reimbursement rate for quarterly reassessments and supervisory visits shall be the RN rate for each fifteen (15) minute unit of service not to exceed a total of eight (8) units of service per reassessment or supervisory visit.

9031.24 Any future increases in the Medicaid reimbursement rate for skilled nursing services under the Medicaid State Plan, listed in Title 29 (Public Welfare) of the DCMR, shall be applied equally to skilled nursing services and extended skilled nursing services through the Waiver.

9032 SPEECH, HEARING, AND LANGUAGE SERVICES

9032.1 The purpose of this section is to establish standards governing Medicaid eligibility for speech, hearing, and language services for persons enrolled in the IFS Waiver and to establish conditions of participation for providers of speech, hearing, and language services.

9032.2 Speech, hearing, and language services are therapeutic interventions to address communicative and speech disorders to maximize a person's expressive and receptive communication skills.

- (a) These services may be delivered at a person's home, day service setting, and/or in the community.
- (b) These services are available as an individual service based upon the recommendation of the person's support team as reflected in the person's ISP. A person may use individual services, subject to the service limitations described in § 9032.16.

9032.3 To qualify for Medicaid reimbursement, speech, hearing, and language services shall be:

- (a) Ordered by a physician, if the person has a medically-related condition such as a history of aspiration, swallowing problems, tube feeding, or a tracheotomy;
- (b) Recommended by the Support Team, if the person has a non-medical condition such as a receptive or expressive speech delay or disorder;

- (c) Delivered to a person that is over the age of twenty-one (21), except that services may also be provided to a person enrolled in the Waiver who is between the ages of eighteen (18) and twenty-one (21) years old, in accordance with § 9032.15;
- (d) Reasonable and necessary to treat the person's medical or non-medical communicative disorder; and
- (e) Included in the person's ISP and Plan of Care.

9032.4 In order to be eligible for Medicaid reimbursement, speech, hearing and language services shall be used to address the following conditions:

- (a) Swallowing and feeding disorders;
- (b) Receptive and expressive communication disorders;
- (c) Voice impairments; and
- (d) Articulatory and motor speech disorders.

9032.5 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing and language services shall comply with the following service delivery requirements:

- (a) Conduct a comprehensive assessment, within the first four (4) hours of service delivery, which shall include the following:
 - (1) A background review and current functional review of communication capabilities in different environments;
 - (2) An environmental review of communication in places of employment, residence, and other sites as necessary;
 - (3) The potential for use of augmentative and alternative speech devices, methods, or strategies;
 - (4) The potential for sign language or other expressive communication methods; and
 - (5) A needs assessment for the use of adaptive eating equipment.
- (b) Develop and implement a speech, hearing, and language treatment plan, within the first four (4) hours of service delivery, that describes treatment strategies, including direct therapy, training of caregivers, monitoring requirements and instructions, and the anticipated and measurable,

functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP;

- (c) Assist persons with voice disorders to develop proper control of vocal and respiratory systems for correct voice production, if applicable;
- (d) Conduct aural rehabilitation by teaching sign language and lip reading to people who have hearing loss, if applicable;
- (e) Participate in ISP and Support Team meetings to provide consultative services and recommendations specific to the expert content with a focus on how the person is doing in achieving the functional goals that are important to him or her;
- (f) Record progress notes on each visit and submit quarterly reports;
- (g) Verify that the speech, hearing, and language assessment and treatment plan, and daily notes and quarterly reports, are delivered to the person, family or other caregiver, physician, and the Department on Disability Services (DDS) Service Coordinator prior to the person's Support Team meeting;
- (h) Assess the need for the use of adaptive equipment;
- (i) Routinely assess (at least annually and more frequently as needed) the appropriateness and quality of adaptive equipment to ensure it addresses the person's needs;
- (j) Conduct periodic examinations to modify treatments, as appropriate, for the person receiving services and ensure that the speech pathologist's or audiologist's recommendations are incorporated into the ISP; when necessary; and
- (k) Complete documentation required to obtain or repair adaptive equipment in accordance with insurance requirements and Medicare and Medicaid guidelines, including required timelines for submission.

9032.6

In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing, and language services shall:

- (a) Be employed by a home health agency or a Waiver provider;
- (b) Be a speech pathologist or audiologist in a private practice; or

- (c) Be an assistant working under the direct supervision of a licensed speech pathologist or audiologist.

9032.7 In order to be eligible for Medicaid reimbursement, each individual providing speech, hearing, and language services shall also comply with the following requirements:

- (a) Be a speech-language pathologist or audiologist licensed pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) and implementing rules;
- (b) Have a minimum of two (2) years of experience as a licensed speech-language pathologist or audiologist;
- (c) Have a Certificate of Clinical Competence in the area of Audiology or Speech Pathology granted by the American Speech-Language-Hearing Association; and
- (d) Comply with Section 9010 (Provider Qualifications) and 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9032.8 In order to be eligible for Medicaid reimbursement, a speech pathologist assistant or audiologist assistant shall meet the following requirements:

- (a) Be personally supervised by the speech pathologist or audiologist. Personal supervision requires the speech pathologist or audiologist to be in the room during the performance of the service; and
- (b) Be employed by the speech pathologist or audiologist or by the speech pathologist or audiologist's employer; and
- (c) Comply with Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR.

9032.9 Speech, hearing and language service providers, without regard to their employer of record, shall be selected by the person receiving services, their guardian, or legal representative and shall be answerable to the person receiving services.

9032.10 Any provider substituting professionals for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Service Coordinator to evaluate the continuation of services.

9032.11 In order to be eligible for Medicaid reimbursement, the speech pathologist or audiologist in a private practice shall meet all of the following conditions:

- (a) Maintain a private office, even if services are always furnished in the person's home;
- (b) Meet all state and local licensure laws and rules;
- (c) Maintain a minimum of one (1) million dollars in liability insurance;
- (d) Ensure that speech, hearing, and language services are provided consistent with the person's ISP and Plan of Care; and
- (e) Maintain a space that is owned, leased or rented by the private practice and is used exclusively for the purpose of operating the private practice.

9032.12 In order to be eligible for Medicaid reimbursement, services shall only be authorized for reimbursement in accordance with the following provider requirements:

- (a) DDS shall provide a written service authorization before the commencement of services;
- (b) The provider shall conduct an assessment within the first four (4) hours of service delivery and develop a speech, hearing, and language treatment plan with training goals and techniques that will assist the caregivers;
- (c) The service name and provider delivering services shall be identified in the ISP and Plan of Care;
- (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received; and
- (e) Services shall be provided consistent with the service limitations described under Section 9032.16.

9032.13 In order to be eligible for Medicaid reimbursement, each home health agency, Waiver provider, or licensed speech pathologist or audiologist shall maintain the following documents for monitoring and audit reviews:

- (a) A copy of the speech, hearing, and language assessment and treatment plan;
- (b) A copy of the physician's orders and other pertinent documentation of the person's progress;
- (c) A copy of the daily progress notes, containing the following information:
 - (1) Progress in meeting each goal in the ISP;
 - (2) Any unusual health or behavioral events or change in status;

- (3) The start and end time of any services received by the person; and
- (4) Any matter requiring follow-up on the part of the service provider or DDS.
- (d) A copy of the quarterly reports used to verify the functioning of the person’s adaptive equipment; and
- (e) Any other documents required to be maintained under Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR.

9032.14 In order to be eligible for Medicaid reimbursement, each provider shall comply with Section 9013 (Reporting Requirements) and Section 9005 (Individual Rights) of Chapter 90 of Title 29 of the DCMR.

9032.15 If the person enrolled in the Waiver is between the ages of eighteen (18) and twenty-one (21) years old, the DDS Service Coordinator shall ensure that Early Periodic Screening and Diagnostic Treatment (EPSDT) services under the District of Columbia State Plan for Medical Assistance are fully utilized before accessing speech, hearing and language services under the Waiver.

9032.16 Speech, hearing, and language services shall be limited to four (4) hours per day and one hundred (100) hours per year. Requests for additional hours may be approved when accompanied by a physician’s order documenting the need for additional speech, hearing, and language services or if approved by a designated staff member at DDA.

9032.17 There shall be a Medicaid reimbursement rate for a speech, hearing and language assessment. The billable unit of service shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

9032.18 There shall be a Medicaid reimbursement rate for individual speech, hearing and language services. The billable unit of service for speech, hearing and language therapy services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

9033 SUPPORTED EMPLOYMENT SERVICES - INDIVIDUAL AND SMALL GROUP SERVICES

9033.1 This section shall establish standards governing Medicaid eligibility for supported employment services for persons enrolled in the IFS Waiver and shall establish conditions of participation for providers of supported employment services.

- 9033.2 Medicaid reimbursable supported employment services are designed to provide opportunities for persons with disabilities to obtain competitive work in integrated work settings, at minimum wage or higher and at a rate comparable to workers without disabilities performing the same tasks. All Medicaid reimbursable supported employment services must fully comply with the requirements of the HCBS Settings Rule.
- 9033.3 Medicaid reimbursable supported employment services may be delivered individually or in a small group, based upon the recommendations of the person and his or her support team, as reflected in the person's ISP and Plan of Care. For persons enrolled in small group supported employment services, the provider must make every effort to match the person with another person or persons of his or her choosing, or with a person who has similar skills or interests.
- 9033.4 Medicaid reimbursable small group supported employment services are services and training activities that are provided in regular business, industry, or community setting for groups of two (2) to four (4) workers.
- 9033.5 Small group supported employment services is intended to enable the person to become part of a competitive, integrated work setting.
- 9033.6 In order to receive Medicaid reimbursement for supported employment services, the person receiving services shall:
- (a) Be interested in obtaining full-time or part-time employment in an integrated work setting; and
 - (b) Demonstrate that a previous application for the District of Columbia Rehabilitation Services Administration (RSA) funded supported employment services was made, by the submission of a letter documenting either ineligibility for RSA services or the completion of RSA services with the recommendation for long-term employment support.
- 9033.7 Medicaid reimbursable supported employment services shall:
- (a) Provide opportunities for persons with disabilities to achieve successful integrated employment consistent with the person's goals;
 - (b) Be recommended by the person's Support Team; and
 - (c) Be identified in the person's ISP, Plan of Care, and Summary of Supports.
- 9033.8 The three (3) models of supported employment services eligible for Medicaid reimbursement are as follows:

- (a) An Individual Job Support Model, which evaluates the needs of the person and places the person into an integrated competitive or customized work environment through a job discovery process;
- (b) A Small Group Supported Employment Model, which utilizes training activities for groups of two (2) to four (4) workers with disabilities to place persons in an integrated community based work setting; and
- (c) An Entrepreneurial Model, which utilizes training techniques to develop on-going support for a small business that is owned and operated by the person.

9033.9 Medicaid reimbursable supported employment services for the entrepreneurial model shall include the following activities:

- (a) Assisting the person to identify potential business opportunities;
- (b) Assisting the person in the development of a business and launching a business;
- (c) Identification of the supports that are necessary in order for the person to operate the business; and
- (d) Ongoing assistance, counseling and guidance once the business has been launched.

9033.10 Medicaid reimbursable supported employment individual services shall consist of the following activities:

- (a) Intake and assessment;
- (b) Job placement and development;
- (c) Job training and support; and
- (d) Long-term follow-along services.

9033.11 Medicaid reimbursable supported employment small group services shall consist of the following activities:

- (a) Job placement and development;
- (b) Job training and support; and
- (c) Long-term follow-along services.

- 9033.12 Intake and assessment services determine the interests, strengths, preferences, and skills of the person in order to ultimately obtain competitive employment and to further identify the necessary conditions for the person's successful participation in employment. The purpose of the intake and assessment is to facilitate and ensure a person's success in integrated competitive employment.
- 9033.13 Medicaid reimbursable intake and assessment activities include, but are not limited to, the following:
- (a) Conducting a person-centered vocational and situational assessment based upon what is important to and for the person as reflected in his or her Person-Centered Thinking and Discovery tools and related ISP goals;
 - (b) Developing a person-centered employment plan that includes the person's job preferences and desires, through a discovery process and the development of a Positive Personal Profile and Job Search and Community Participation Plan;
 - (c) Assessing person-centered employment information, including the person's interest in doing different jobs, transportation to and from work, family support, and financial issues;
 - (d) Engaging in community mapping to identify available community supports and assisting the person to establish a network for job development, placement and mentoring;
 - (e) Counseling an interested person on the tasks necessary to start a business, including referral to resources and nonprofit associations that provide information specific to owning and operating a business;
 - (f) Providing employment counseling, which includes, but is not limited to, the person's rights as an employee with a disability; and
 - (g) Providing or coordinating access to benefits counseling, defined as analysis and advice to help the person understand the potential impact of employment on his or her public benefits, including, but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Supplemental Nutrition Assistance Program (SNAP).
- 9033.14 After intake and completion of the assessments, each provider of Medicaid reimbursable supported employment services shall complete and deliver a comprehensive vocational assessment report prior to the end of the intake and assessment service authorization period, to the DDS Service Coordinator that includes the following information:

- (a) Employment-related strengths and weaknesses of the person;
- (b) Availability of family and community supports for the person;
- (c) The assessor's concerns about the health, safety, and wellbeing of the person;
- (d) Accommodations and supports that may be required for the person on the job; and
- (e) If a specific job or entrepreneurial effort has been targeted:
 - (1) Individualized training needed by the person to acquire and maintain skills that are commensurate with the skills of other employees;
 - (2) Anticipated level of interventions that will be required for the person by the job coach;
 - (3) Type of integrated work environment in which the person can potentially succeed; and
 - (4) Activities and supports that are needed to improve the person's potential for employment, including whether the person has natural supports that may help him or her to be successful in the specific job or entrepreneurial effort.

9033.15 Medicaid reimbursable job placement and development includes activities to facilitate the person's ability to work in a setting that is consistent with their strengths, abilities, priorities, and interests, as well as the identification of potential employment options, as determined through the supported employment intake and assessment process.

9033.16 Job placement and development activities eligible for Medicaid reimbursement include, but are not limited to, the following:

- (a) Conducting workshops or other activities designed to assist the person in completing employment applications or preparing for interviews;
- (b) Conducting workshops or other activities to instruct the person on appropriate work attire, work ethic, attitude, and expectations;
- (c) Assisting the person with the completion of job applications;
- (d) Assisting the person with job exploration and placement, including assessing opportunities for the person's advancement and growth, with a consideration for customized employment, as needed;

- (e) Visiting employment sites, participating in informational interviews, attending employment networking events, and job shadowing;
- (f) Making telephone calls and conducting face-to-face informational interviews with prospective employers, individuals in the person's network, utilizing the internet, social media, magazines, newspapers, and other publications as prospective employment leads;
- (g) Collecting descriptive data regarding various types of employment opportunities, for purposes of job matching and customized employment;
- (h) Negotiating employment terms with or on behalf of the person;
- (i) Working with the person to develop and implement a plan to start a business, including developing a business plan, developing investors or start-up capital, and other tasks necessary to starting a small business;
- (j) Providing or coordinating access to benefits counseling; and
- (k) Working with the person and employer to develop group placements.

9033.17 Job training and support activities are those activities designed to assist and support the person after he or she has obtained employment. The expectation is that the person's reliance upon job training and support activities will decline as a result of job skills training and support from supervisors and co-workers in the existing work setting to maintain employment.

9033.18 Medicaid reimbursable job training and support activities include, but are not limited to, the following:

- (a) On-the-job training in work and work-related skills required to perform the job;
- (b) Work site support that is intervention-oriented and designed to enhance work performance and support the development of appropriate workplace etiquette
- (c) Supervision and monitoring of the person in the workplace;
- (d) Training in related skills essential to obtaining and maintaining employment, such as the effective use of community resources, break or lunch rooms, attendance and punctuality, mobility training, re-training as job responsibilities change, and attaining new jobs; including, where appropriate, the use of assistive technology, *i.e.* calendar alerts, timers,

alarm clocks and other devices that assist a person with meeting employment requirements;

- (e) Monitoring and providing information and assistance regarding wage and hour requirements, appropriateness of job placement, integration into the work environment, and need for functional adaptation modifications at the job site;
- (f) Providing or coordinating access to ongoing benefits counseling, including but not limited to prior to the person reaching the end of his or her Trial Work period and/or attaining Substantive Gainful Activity (SGA);
- (g) Consulting with other professionals and the person's family, as necessary;
- (h) Providing support and training to the person's employer, co-workers, or supervisors so that they can provide workplace support, as necessary; and
- (i) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and confidence so that the person is less reliant upon job training and support activities.

9033.19 Medicaid reimbursable long-term follow-along activities are stabilization services needed to support and maintain a person in an integrated competitive employment site or in their own business.

9033.20 Medicaid reimbursable long-term follow-along activities include, but are not limited to, the following:

- (a) Periodic monitoring of job stability with a minimum of two (2) visits per month;
- (b) Intervening to address issues that threaten job stability;
- (c) Providing re-training, cross-training, and additional supports as needed, when job duties change;
- (d) Facilitating integration and natural supports at the job site;
- (e) Providing or coordinating access to benefits counseling prior to and after the person reaching the end of his or her Trial Work period and/or attaining SGA, and to ensure a person maintains eligibility for benefits and that earnings are being properly reported;
- (f) Working with the person and his or her support network to identify a plan to develop his or her skills that facilitate workplace independence and

confidence so that the person is less reliant upon job training and support activities; and

- (g) Facilitating job advancement, professional growth, and job mobility.

9033.21 Each provider of Medicaid reimbursable supported employment services shall be responsible for delivering ongoing supports to the person to promote job stability after they become employed.

- (a) Once the person exhibits confidence to perform the job without a job coach present, the provider shall make a minimum of two (2) visits to the job site per month for the purpose of monitoring job stability.
- (b) On the job coaching supported employment services may be provided in person, or by phone or by any other technology device that supports the use of Skype, FaceTime, etc., where approved by the person and his or her support team and documented in the ISP. Supported employment services by phone or other technology to communicate cannot exceed twenty (20) percent of the total hours of supported employment services that the person receives each week.

9033.22 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with DDS and the employer to provide functional adaptive modifications for each person to accomplish basic work related tasks at the work site.

9033.23 When applicable, each provider of Medicaid reimbursable supported employment services shall coordinate with the employer to ensure that each person has an emergency back-up plan for job training and support.

9033.24 Each provider of Medicaid reimbursable supported employment services shall be a Waiver provider agency and shall comply with the following requirements:

- (a) Participate in the person's support team meetings, at the person's preference;
- (b) Be certified by the U.S. Department of Labor, if applicable;
- (c) Comply with the requirements described under Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR; and
- (d) Enroll as a supported employment provider for the District of Columbia Rehabilitation Services Administration by September 23, 2016, for current providers, or, for new Medicaid waiver supported employment provider agencies, within one year after enrollment as a waiver provider.

- 9033.25 Each professional or paraprofessional providing Medicaid reimbursable supported employment services for a Waiver provider shall meet the requirements in Section 9011 (Requirements for Direct Support Professionals) of Chapter 90 of Title 29 DCMR.
- 9033.26 Professionals authorized to provide Medicaid reimbursable supported employment activities without supervision shall include the following:
- (a) A Vocational Rehabilitation Counselor;
 - (b) An individual with a Master's degree and a minimum of one (1) year of experience working with persons with intellectual and developmental disabilities in supported employment;
 - (c) An individual with a bachelor's degree and two years of experience working with persons with intellectual and developmental disabilities in supported employment; or
 - (d) A Rehabilitation Specialist.
- 9033.27 Paraprofessionals shall be authorized to perform Medicaid reimbursable supported employment activities under the supervision of a professional. Supervision is not intended to mean that the paraprofessional performs supported employment activities in the presence of the professional, but rather that the paraprofessional has a supervisor who meets the qualifications of a professional as set forth in § 9033.26.
- 9033.28 Paraprofessionals authorized to perform Medicaid reimbursable supported employment activities are as follows:
- (a) A Job Coach, which shall be an individual with at least one of the following:
 - (1) A four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent;
 - (2) A college degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or
 - (3) A high school degree and three (3) years of experience in a supported employment program, or the equivalent.

- (b) An Employment Specialist, which shall be an individual with at least one of the following:
 - (1) A four-year college degree and a minimum of one (1) year of experience in a supported employment program or equivalent;
 - (2) A four-year college degree and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization; or
 - (3) A high school degree and three (3) years of experience in a supported employment program, or the equivalent.

9033.29 Services shall be authorized for Medicaid reimbursement in accordance with the following Waiver provider requirements:

- (a) DDS provides a written service authorization before the commencement of services;
- (b) The provider conducts a comprehensive vocational assessment, at minimum consisting of a Positive Personal Profile and Job Search and Community Participation Plan, if the person does not already have a comprehensive assessment. If the person does have a comprehensive vocational assessment, this must be reviewed to ensure that it is current and reflects what is important to and for the person, and updated as needed;
- (c) The provider develops an individualized employment plan with training goals and techniques within the first two (2) hours of service delivery;
- (d) The service name and provider delivering services are identified in the ISP and Plan of Care;
- (e) The ISP, Plan of Care, and Summary of Supports and Services document the amount and frequency of services to be received;
- (f) The provider completes an employment progress plan, using the template required by DDS, and submits it as an attachment to the required quarterly report; and
- (g) Services shall not conflict with the service limitations described under §§ 9033.31 - 9033.42.

9033.30 If extended services are required, the provider shall submit a supported employment extension request. The request is a written justification that must be submitted to the Service Coordinator at least fifteen (15) calendar days before the exhaustion of Supported Employment hours. Failure to submit all required documents may result

in a delay of the approval of services. Any failure on the part of the provider to submit required documents to approve service authorizations will result in sanctions by DDS up to and including a ban on authorizations for new service recipients. Service interruptions to the waiver participant due to the service provider's failure to submit required documentation will initiate referrals to a choice of a new service provider to ensure a continuation of services for the waiver participant.

- 9033.31 Supported employment services are not available to people who are eligible to participate and are fully supported in programs funded under Title I of the Rehabilitation Act of 1973, Section 110, enacted September 26, 1973 (Pub. L. 93-112; 29 USC §§ 720 *et seq.*), or Section 602(16) and (17) of the Individuals with Disabilities Education Act, 20 USC §§ 1401(16) and (71), enacted October 30, 1990 (Pub. L. 91-230; 20 USC §§ 1400 *et seq.*). However, supported employment services may be used to provide additional supports for employment for persons eligible for and participating in those programs.
- 9033.32 Court-ordered vocational assessments authorizing intake and assessment services qualify for Medicaid reimbursement under the Waiver if services provided through programs funded under the Acts referenced in § 9033.31 cannot be provided in the timeframe set forth in the Court's Order.
- 9033.33 Medicaid reimbursement is available for supported employment services that are provided either exclusively as a vocational service or in combination with individualized day supports, employment readiness, or day habilitation services if provided during different periods of time, including during the same day.
- 9033.34 Medicaid reimbursement is not available if supported employment services are provided in specialized sheltered workshop or other similar type facilities that are not part of the general workforce. Medicaid reimbursement is not available for volunteer work.
- 9033.35 Medicaid reimbursable supported employment services shall not include payment for supervision, training, support, adaptations, or equipment typically available to other workers without disabilities in similar positions.
- 9033.36 Medicaid reimbursable supported employment services shall be provided for a maximum of eight (8) hours per day, five (5) days per week.
- 9033.37 Medicaid reimbursement is not available for incentive payments, subsidies, or unrelated vocational training expenses such as the following:
- (a) Incentive payments made to an employer to encourage or subsidize the employer's participation in a supported employment services program;
 - (b) Payments that are processed and paid to users of supported employment service programs; and

- (c) Payment for vocational training that is not directly related to the person's success in the supported employment services program.
- 9033.38 Supported employment providers may not pay a stipend to a person for attendance or participation in activities at the day habilitation program.
- 9033.39 A supported employment provider may not concurrently employ a person and be his or her provider of Medicaid supported employment services.
- 9033.40 Medicaid reimbursement shall not be available for time spent in transportation to and from the employment program and shall not be included in the total amount of services provided per day. Time spent in transportation to and from the program for the purpose of training the person on the use of transportation services shall be Medicaid reimbursable and may be included in the number of hours of services provided per day for a period of time specified in the person's ISP and Plan of Care.
- 9033.41 Medicaid reimbursement shall only be available for adaptations, supervision and training for supported employment services provided at the work site in which persons without disabilities are employed. Medicaid reimbursement shall not be available for supervisory activities, which are rendered as a normal part of the business setting.
- 9033.42 Medicaid reimbursable intake and assessment activities shall be billed at the unit rate. This service shall not exceed three-hundred and twenty (320) units or eighty (80) hours annually. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. Individual supported employment intake and assessment activities shall be reimbursable by Medicaid only if:
- (a) Performed by a professional listed in § 9033.26; or
- (b) Performed by a paraprofessional listed in § 9033.28 under the supervision of a professional.
- 9033.43 Medicaid reimbursable job preparation, developmental and placement activities shall be billed at the unit rate. This service shall not exceed nine hundred and sixty (960) units or two-hundred and forty (240) hours annually for both individual and group services, combined. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill for one (1) unit of service. There shall be a Medicaid reimbursement rate for individual supported employment job preparation, developmental and placement activities (a) if performed by a professional listed in § 9033.26; and (b) if performed by a paraprofessional listed in § 9033.28 under the supervision of a professional. For small group supported employment job preparation, developmental and placement

activities, there shall be a Medicaid reimbursement rate for each person in a group of two (2) to four (4) people enrolled in the Waiver.

9033.44 Medicaid reimbursable on the job training and support activities shall not exceed three hundred and sixty hours (360) or one thousand, four hundred and forty (1,440) units per ISP year, unless additional hours are prior authorized by DDS. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. There shall be a Medicaid reimbursement rate for individual supported employment job training and support activities (a) if performed by a professional listed in § 9033.26; and (b) if performed by a paraprofessional listed in § 9033.28 under the supervision of a professional. For small group supported employment on the job training and support activities, there shall be a Medicaid reimbursement rate for each person in a group of two (2) to four (4) people enrolled in the Waiver.

9033.45 Medicaid reimbursable long-term follow-along activities shall not exceed one thousand four hundred eight (1,408) units per ISP year. A standard unit of service is fifteen (15) minutes and the provider shall provide at least eight (8) continuous minutes of service to bill one (1) unit of service. There shall be a Medicaid reimbursement rate for both professionals and paraprofessionals for individual supported employment long-term follow-along activities. For small group supported employment long-term follow-along activities, there shall be a Medicaid reimbursement rate for each person in a group of two (2) to four (4) people enrolled in the Waiver.

9033.46 DDS shall only approve an extension for Job Training and Supports when there is documentation in the employment progress plan that the person continues to demonstrate progress on the job, including but not limited to: learning the job and related tasks, following directions, interaction with others, following supervision, reluctance or reliance on the job coach. However, if recommended by the person or his or her support team and reflected in the ISP, DDS shall authorize long-term follow-along supported employment services as needed to support the person on an ongoing basis.

9033.47 In order to be eligible for Medicaid reimbursement, each Waiver provider of supported employment services shall comply with Section 9013 (Reporting Requirements); Section 9006 (Records and Confidentiality of Information); and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.

9034 WELLNESS SERVICES

9034.1 The purpose of this section is to establish standards governing Medicaid eligibility for wellness services for persons enrolled in the IFS Waiver, and to establish conditions of participation for providers of wellness services in order to receive reimbursement.

- 9034.2 Wellness services are designed to promote and maintain good health, the provision of these services shall be based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools and the goals in his or her ISP. Wellness services assist in increasing the person's independence, participation, prevent further disability, maintain health and increase emotional well-being, and productivity in their home, work, and community.
- 9034.3 The wellness services eligible for Medicaid reimbursement are:
- (a) Bereavement Counseling;
 - (b) Fitness Training;
 - (c) Massage Therapy;
 - (d) Nutrition Evaluation/Consultation; and
 - (e) Sexuality Education.
- 9034.4 Fitness training is available as either an individual service, or in small group settings of 1:2 based upon the person's request or recommendation of the person's support team. A person may utilize 1:1 fitness services subject to the limitations in § 9034.21.
- 9034.5 To be eligible for Medicaid reimbursement of bereavement counseling:
- (a) The person shall have experienced a loss through death, relocation, change in family structure, or loss of employment;
 - (b) The services shall be requested by the person or recommended by the person's support team; and
 - (c) The service shall be identified as a need in the person's ISP and Plan of Care.
- 9034.6 To be eligible for Medicaid reimbursement of sexuality education, the services shall be:
- (a) Requested by the person or recommended by the person's support team; and
 - (b) Identified as a need in the person's ISP and Plan of Care.
- 9034.7 To be eligible for Medicaid reimbursement of fitness training and massage therapy, the services shall be:
- (a) Requested by the person or recommended by the person's support team;

- (b) Identified as a need in the person's ISP and Plan of Care; and
- (c) Ordered by a physician.

9034.8 To be eligible for Medicaid reimbursement of nutritional evaluation/consultation services, each person shall meet one or more of the following criteria:

- (a) Have a history of being significantly above or below body weight;
- (b) Have a history of gastrointestinal disorders;
- (c) Have received a diagnosis of diabetes;
- (d) Have a swallowing disorder; or
- (e) Have a medical condition that can be a threat to health if nutrition is poorly managed.

9034.9 In addition to the requirements set forth in § 9034.8, nutritional evaluation/consultative services shall be:

- (a) Recommended by the person's support team;
- (b) Identified as a need in the person's ISP and Plan of Care based upon the Stage of Change the person is in;
- (c) Ordered by a physician; and
- (d) Targeted to the identified Stage of Change.

9034.10 The specific wellness service delivered shall be consistent with the scope of the license or certification held by the professional. Service intensity, frequency, and duration shall be determined by the person's individual needs and documented in the person's ISP and Plan of Care.

9034.11 In order to be eligible for Medicaid reimbursement, each professional providing wellness services shall:

- (a) Conduct an initial assessment within the first four (4) hours of service delivery with long term and short term goals;
- (b) Develop and implement a person-centered plan consistent with the person's choices, goals and prioritized needs that describes wellness strategies and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered

Thinking tools and the goals in his or her ISP. The plan shall include treatment strategies including direct therapy, caregiver training, monitoring requirements and instructions, and specific outcomes;

- (c) Deliver the completed plan to the person, family, guardian, residential provider, or other caregiver, and the DDS Service Coordinator prior to the Support Team meeting;
- (d) Participate in the ISP and Support Team meetings, when invited by the person, to provide consultative services and recommendations specific to the wellness professional's area of expertise with the focus on how the person is doing in achieving the functional goals that are important to him or her;
- (e) Provide necessary information to the person, family, guardian, residential provider, or other caregivers and assist in planning and implementing the approved ISP and Plan of Care;
- (f) Record progress notes on each visit which contain the following information:
 - (1) The person's progress in meeting each goal in the ISP;
 - (2) Any unusual health or behavioral events or change in status;
 - (3) The start and end time of any services received by the person; and
 - (4) Any matter requiring follow-up on the part of the service provider or DDS.
- (g) Submit quarterly reports in accordance with the requirements in Section 9006 (Records and Confidentiality of Information) of Chapter 90 of Title 29 DCMR; and
- (h) Conduct periodic examinations and modify treatments for the person receiving services, as necessary.

9034.12

In order to be eligible for Medicaid reimbursement, each professional providing nutrition evaluation/consultation services shall comply with the following additional requirements, as needed:

- (a) Conduct a comprehensive nutritional assessment within the first four (4) hours of delivering the service;
- (b) Conduct a partial nutritional evaluation to include an anthropometric assessment;

- (c) Perform a biochemical or clinical dietary appraisal;
- (d) Analyze food-drug interaction potential, including allergies;
- (e) Perform a health and safety environmental review of food preparation and storage areas;
- (f) Assess the need for a therapeutic diet that includes an altered/textured diet due to oral-motor problems;
- (g) Conduct a needs assessment for adaptive eating equipment and dysphagia management;
- (h) Conduct a nutrition evaluation and provide consulting services on a variety of subjects, including recommendations for the use of adaptive equipment, to promote improved health and increase the person's ability to manage his or her own diet or that of his or her child(ren) in an effective manner; and
- (i) Provide education to include menu development, shopping, food preparation, food storage, and food preparation procedures consistent with the physician's orders.

9034.13 Each professional providing wellness services shall be employed by a Home and Community-Based Services Waiver provider agency or by a professional service provider who is in private practice as an independent clinician as described in § 9010.2 of Title 29 DCMR.

9034.14 Each provider shall comply with the requirements set forth under Section 9010 (Provider Qualifications) and Section 9009 (Provider Enrollment Process) of Chapter 90 of Title 29 DCMR.

9034.15 In order to be eligible for Medicaid reimbursement, professionals delivering wellness services shall meet the following licensure and certification requirements:

- (a) Bereavement counseling services shall be performed by a professional counselor licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)) and certified by the American Academy of Grief Counseling as a grief counselor or other equivalent national certification as approved by DDS;
- (b) Fitness services shall be performed by professional fitness trainers who have been certified by any of the following national or international certifications, or other equivalent national certification as approved by DDS: the American Fitness Professionals and Associates, the National

Athletic Training Association, the National Academy of Sports Medicine, the Aerobics and Fitness Association of America, and the American College of Sports Medicine; or professional fitness trainers who have a bachelor's degree in physical education, health education, exercise, science or kinesiology; or recreational therapists;

- (c) Dietetic and nutrition counselors shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)); and
- (d) Massage Therapists shall be licensed pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.* (2016 Repl.)) and certified by the National Certification Board for Therapeutic Massage and Bodywork, or other equivalent national certification as approved by DDS.

9034.16 In order to be eligible for Medicaid reimbursement, sexuality education services shall be delivered by:

- (a) A Sexuality Education Specialist who is certified to practice sexuality education by the American Association of Sexuality Educators, Counselors and Therapists Credentialing Board, or other equivalent national certification as approved by DDS; or
- (b) Any of the following professionals with specialized training in Sexuality Education:
 - (1) Psychologist;
 - (2) Psychiatrist;
 - (3) Licensed Clinical Social Worker; or
 - (4) Licensed Professional Counselor.

9034.17 Each Wellness service provider, and professional, regardless of their employer of record, shall be selected by the person receiving services or his or her authorized representative, and shall be answerable to the person receiving services.

9034.18 Any provider substituting treating professionals for more than a two (2) week period or four (4) visits due to emergency or availability events shall request a case conference with the DDS Service Coordinator to evaluate the continuation of services.

- 9034.19 In order to be eligible for Medicaid reimbursement, services shall be authorized in accordance with the following requirements:
- (a) DDS shall provide a written service authorization before the commencement of services;
 - (b) The provider shall conduct an initial assessment and develop a person-centered plan within the first four (4) hours of service delivery which:
 - (1) Describes wellness strategies and the anticipated and measurable, functional outcomes, based upon what is important to and for the person as reflected in his or her Person-Centered Thinking tools; and
 - (2) Includes training goals and techniques in the ISP that will assist the caregivers;
 - (c) The service name and provider entity delivering services shall be identified in the ISP and Plan of Care; and
 - (d) The ISP, Plan of Care, and Summary of Supports and Services shall document the amount and frequency of services to be received.
- 9034.20 Each Provider shall comply with the requirements described under Section 9013 (Reporting Requirement), Section 9006 (Records and Confidentiality of Information), and Section 9005 (Individual Rights) of Chapter 90 of Title 29 DCMR.
- 9034.21 Medicaid reimbursement of Wellness services shall be limited as follows:
- (a) Massage Therapy shall be limited to fifty-two (52) hours per ISP year. Additional hours up to one hundred (100) hours per year may be authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA based upon assessed medical or clinical need;
 - (b) Sexuality Education shall be limited to fifty-two (52) hours per ISP year. Additional hours up to one hundred (100) hours per year may be authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA.
 - (c) Fitness Training and Small Group Fitness Training shall be limited to fifty-two (52) hours per ISP year for people receiving host home, supported living, residential habilitation or in-home supports services, or who otherwise have natural supports available that can assist the person practice the fitness skills they need to achieve their fitness goals. Additional hours up to one hundred four (104) hours per year may be authorized before the expiration of the ISP year, and when the person's health and safety are at

risk, for people who in live in natural homes without in-home supports services and do not have such natural supports available that can assist the person practice the fitness skills they need to achieve their fitness goals. Requests for additional hours may be approved when accompanied by a physician's order or if the request passes a clinical review by staff designated by DDS;

- (d) Nutrition Counseling shall be limited to twenty-six (26) hours per ISP year and to people who have natural or paid supports to help them implement the learning and nutrition goals outside of the time with the dietician or nutritionist. Additional hours up to one hundred four (104) may be authorized before the expiration of the ISP year with approval by DDS Deputy Director for DDA based upon assessed medical or clinical need; and
- (e) Bereavement Counseling shall be limited to one hundred (100) hours per ISP year. Additional hours may be authorized before the expiration of the ISP year and when the person's health and safety are at risk and the person is demonstrating progress towards achieving established outcome or maintenance of goals.

9034.22 The person may utilize one (1) or more wellness services in the same day, but not at the same time.

9034.23 The Medicaid reimbursable billable unit of service for wellness services shall be fifteen (15) minutes. A provider shall provide at least eight (8) minutes of service in a span of fifteen (15) continuous minutes to bill a unit of service.

9099 DEFINITIONS

9099.1 When used in this chapter, the following terms and phrases shall have the meanings ascribed:

Abbreviated Readiness Process - A process that assures that existing providers that have been approved as HCBS Waiver providers possess and demonstrate the capability to effectively serve people with disabilities and their families by providing the framework for identifying qualified providers ready to begin serving people in the Waiver and assisting those providers already in the DDS/DDA system who may need to improve provider performance.

Advance Practice Registered Nurse (APRN) or Nurse Practitioner (NP) - An individual who is licensed to practice nursing pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*), or licensed to practice nursing in the jurisdiction where the services are being provided.

Anthropometric assessment - A clinical approach utilizing noninvasive methods to assess the size or body composition of an individual.

Archive – Maintenance and storage of records.

Audiologist - A person who meets the education and experience requirements for a Certificate of Clinical Competence in the area of audiology granted by the American Speech and Hearing Association or is licensed or certified as an audiologist in the state where the services are provided.

Audiologist Assistant - Support personnel who, following academic or on-the-job training, perform tasks prescribed, directed, and supervised by ASHA-certified audiologists.

Behavior Management Specialist - An individual who has the training and experience in the theory and technique of changing the behavior of individuals to enhance their learning of life skills and adaptive behaviors, and to decrease maladaptive behaviors, and who works under the supervision of a licensed practitioner.

Behavioral Support Plan - A plan that is a component of the ISP that outlines positive supports and strategies to help a person ameliorate and/or eliminate the negative impact of one or more challenging behaviors that have a negative impact on a person's ability to achieve his/her goals.

Benefits Counseling – Analysis and advice provided to a person to help him/her understand the potential impact of employment on his/her public benefits, including but not limited to Supplemental Security Income, Medicaid, Social Security Disability Insurance, Medicare, and Food Stamps.

Bereavement counseling - A form of psychotherapy that aims to help a person cope with grief and mourning following a major life change or the death of a loved one.

Board Certified Behavior Analyst - An individual with at least a Master's Degree and a certificate from the Behavioral Analyst Certification Board (BCABA), in the jurisdiction where the credential is accepted.

Board Certified Assistant Behavior Analyst - An individual with at least a Bachelor's Degree and a certificate from the BACBA in the jurisdiction where the credential is accepted.

Community integration plan - A plan that includes structured activities and practical experiences by incorporating goals and strategies that best meets the person's interests, needs and learning styles, and that can be implemented within a flexible time period.

Competitive Integrated Employment - Full or part-time work at minimum wage or higher, with wages and benefits, and opportunities for advancement similar to those without disabilities performing the same work, and fully integrated with co-workers without disabilities.

Continuous Quality Assurance Plan – A plan that has a systematic approach to assessing Waiver services and supports designed to ensure Waiver requirements are implemented on an ongoing basis including activities that emerge from a systematic and organized framework that tracks improvement.

Couples - Married or unmarried persons in a relationship, including same-sex relationships.

Day Habilitation Plan - A person-centered plan developed by the day habilitation provider, based on a person-centered planning process that takes into account the results of a functional analysis, ISP, Plan of Care and other available information which lists services and outlines preferences, interests, and measurable outcomes to enable the person to reside, work and participate in the community, and maintain the person's health.

Diagnostic Assessment Report – A report that summarizes the person's psychological and behavioral functioning to determine whether the person may benefit from a Behavioral Support Plan based upon the person's presenting problems and individual goals.

Direct Support Professional (DSP) - An individual who works directly with people with developmental disabilities with the aim of assisting the person to become integrated into his or her community or the least restrictive environment.

EPSDT - Early and Periodic Screening, Diagnostic, and Treatment Services designed for Medicaid-eligible children under the age of twenty-one (21) that include periodic screenings to identify physical and mental conditions, vision, hearing, and dental, as well as diagnostic and treatment services to correct conditions identified during screenings.

Fade-out plan - A plan used by providers to ensure that the restrictive technique or processes utilized are gradually and ultimately eliminated in the person's plan of care.

Family - Anyone who is related to the person by blood, marriage, or adoption.

Fitness training - Instruction using exercise and weight training to promote a person's overall health and physical well-being to maintain a healthy weight range.

Functional Analysis - The process of identifying a person's specific strengths, preferences, developmental needs, and need for services by identifying the person's present developmental level, health status, expressed needs and desires of the person and his or her family, and environmental or other conditions that would facilitate or impede the person's growth and development.

Functional Behavioral Analysis – A comprehensive and individualized process for identifying events that precede and follow a target behavior in order to develop hypotheses regarding the purpose of the target behavior and identify positive changes to be made.

Group Home for a Person with an Intellectual Disability – The same as the definitions and licensure requirements as set forth in Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

Group Supported Employment - An integrated setting in competitive employment in which a group of two (2) to four (4) persons or four to eight (8) persons are working at a particular work setting. The persons may be disbursed throughout the company or among workers without disabilities.

HCBS Settings Rule – The Centers for Medicare & Medicaid Services (CMS) final rule on Medicaid home and community-based services (HCBS), effective March 17, 2014. *See* 79 Fed. Reg. 2947 (Jan. 16, 2014).

Health Care Management Plan - A written document designed to evaluate a person's health care status and to provide recommendations regarding the treatment and amelioration of health care issues by identifying types of risk, interventions to manage identified risks, persons responsible for carrying out interventions, and persons responsible for providing an evaluation of outcomes and timeframes.

Home Health Agency - Shall have the same meaning as "home care agency" and shall meet the definitions and licensure requirements as set forth in the Health-Care and Community Residence Facility, Hospice and Home Care Licensure Act of 1983, effective February 24, 1984 (D.C. Law 5-48; D.C. Official Code §§ 44-501 *et seq.*), and implementing rules.

Host Home - The residence owned or leased by the homeowner or principal care provider who provides host home services to the person enrolled in the ID/DD Waiver.

Individual Habilitation Plan - The plan as set forth in Section 403 of the Citizens with Intellectual Disabilities Constitutional Rights and Dignity Act of 1978, effective March 3, 1979 (D.C. Law 2-137; D.C. Official Code § 7-1304.03).

Individual Support Plan (ISP) - Identifies the supports and services to be provided to the person and the evaluation of the person's progress on an on-going basis to assure that the person's needs and desired outcomes are being met.

Individual Supported Employment - A supported employment strategy in which a job coach places a person into competitive or customized employment through a job discovery process, provides training and support, and then gradually reduces time and assistance at the work site.

Integrated Work Setting - A work setting that provides a person enrolled in the Waiver with daily interactions with other employees without disabilities or the general public.

Intellectual Disability - Means a substantial limitation in capacity that manifests before eighteen (18) years of age and is characterized by significantly below-average intellectual functioning, existing concurrently with two (2) or more significant limitations in adaptive functioning as defined in D.C. Official Code § 7-1301.03(15A). The determination of intellectual functioning includes consideration of the standard error of measurement associated with the particular intelligence quotient test. The adaptive functioning deficits must cross at least two of the following three domains: conceptual, practical, and social.

Intermediate Care Facility for Individuals with Intellectual Disabilities - The same meaning as an "Intermediate Care Facility for Individuals with Intellectual Disabilities" as set forth in Section 1905(d) of the Social Security Act.

ISP Year - The three hundred and sixty five (365) day period during which a person's ISP is in effect.

Licensed Independent Clinical Social Worker - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

Licensed Graduate Social Worker - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

Licensed Independent Social Worker - An individual who is licensed to practice social work pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1208 *et seq.*) or licensed to practice social work in the jurisdiction where the services are being provided.

Licensed Professional Counselor - An individual who is licensed to practice counseling pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1207 *et seq.*) or licensed to practice counseling in the jurisdiction where the services are being provided.

Living Wage - Living Wage refers to minimum hourly wage requirements as set forth in Title I of the Living Wage Act of 2006, effective June 9, 2006 (D.C. Law 16-18; D.C. Official Code §§ 2-220.01 to .11).

Long-term follow along activities - Ongoing support services considered necessary to assure job retention.

Massage therapy - The therapeutic practice of manipulating the muscles and limbs to ease tension, reduce pain, enhance function, aid in the healing process, and promote relaxation and well-being.

Medical Professionals – Individuals who are trained clinicians and deliver medical services.

Mental Health Habilitation Services – Mental health services provided by a Department of Behavioral Health (DBH) certified community mental health provider to consumers to assist consumers in partially or fully acquiring or improving skills and functioning in accordance with the District of Columbia State Medicaid Plan, the DHCF/DBH Interagency Agreement, and Chapter 34 of Title 22-A DCMR.

Non-job, task-specific skills – General skills designed to support employment goals, such as resume writing, interviewing skills, and the ability to communicate effectively.

Nutrition evaluation/consultation- The evaluation and assessment of a person's nutritional status based on their symptoms, health goals, and diet to maximize the person's overall health.

Occupational Therapist – An individual who is licensed to practice occupational therapy pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1201 *et seq.*) or licensed to practice occupational therapy in the jurisdiction where services are provided.

Person – An individual enrolled in the HCBS Waiver for Individual and Family Support (IFS Waiver) program.

People – Individuals enrolled in the HCBS Waiver for Individual and Family Support (IFS Waiver) program.

Person centered – An approach that focuses on what is important to the person based on his or her needs, goals, and abilities rather than using a general standard applicable to all people.

Person's home - The natural home of the person, which does not include an institutional or residential facility or foster home.

Physical Therapist – An individual who is licensed to practice physical therapy pursuant to Section 501 of the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1205.01) or licensed to practice physical therapy in the jurisdiction where services are provided.

Plan of Care - A written service plan that meets the requirements set forth in § 9004.6 of Title 29 DCMR, is signed by the person receiving services, and is used to prior authorize Waiver services.

Positive behavioral support strategies – An alternative to traditional or punitive approaches for managing challenging behaviors that focuses on changing the physical and interpersonal environment and increasing skills so that the person is able to get his/her needs met without having to resort to challenging behavior.

Private Practice - An individual whose practice is an unincorporated solo practice or unincorporated partnership. Private practice also includes an individual who is practicing therapy as an employee of an unincorporated practice, a professional corporation, or other incorporated therapy practice. Private practice does not include individuals when they are working as employees of a hospital, nursing facility, clinic, home health agency, rehabilitation facility or any other entity that has a Medicaid provider agreement which includes physical therapy in the provider's reimbursement rate.

Proactive strategies – Specific interventions such as staff actions or environmental modifications that prevent the occurrence of target behaviors.

Provider - Any entity that meets the Waiver service requirements, has signed a Medicaid Provider Agreement with DHCF to provide those services, and is enrolled by DHCF to provide Waiver services.

Provider for the agency – The roommate of the person receiving waiver supports, who is hired as a contract employee by the Waiver provider to provide shared living supports to the person.

Psychiatrist - An individual licensed to practice psychiatry pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*) or licensed as a psychiatrist in the jurisdiction where the services are being provided.

Psychologist - An individual licensed to practice psychology pursuant to the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1202 *et seq.*) or licensed as a psychologist in the jurisdiction where the services are being provided.

Qualified Intellectual Disabilities Professional- Also known as Qualified Developmental Disabilities Professional or QDDP as defined in D.C. Official Code § 7-1301.03(21), is someone who oversees the initial habilitative assessment of a person; develops, monitors, and review ISPs; and integrates and coordinates Waiver services.

Rehabilitation Specialist - An individual with a Master's degree in Rehabilitation Counseling or a similar degree from an accredited university; an individual with a Master's degree in a social services discipline and a minimum of one (1) year of experience in a supported employment program or equivalent; or an individual with a Master's degree in a social services discipline and certification from the Commission on Rehabilitation Counselor Certification or a similar national organization.

Registered Nurse - An individual who is licensed or authorized to practice registered nursing pursuant to the District of Columbia Health Occupations Revisions Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as amended, or licensed as a registered nurse in the jurisdiction where services are provided.

Sensorimotor - Functioning in both sensory and motor aspects of bodily activity.

Serious Reportable Incident - Events that due to severity require immediate response, notification to, and investigation by DDS in addition to the

internal review and investigation by the provider agency. Serious reportable incidents include death, allegations of abuse, neglect or exploitation, serious physical injury, inappropriate use of restraints, suicide attempts, serious medication errors, missing persons, and emergency hospitalization.

Service Coordinator – The DDS staff responsible for coordinating a person’s services pursuant to their ISP and Plan of Care.

Sexuality education - A comprehensive training about various aspects of sexuality, including information about family planning; reproduction; body image; sexual orientation; sexual pleasure and decision making; communication; sexually transmitted infections; safe sexual practices; birth control methods; and how to reduce the likelihood of sexual victimization.

Situational Assessment - A type of assessment that provides the person an opportunity to explore job tasks in work environments in the community to identify the type of employment that may be beneficial to the person and the support required by each person to succeed in his/her work environment. This assessment shall include observation of the person at the work site, identification of work site characteristics, training procedures, identification of supports needed for the person, and recommendations and plans for future services, including the appropriateness of continuing supported employment.

Skilled Nursing - Health care services that are delivered by a registered or practical nurse acting within the scope of their practice and shall meet the definitions and licensure requirements as set forth in the District of Columbia Health Occupations Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code §§ 3-1201 *et seq.*), as amended, and implementing rules.

Small Group Day Habilitation – Day habilitation services delivered in small group settings at a ratio of one-to-three for persons with higher intensity support needs in a setting not to exceed fifteen (15) people.

SMARTER Goals –Goals that are: Specific, Measurable, Attainable, Relevant and Time-Bound, Evaluated, and Revisable.

Special Education Teacher - An individual with a Master's Degree in Special Education from an accredited college or university and a teacher’s certificate in the jurisdiction where services are provided.

Speech Pathologist – An individual who meets the education and experience requirements for a Certificate of Clinical Competence in the areas of speech pathology granted by the American Speech and Hearing Association

(ASHA) or is licensed or certified as a speech pathologist in the state where the services are provided.

Speech Pathologist Assistant - Support personnel who, following academic or on-the-job training, perform tasks prescribed, directed, and supervised by ASHA-certified speech language pathologists.

Staffing Plan - A written document that includes the numbers and titles of staff assigned to the particular person, for a specified time period and scheduled for a given site and/or shift to successfully provide oversight and to ensure the maintenance of the health, safety and well-being of the person receiving services.

Stipend – Nominal fee paid to a person for attendance or participation in activities designed to achieve his or her employment goal, as identified in the person’s ISP.

Substantial Gainful Activity (SGA) – A level of work activity and earning that is consistent with 20 CFR §§ 404.1510 and 404.1571-404.1576.

Summary of Supports and Services - A written document that lists the various supports and services to be received by a person and a component of the person’s ISP.

Support Team - A group of individuals providing support to a person with an intellectual/developmental disability, who have the responsibility of performing a comprehensive person-centered evaluation to support the development, implementation, and monitoring of the person’s ISP and Plan of Care.

Supported Living Residence - A residence owned or leased by the provider or a residence owned or leased by the person receiving services.

Target behavior - The challenging behaviors to be addressed by staff.

Temporary Emergency – A sudden change in the medical condition or behavioral status of a person receiving in-home supports services or their caregiver that warrants additional hours of in-home supports services.

Trained Medication Employee – An individual employed to work in a program who has successfully completed a training program approved by the Board of Nursing and is certified to administer medication to program participants.

Travel Skills Training – Training the person to use public transportation to travel safely to their job or training work site.

Treatment Plan - A written plan that includes diagnostic findings, preventative care, and treatment recommendations resulting from a comprehensive evaluation of the person's dental health needs.

Vocational Assessment - An assessment designed to assist a person, their family and service providers with specific employment related data that will generate positive employment outcomes. The assessment should address the person's life, relationships, challenges, and perceptions as they relate to potential sources of community support and mentorship.

Waiver - HCBS Waiver for Individual and Family Support (IFS Waiver) as approved by CMS.

Comments on these emergency and proposed rules shall be submitted in writing to Melisa Byrd, Senior Deputy Director/Medicaid Director, Department of Health Care Finance, Government of the District of Columbia, 441 4th Street NW, Suite 900, Washington, DC 20001, via telephone at (202) 442-8742, by email at DHCFPublicComments@dc.gov, or online at www.dcregs.dc.gov, within thirty (30) days of the date of publication of this notice in the *D.C. Register*. Additional copies of these rules may be obtained from the above address.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

ADMINISTRATIVE ISSUANCE SYSTEM

Mayor's Order 2020-129
December 29, 2020

SUBJECT: Establishment — Saving DC's Rental Housing Market Strike Force

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.), it is hereby **ORDERED** that:

- I. **ESTABLISHMENT**: There is established the Saving DC's Rental Housing Market Strike Force ("Strike Force").
- II. **PURPOSE**: The Strike Force shall serve as an advisory group to address actions by or with the District government to address the future of DC's rental housing market – affordable, market-rate, and naturally occurring affordable units.
- III. **RESPONSIBILITIES**
 - A. The Strike Force shall issue a report of recommendations by March 4, 2021 and shall be submitted to the Housing Agency Partners coordinated by the Office of the Deputy Mayor for Planning and Economic Development.
 - B. The report shall, at a minimum:
 1. Develop balanced solutions together with housing providers and tenants, a proactive approach in anticipation of dramatic changes in the District's rental market, with a focus on expected higher vacancy rates; higher eviction rates, calls for an extension of the eviction moratorium; rental assistance programs expiring due to exhaustion of existing funding; and a lack of additional local or federal funding.
 2. Advise on how to handle immediate, emergency issues like eviction and distressed properties in a way that puts the District in a good position to meet the Mayor's housing goals during a recovery period and beyond.
 3. Provide specific recommendations on programs and policies to:

- a. Maintain the tenancies of low-income tenants and the financial feasibility of the buildings in which they reside after the end of the eviction moratorium;
- b. Add income- and rent-restricted affordable units to the inventory of housing units in the District in a way that furthers the Mayor's affordable housing goals;
- c. Assist the recovery of a vibrant private rental housing market and keep the District on course to meet the Mayor's goal for new housing within the context of the Housing Framework for Equity and Growth; and
- d. Provide economic and wealth-building opportunities for District residents in the expansion of the residential rental market.

IV. COMPOSITION

- A. The Strike Force shall consist of the following twenty-five (25) members:
 1. The Deputy Mayor for Planning and Economic Development, or the Deputy Mayor's designee;
 2. The Director of the Department of Housing and Community Development;
 3. The Director of the Office of Planning;
 4. The Director of the Department of Human Services;
 5. The Director of the Interagency Council on Homelessness;
 6. The Chief Tenant Advocate;
 7. The Executive Director/Chief Executive Officer of the District of Columbia Housing Finance Agency;
 8. The Attorney General for the District of Columbia, or the Attorney General's designee; and
 9. Seventeen (17) public and legislative members, at least one (1) of whom shall be appointed from each of the following categories, and each of whom shall be appointed by, and serve at the pleasure of, the Mayor:

- a. Representative(s) of membership organizations that support the housing and economic development industries;
 - b. Representative(s) of housing providers;
 - c. Representative(s) housing counseling organizations, tenant advocates, or tenants;
 - d. Representative(s) of the financial services industry;
 - e. Representative(s) of the judicial branch and legal services organizations;
 - f. Representative(s) of housing policy research organization(s);
 - g. Representative(s) of philanthropy; and
 - h. Member(s) or staff of the Council of the District of Columbia.
- B. The Mayor shall designate a member of the Strike Force to serve as the Chairperson of the Strike Force. The member so designated shall serve in the capacity of Chairperson at the pleasure of the Mayor.

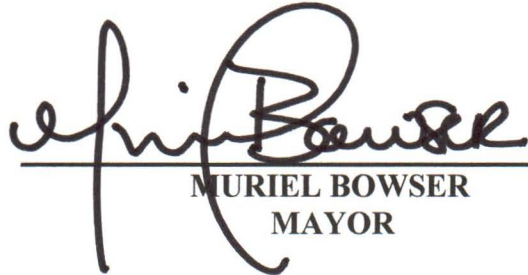
V. **ADMINISTRATION**

- A. DHCD shall provide administrative support for the activities of the Strike Force and coordinate and schedule all activities necessary for the Strike Force to function effectively.
- B. DHCD may issue procedures or guidelines as may be appropriate to ensure the efficient implementation of this Order.
- C. The Chairperson of the Strike Force may establish and oversee the work of partnerships, teams, committees, or subcommittees as he or she deems appropriate to carry out the purposes of this Order.
- D. All District agencies shall cooperate with the Strike Force, participate in meetings of the Strike Force upon request of the Chairperson, and provide, in a timely manner, any information that the Strike Force may reasonably request to carry out the purposes of this Order.

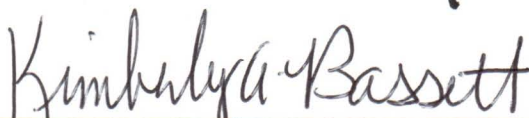
VI. SUNSET

The Strike Force shall remain active for three (3) months after the effective date of this Order.

VII. 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

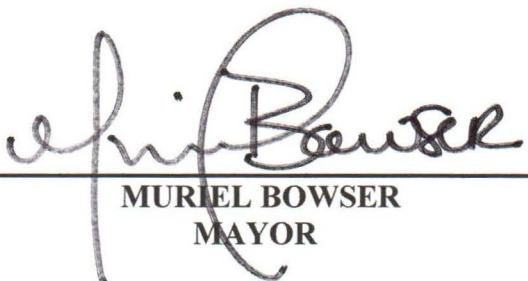
Mayor's Order 2021-001
January 1, 2021

SUBJECT: Appointment — Acting Chief, Metropolitan Police Department


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.), it is hereby **ORDERED** that:

- 1. **ROBERT J. CONTEE III**, is appointed Acting Chief of the Metropolitan Police Department and shall serve in that capacity at the pleasure of the Mayor.
- 2. This Order supersedes Mayor's Order 2017-061, dated March 7, 2017.
- 3. **EFFECTIVE DATE:** This Order shall become effective on January 2, 2021.



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 2021-002

January 6, 2021

SUBJECT: Declaration of a Second Public Emergency – Citywide Curfew**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in me as Mayor of the District of Columbia pursuant to section 422 of the District of Columbia Home Rule Act, approved December 24, 1973, Pub. L. 93-198, 87 Stat. 790, D.C. Official Code § 1-204.22 (2016 Repl.); section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3-149, D.C. Official Code § 7-2304 (2018 Repl.); the Coronavirus Support Temporary Amendment Act of 2020, effective October 9, 2020, D.C. Act 23-334, 67 DCR 12236; and Mayor's Orders 2020-050, 2020-063, 2020-066, 2020-067, 2020-079, 2020-103, and 20220-127, it is hereby **ORDERED** that:

I. BACKGROUND

1. As the nation's capital, Washington, DC hosts hundreds of First Amendment demonstrations each year. As Mayor, I am proud of our city's long history of hosting these gatherings and of the peaceful exercise of our citizens' constitutional rights.
2. During the weekend of November 13-14, 2020, a number of individuals came to Washington, DC to exercise their First Amendment rights in support of the failed Trump reelection campaign. Although the country was in the midst of the COVID-19 pandemic, with more than 260,000 people having died from the disease, large numbers of participants failed to abide by District requirements to wear a face mask, maintain social distancing, and self-quarantine when arriving from other states with high rates of COVID-19 outbreaks. Although the majority of participants in the demonstration and counter-demonstrations were peaceful, a number of participants came to Washington, DC with the intent of engaging in physical altercations or vandalism. As a result, more than 20 people were arrested for weapons violations and assaults, at least one person was stabbed, a number of confrontations and assaults were documented on social media, and protestors vandalized or destroyed signs proclaiming "Black Lives Matter" on private property, including at houses of worship.
3. On December 12, 2020, another First Amendment demonstration occurred in Washington, DC to protest the Electoral College votes cast to elect Joe Biden and Kamala Harris as the nation's next President and Vice President. Once again, large numbers of participants failed to abide by District requirements to wear a face mask, maintain social distancing, and self-quarantine when arriving from other states with high rates of COVID-19 transmission. A number of participants again

came to Washington, DC with the intent of engaging in physical confrontations. As a result of this violence, more than 30 people were arrested for weapons violations and assaults, at least four people were stabbed, and four churches were victims of hateful actions resulting in the theft and burning of "Black Lives Matter" signs and banners stolen from their private property.

4. On January 5-6, 2021, First Amendment demonstrations were issued permits by the federal government for Freedom Plaza, the Ellipse, the National Mall, and the U.S. Capitol grounds as Congress meets to accept the Electoral College votes cast to elect Joe Biden and Kamala Harris the nation's next President and Vice President, respectively.
5. On the night of January 5, 2020, a number of weapons arrests were made. On January 6, 2021 protests transformed from peaceful to violent. Barricades at the Capitol were stormed and persons have entered the Capitol with the intent of disrupting proceedings. Protestors brought their own stink bombs and deployed them, sprayed pepper spray, and threw bricks, bottles, and bicycle racks at persons, including law enforcement officers. Both Capitol Police and Metropolitan Police Department officers have been injured. Bomb threats have been called in and shots have been fired at the Capitol.
6. Policing experience shows that violence escalates at night, and thus we are in reasonable apprehension that the already-violent crowd will become even more dangerous.
7. The health, safety, and well-being of persons within the District of Columbia are threatened and endangered by the existence of these violent actions and large crowds gathering at night, particularly when they are likely to be in close proximity, without wearing facemasks, and potentially engaged in physical altercations.
8. Moreover, the District is currently under a declared public health state of emergency due to COVID-19; mass gatherings of more than twenty-five (25) persons are currently prohibited in order to reduce the spread of the disease and to protect the public health; and COVID-19 is spreading exponentially around the country. Today, no states are below the high-risk threshold of ten new cases per 100,000 persons, although the District exempts Maryland and Virginia from the travel restrictions applicable to others coming from high-risk states, and the President has called for persons around the country to make a last ditch effort to persuade Congress to overturn the results of the election, his court challenges having failed.
9. On multiple occasions, President Donald Trump has encouraged extremists and conspiracy theorists to come to Washington, DC:
 - a. On December 19, 2020, President Trump tweeted, "Statistically impossible to have lost the 2020 Election. Big protest in D.C. on January

- 6th. Be there, will be wild!"
- b. On December 26, 2020, President Trump again encouraged extremists and promoted a mass gathering by tweeting, "The 'Justice Department' and the FBI have done nothing about the 2020 Presidential Election Voter Fraud, the biggest SCAM in our nation's history, despite overwhelming evidence. They should be ashamed. History will remember. Never give up. See everyone in D.C. on January 6th."
 - c. On December 27, 2020, President Trump tweeted, "See you in Washington, DC, on January 6th. Don't miss it. Information to follow!"
 - d. On December 30, 2020, President Trump tweeted, "JANUARY SIXTH, SEE YOU IN DC!"
 - e. On January 1, 2021, President Trump tweeted, "The BIG Protest Rally in Washington, D.C., will take place at 11:00 A.M. on January 6th. Locational details to follow. StopTheSteal! [sic]"
 - f. On January 1, 2021, President Trump tweeted, "Massive amounts of evidence will be presented on the 6th. We won, BIG!"
 - g. On January 2, 2021, President Trump tweeted in reference to the January 6 protests, "I will be there. Historic day!"
 - h. On January 5, 2021, President Trump tweeted, "How can you certify an election when the numbers being certified are verifiably WRONG. You will see the real numbers tonight during my speech, but especially on JANUARY 6th... Republicans have pluses & minuses, but one thing is sure, THEY NEVER FORGET!"
10. Although more than 21 million Americans have been infected with COVID-19 and more than 358,000 have died from the disease, President Trump has repeatedly amplified extremists' election conspiracies and encouraged supporters to participate in demonstrations that are likely to spread COVID-19.
11. I now must exercise my authority to impose a curfew, in order to protect the safety of persons and property in the District.
12. By this Order, a second public emergency is declared in the District of Columbia, and a curfew is ordered for Wednesday night, January 6, 2021, continuing until the morning of January 7, 2020.

II. MEASURES ORDERED

1. A curfew is hereby ordered commencing at 6:00 p.m. on Wednesday, January 6, 2021 and ending at 6:00 a.m. on Thursday, January 7, 2021. The curfew shall

apply citywide.

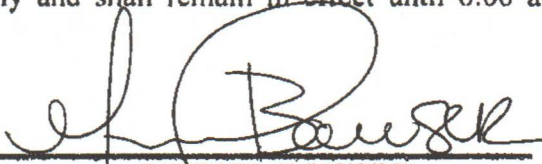
- 2. During the hours of the curfew, no person, other than persons designated by the Mayor, shall walk, bike, run, loiter, stand, ride a scooter, or motor by car or other mode of transport upon any street, alley, park, or other public place within the enumerated geographic area described above. Individuals performing essential duties or participating in essential activities as authorized by prior Mayor's Orders, including working media with their outlet-issued credentials and healthcare personnel, are exempt when engaged in essential functions.
- 3. During this declared second public emergency, no District government law enforcement personnel, including employees of the Metropolitan Police Department or those members of the District of Columbia National Guard activated for the District's response to the COVID-19 public health emergency may deputize any other law enforcement personnel from other local, state, or federal jurisdictions without express authorization by me.

III. ENFORCEMENT

Any person who violates the curfew imposed by this Order may be subject to a criminal fine of up to three-hundred dollars (\$300) or to imprisonment for not more than ten (10) days pursuant to Title 24, Chapter 22 of the District of Columbia Municipal Regulations (24 DCMR § 2203.4).

IV. EFFECTIVE DATE AND DURATION

This Order shall become effective immediately and shall remain in effect until 6:00 a.m. on Thursday, January 7, 2021.



MURIEL BOWSER
MAYOR

ATTEST: Kimberly A. Bassett
KIMBERLY A. BASSETT
SECRETARY OF STATE OF THE DISTRICT OF COLUMBIA

**GOVERNMENT OF THE DISTRICT OF SYSTEM
COLUMBIA ADMINISTRATIVE ISSUANCE**

Mayor's Order 2021-003

January 6, 2021

SUBJECT: Extension of Public Emergency**ORIGINATING AGENCY:** Office of the Mayor

By virtue of the authority vested in the Mayor of the District of Columbia pursuant to section 422(11) of the District of Columbia Home Rule Act, approved December 24, 1973, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(11) (2016 Repl.); section 5 of the District of Columbia Public Emergency Act of 1980, effective March 5, 1981, D.C. Law 3- 149, D.C. Official Code § 7-2304 (2018 Repl.); D.C. Official Code § 5-129.03, and Mayor's Order 2009-4, it is hereby **ORDERED** that:

I. FINDINGS (NATURE OF THE PUBLIC EMERGENCY)

First Amendment protests have turned violent. Many persons came to the District armed and for the purpose of engaging in violence and destruction and have engaged in violence and destruction. They have fired chemical irritants, bricks, bottles, and guns. They have breached the security of the Capitol and their destructive and riotous behavior has the potential to spread beyond the Capitol.

Their motivation is ongoing. Today, they sought to disrupt the Congressional proceedings relating to the acceptance of electoral college votes. President Trump continues to fan rage and violence by contending that the Presidential election was invalid. Persons are dissatisfied with judicial rulings and the findings of State Boards of Elections, and some persons can be expected to continue their violent protests through the inauguration.

Today's events and the reasonable apprehension of an ongoing public emergency represent an immediate threat to the health, safety, and welfare of District residents that requires emergency protective actions. Accordingly, by this Order, the public emergency declared by Mayor's Order 2021-002 earlier this afternoon is hereby extended for a total of fifteen (15) days, until and unless provided for by further Mayoral Order.

II. EMERGENCY MEASURES AND REQUIREMENTS

- A. The City Administrator, in consultation with the Director of the District of Columbia Homeland Security and Emergency Management Agency, is authorized to implement such measures as may be necessary or appropriate to protect persons and property in the District of Columbia from the conditions caused by this public emergency. Such measures may include, as necessary or appropriate, actions

authorized under D.C. Official Code § 7-2304(b), including requesting federal disaster assistance, or taking measures under the District Response Plan to the extent necessary or appropriate to effectuate the relief contemplated by this Order.

- B. This Order shall apply to all departments, agencies, and instrumentalities of the District government as necessary or appropriate to implement this Order.
- C. The Chief Financial Officer of the District of Columbia is authorized to approve disbursement of all appropriations necessary to carry out this Order.
- D. The City Administrator, in coordination with the Deputy Mayor for Public Safety and Justice, the Director of the District of Columbia Homeland Security and Emergency Management Agency, and the Chief Financial Officer, is authorized to apply for financial assistance through the Federal Emergency Management Agency, any other federal, private, or nonprofit disaster relief and recovery organizations, and any other appropriate agencies of the United States government to recoup expenditures incurred, or obtain funding needed, under this order.
- E. The District Response Plan is hereby implemented beginning immediately, including the execution of mutual aid agreements for public safety purposes, and the appointment and swearing in of special police.
- F. In accordance with 49 C.F.R. § 390.23 (Relief from Regulations), any motor carriers or drivers operating commercial motor vehicles directly engaged in the resolution of this emergency shall not be subject to any provision that restricts the length of their work hours. Accordingly, this order permits utility workers and District agencies to retain crews to complete emergency repairs and restore services beyond normal work hours.
- G. Expend appropriated funds as needed to address the public emergency.
- H. Prepare for, order, and supervise the evacuation or sheltering of persons.
- I. Disconnect, suspend, or shut-off public utilities.
- J. Destroy, remove, or prohibit access to real or personal property found to be contaminated by any matter which renders it deleterious to life or health.
- K. Issue orders to regulate the use, sale, production, and distribution of food, fuel, clothing and other commodities as required by the District's response plan.
- L. Reduce or alter the hours of business, and direct persons to remain off public streets if a curfew is established.
- M. Establish such emergency services units as required.

- N. Expand existing departmental and agency units related to public emergency services.
- O. Exercise operational direction over all District government departments.
- P. Procure supplies, provide inform the public, and take any other preparatory steps.
- Q. Request pre-disaster assistance from the federal government.
- R. Take action to prevent or reduce harmful consequences of disaster.
- S. Waive application of any law administered by the Department of Insurance, Securities, and Banking if doing so is reasonably calculated to protect the health, safety, or welfare of District residents; and
- T. Notwithstanding any provision of Chapter 6 of Title 1, or the rules issued pursuant to Chapter 6 of Title 1, the subchapter I-A of Chapter 5 of Title 1, or any other personnel law or rules, the Mayor may take the following personnel actions regarding executive branch subordinate agencies that the Mayor determines necessary and appropriate to address the emergency:
 - 1. Redeploying employees within or between agencies;
 - 2. Modifying employees' tours of duty;
 - 3. Modifying employees' places of duty;
 - 4. Mandating telework;
 - 5. Extending shifts and assigning additional shifts;
 - 6. Providing appropriate meals to employees required to work overtime or work without meal breaks;
 - 7. Assigning additional duties to employees;
 - 8. Extending existing terms of employees;
 - 9. Hiring new employees into the Career, Education, and Management Supervisory Services without competition;
 - 10. Eliminating any annuity offsets established by any law; or
 - 11. Denying leave or rescinding approval of previously approved leave.

III. DURATION OF ORDER

This Order shall remain in effect until fifteen (15) days after its effective date, until 3:00 p.m. on Thursday, January 21, 2021, unless earlier rescinded or superseded.

IV. EFFECTIVE DATE:

This Order shall become effective immediately.

ATTEST: Kimberly Bassett
Kimberly A. Bassett
SECRETARY OF STATE OF THE DISTRICT
OF COLUMBIA

Muriel Bowser
Muriel Bowser
Mayor

**DISTRICT OF COLUMBIA COMMISSION ON SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS
NOTICE OF PUBLIC MEETING**

In accordance with D.C. Code § 2-576(1), the District of Columbia Commission on Selection and Tenure of Administrative Law Judges of the Office of Administrative Hearings (Commission) hereby gives notice that, in light of the Government of the District of Columbia's shutdown of in-person public services due to the Coronavirus epidemic, it will conduct a teleconference meeting on **January 6, 2021 at 1:00 p.m.** in order to consider the reappointments of two (2) Administrative Law Judges. The entire meeting will be closed pursuant to D.C. Code § 2-575(b)(10), which permits closed meetings in order to "discuss the appointment, employment, assignment, performance evaluation, compensation, discipline, demotion, removal, or resignation of government appointees, employees, or officials." The agenda below will be posted on the OAH website at www.oah.dc.gov and the Office of Open Government/BEGA website at www.open-dc.gov.

For further information, please contact Louis Neal at Louis.Neal@dc.gov or 202-724-3672.

AGENDA

- I. Call to Order (Board Chair)**
- II. Ascertainment of Quorum**
- III. Adoption of Agenda**
- IV. Vote on Reappointment of Eligible Administrative Law Judges**
 - a. John Rooney**
 - b. Margaret Mangan**
- V. Discussion of Next Meeting**
- VI. Adjournment (Board Chair)**

**DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**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 T. Rooney.

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 Rooney’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Rooney has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of his six-year term on January 8, 2021.

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 Rooney’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 January 20, 2021. 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 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams
Joseph N. Onek, Esq.
Rob Hawkins, Esq.
Nadine C. Wilburn, Esq.
Acting Chief Administrative Law Judge M. Colleen Currie

**DISTRICT OF COLUMBIA COMMISSION ON
SELECTION AND TENURE OF
ADMINISTRATIVE LAW JUDGES OF
THE OFFICE OF ADMINISTRATIVE HEARINGS**

**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 Margaret Mangan.

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 Mangan’s qualifications for reappointment to the District of Columbia Office of Administrative Hearings. Administrative Law Judge Mangan has filed a statement with the Commission requesting reappointment to a six-year term upon the expiration of her six-year term on January 22, 2021.

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 Mangan’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 January 20, 2021. 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 4th Street, N.W.
Suite 450N
Washington, D.C. 20001

The members of the Commission are:

The Honorable Yvonne Williams
Joseph N. Onek, Esq.
Rob Hawkins, Esq.
Nadine C. Wilburn, Esq.
Acting Chief Administrative Law Judge M. Colleen Currie

BREAKTHROUGH MONTESSORI PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Fundraising Services/Consultancy****I. Introduction**

Breakthrough Montessori Public Charter School was founded in Washington, DC in 2015 with the mission to provide families with a fully-implemented, public Montessori program that enables children to develop within themselves the power to shape their lives and the world around them.

Breakthrough Montessori is a growing school. In 2016, Breakthrough began its inaugural school year with 90 students. Currently, Breakthrough serves 270 students in grades PK3-3. At scale, Breakthrough will serve 405 students in grades PK3-6.

The Montessori method is a time-honored instructional approach anchored by a belief in the boundless potential of all children. At Breakthrough, we honor each child's unique self and encourage their inquisitive nature through individual and small-group lessons, hands-on learning, student-led discovery, and a self-paced curriculum.

To bring our vision for public Montessori education to fruition, we are exploring avenues to diversity revenue sources and increase fundraising efforts. Through this RFP, Breakthrough seeks bidders to provide fundraising services as specified below. The fundraising consultant will work with the school's leadership and Board of Trustees to build fundraising capacity and implement a long-term fundraising campaign.

II. Scope of Work

Breakthrough seeks fundraising services to complete the following:

Feasibility Study:

- Determine the feasibility of a capital campaign
- Assess the amount of money that might be raised through a capital campaign
- Test the case for support for Breakthrough Montessori
- Identify strengths and challenges that would impact a capital campaign for Breakthrough Montessori
- Assess availability of volunteer leadership and assistance
- Identify potential donors

Campaign Plan

- Develop a multi-year capital campaign plan and implementation strategy that reflects Breakthrough's mission, vision, values, and capacity to execute and sustain.
- Plan must include campaign goal, timetable and characteristics of a campaign leadership team or steering committee

Campaign Implementation

- Provide direct support to school leadership in the implementation of fundraising plan
- Design and implement programs to identify and cultivate donors
- Develop and manage a prospect tracking and management system

III. Proposal Submission

Submit proposals in PDF format to emily.hedin@breakthroughmontessori.org by 5:00pm ET on Monday, February 1, 2021. Proposals must include:

- Contact information
- A description of fee structure
- A detailed response to the services requested
- A list of three references with contact information (references from other public charter schools or Montessori schools preferred but not required)

Direct all questions to Emily Hedin at emily.hedin@breakthroughmontessori.org.

OFFICE OF THE DISTRICT OF COLUMBIA CLEMENCY BOARD

NOTICE OF PUBLIC MEETING

The Clemency Board will be holding its meeting on Friday, January 29, 2021 at 10:30 a.m. The meeting will be held via WebEx at the link (and numbers) below. Below is the agenda for this meeting.

AGENDA

1. Welcome and Call to Order
2. Old Business
 - a. None
3. New Business
 - a. Update on progress of rulemaking
4. Public Comments
5. Adjournment

Meeting Link:

<https://dcnet.webex.com/dcnet/onstage/g.php?MTID=e99cb42596da5eb6b9e3d879836f073d7>

Registration: Please press Ctrl and click the link above to pre-register for the meeting.

Registration password: This meeting does not require a password for registration.

Event number (access code): 180 129 1991

Event password: ptMeGJgm337 (not required)

Join the audio conference only: 1-650-479-3208 – Call-in toll number (US/Canada)

Join from a video system or application: Dial [1801291991](tel:1801291991)@dcnet.webex.com

You can also dial: 173.243.2.68 and enter meeting number.

For additional information, please contact **Lisa M. Wray, Executive Assistant** at (202) 724-7681 or lisa.wray@dc.gov.

D.C. CRIMINAL CODE REFORM COMMISSION**NOTICE OF PUBLIC MEETING****WEDNESDAY, JANUARY 6, 2021 AT 10:00 AM
TELEPHONIC MEETING**

D.C. Criminal Code Reform Commission
441 Fourth Street, NW, Suite 1C001S, Washington, D.C. 20001
(202) 442-8715 www.ccrdc.dc.gov

The D.C. Criminal Code Reform Commission (CCRC) will hold a meeting of its Criminal Code Revision Advisory Group (Advisory Group) on Wednesday, January 6, 2021 at 10am. The meeting will be telephonic and members of the public may hear the meeting by calling:

Dial-in number: 1-650-479-3208

Event number / Access code: 180 216 5030.

The planned meeting agenda is below. Any changes to the meeting agenda will be posted on the agency's website, <http://ccrc.dc.gov/page/ccrc-meetings>. For further information, contact Richard Schmechel, Executive Director, at ccrc@dc.gov.

MEETING AGENDA

- I. Welcome and Announcements.
- II. Discussion of Draft Reports and Memoranda Under Advisory Group Review:
 - (A) First Draft of Report #67 – December 2020 RCC Cumulative Update.
 - (B) Advisory Group Memorandum #39 - Supplemental Materials to the First Draft of Report #67.
 - (C) Fourth Draft of Report #41 – Ordinal Ranking of Maximum Imprisonment Penalties.
 - (D) Advisory Group Memorandum #40 - Statistics on District Adult Criminal Charges and Convictions.
- III. Adjournment.

This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at opengovoffice@dc.gov.

**DC PREPARATORY ACADEMY
PUBLIC CHARTER SCHOOL**

REQUEST FOR PROPOSALS

D.C. Preparatory Academy Public Charter School is seeking proposals from individuals or companies to provide the following:

Due Date: Thursday, January 14th, 2021 at 5:00pm

Details: DC PREP is seeking full **Environmental and Hazmat services** for a large-scale renovation project located at 2330 Pomeroy Road SE over two phases.

Contact: Emily Alexander

Email: DCPREP@jairlynch.com

Due Date: Thursday, January 14th, 2021 at 5:00 pm

Details: DC PREP is seeking full **facility condition assessment** to inform a large-scale renovation project located at 2330 Pomeroy Road SE over two phases.

Contact: Emily Alexander

Email: DCPREP@jairlynch.com

Due Date: Friday, January 29, 2021 - 5:00pm

Details: DC PREP is seeking full **Architectural/Engineering Services** for design and construction administration of a large-scale renovation project located at 2330 Pomeroy Road SE over two phases.

Contact: Emily Alexander

Email: DCPREP@jairlynch.com

Due Date: Friday, January 14, 2021 - 5:00pm

Details: DC PREP is seeking **Legal Services** for the renovation of a public school facility ("Project"). Legal Services will serve as DC Prep's counsel through the Project.

Contact: Dan Englender

Email: denglender@dcprep.org

**DISTRICT OF COLUMBIA BOARD OF ELECTIONS
MONTHLY MEETINGS******Scheduled for the months of January 2021 through December 2021****(All meetings are held at 1015 Half Street, SE, Suite 750)**

DATE	TIME	LOCATION
Wednesday, January 6, 2021	10:30 AM	Suite 750
Wednesday, February 3, 2021	10:30 AM	Suite 750
Wednesday, March 3, 2021	10:30 AM	Suite 750
Wednesday, April 7, 2021	10:30 AM	Suite 750
Wednesday, May 5, 2021	10:30 AM	Suite 750
Wednesday, June 2, 2021	10:30 AM	Suite 750
Wednesday July 7, 2021	10:30 AM	Suite 750
Wednesday, August 4, 2021	10:30 AM	Suite 750
Wednesday, September 1, 2021	10:30 AM	Suite 750
Wednesday, October 6, 2021	10:30 AM	Suite 750
Wednesday, November 3, 2021	10:30 AM	Suite 750
Wednesday, December 1, 2021	10:30 AM	Suite 750

****Dates are subject to change.**

**DEPARTMENT OF EMPLOYMENT SERVICES
OFFICE OF APPRENTICESHIP AND INFORMATION TECHNOLOGY & MARION
BARRY SUMMER YOUTH EMPLOYMENT PROGRAM**

REQUEST FOR APPLICATIONS (RFA): DOES-OAIT-MBSYEP-2021

Purpose/Description of Grant Opportunity

As part of the MBSYEP Pre-Apprenticeship Intermediary Initiative, DOES' OAIT is seeking high quality, structured and innovative grant applications from organizations to develop and implement pre-apprenticeship initiatives within skilled trades that lead to registered apprenticeship opportunities for minority youth (in-school and out-of-school) ages 18-24 and inclusive individuals (individuals possessing physical or mental condition(s) that limits movements, senses, or activities. To demonstrate capacity to move SYEP participants into apprenticeship opportunities post-apprenticeship completion, applying organizations must demonstrate partnerships with registered apprenticeship programs approved by the D.C. Apprenticeship Council via letter of support(s), MOU(s), or other written means to denote partnership.

Eligible Organizations

Organizations that are eligible to apply for this grant include public and private non-profits and for-profit organizations with demonstrated effectiveness providing the requested services and meeting the needs of the target population, including:

- Non-profit, community, or faith-based organizations;
- Community colleges or other postsecondary institutions;
- Public, charter, or alternative secondary schools;
- Trade associations or chambers of commerce;
- Private, for-profit service providers; or
- Labor unions, labor-management partnerships, or registered apprenticeship programs;
- Must have a registered apprenticeship program or have partnerships with other registered apprenticeship programs.

Review Factors

All applications will be objectively reviewed by an independent panel of reviewers and scored against the criteria specified in the Request for Applications (RFA).

Length of Grant Award

The award period for the grant will be from date of award through September 30, 2021 at which time all funds must be invoiced per the payment instructions.

Available Funding

DOES has identified up to \$100,000 in available funding for this grant opportunity.

Anticipated Number of Grant Awards

DOES intends to issue at least one award but reserves the right to issue multiple awards based on the quantity and quality of applications reserved.

Request for Application (RFA) Release Date

The RFA will be released on **December 30, 2020**. The RFA will be posted on the Mayor's Office of Volunteerism and Partnerships website (<http://opgs.dc.gov/page/opgs-district-grants-clearinghouse>) under the District Grants Clearinghouse. It will also be posted at the Department of Employment Services website here: <https://does.dc.gov/page/grant-opportunities>.

Deadline for Applications

The deadline for submission is **January 27th at 5:00 p.m.** Late or incomplete applications will not be forwarded for review.

DEPARTMENT OF HEALTH CARE FINANCE

**PUBLIC NOTICE OF PROPOSED AMENDMENT TO THE DISTRICT
OF COLUMBIA STATE PLAN FOR MEDICAL ASSISTANCE
GOVERNING MEDICAID REIMBURSEMENT OF OUTPATIENT AND
EMERGENCY SERVICES**

The Director of the Department of Health Care Finance (DHCF), pursuant to the authority set forth in an Act to enable the District of Columbia to receive federal financial assistance under Title XIX of the Social Security Act for a medical assistance program, and for other purposes, approved December 27, 1967 (81 Stat.744; D.C. Official Code §1-307.02 (2016 Repl. & 2019 Supp.)) and the Department of Health Care Finance Establishment Act of 2007, effective February 27, 2008 (D.C. Law 17-109; D.C. Official Code § 7-771.01 *et seq.* (2019 Repl.)) hereby gives notice of the intent to submit an amendment to the District of Columbia State Plan for Medical Assistance (State Plan) to the federal Centers for Medicare and Medicaid Services (CMS) for review and approval and to promulgate an accompanying rule.

The proposed State Plan amendment (SPA) and accompanying rule will sunset DHCF's authority to make supplemental payments to eligible hospitals located within the District of Columbia that participate in the Medicaid program effective September 30, 2020 or an alternative effective date established by the Centers for Medicare and Medicaid Services (CMS) in its approval of the corresponding State Plan Amendment, whichever is later. DHCF also is amending the program rules to support this change.

Beginning in FY2021, the hospital provider fee will fund a directed payment initiative that supports contracted Medicaid managed care organizations reimbursing for outpatient hospital services at a rate that is not less than 130% of the District Fiscal Year 2020 fee-for-service base rate.

The proposed SPA requires approval by CMS. These changes shall become effective for services rendered on or after October 1, 2020 or on the effective date established by the CMS in its approval of the corresponding SPA, whichever is later.

This change is proposed in accordance with recent changes set forth under Sections 5001 through 5003 of the Fiscal Year 2021 Budget Support Act of 2020 (D.C. Law 23-149; D.C Official Code § 44-664.01 *et seq.*), effective December 3, 2020, published in the December 18, 2020 issue of the *DC Register* at 67 DCR 14601. As a result of these changes, DHCF projects a net increase in aggregate Medicaid expenditures of approximately \$4,074,995 in Fiscal Year 2021.

If you have any questions, please contact Sharon Augenbaum, Reimbursement Analyst, Office of Rates Reimbursement and Financial Analysis, Department of Health Care Finance, at 441 4th Street, Suite 900S, Washington, DC 20001, or email at sharon.augenbaum@dc.gov or (202) 442-6082.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Audiology and Speech-Language Pathology (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a quarterly basis. The meetings will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 9:30 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

March 15, 2021
June 21, 2021
September 20, 2021
December 20, 2021

The agenda is available at <https://dchealth.dc.gov/node/1170311>. For additional information, contact the Health Licensing Specialist at ashley.balma@dc.gov or (202)724-8819.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Chiropractic (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the second Tuesday of every other month starting on January 12, 2021. The meetings will held from 1:30 PM to 3:30 PM and will be open to the public from 1:30 PM until 2:30PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 2:30 PM until 3:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twelve-month period will be as follows:

January 12, 2021
March 9, 2021
May 11, 2021
July 13, 2021
September 14, 2021
November 9, 2021
January 11, 2022
March 8, 2022

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Dietetics and Nutrition (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a quarterly basis. The meetings will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 9:30 AM to 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

March 9, 2021
June 8, 2021
September 14, 2021
December 14, 2021

The agenda is available at <https://dchealth.dc.gov/page/board-agendas-Dietetics%20and%20Nutrition>. For additional information, contact the Health Licensing Specialist at ashley.balma@dc.gov or (202)724-8819.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Long Term Care Administration (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the second Wednesday of each quarter starting on January 13, 2021. The meetings will held from 10:00 AM to 12:00 PM and will be open to the public from 10:00 AM until 11:00 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 11:00 AM until 12:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twelve-month period will be as follows:

January 13, 2021
April 14, 2021
July 14, 2021
October 13, 2021
January 12, 2022

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Marriage and Family Therapy (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a quarterly basis. The meetings will be open to the public from 11:00 AM until 11:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 11:30 AM to 1:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

March 2, 2021
June 1, 2021
September 7, 2021
December 7, 2021

The agenda is available at <https://dchealth.dc.gov/publication/marriage-and-family-therapy-open-agenda>. For additional information, contact the Health Licensing Specialist at helma.ofosumensah@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Massage Therapy (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a bi-monthly basis from 1:30 PM – 4:00 PM. The meetings will be open to the public from 1:30 PM until 2:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 2:00 PM to 4:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

January 21, 2021
March 18, 2021
May 20, 2021
July 15, 2021
September 16, 2021
November 18, 2021

The agenda is available at <https://dchealth.dc.gov/event/board-massage-therapy-calendar-and-meetings>. For additional information, contact the Health Licensing Specialist at helma.ofosumensah@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Occupational Therapy (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a quarterly basis. The meetings will be open to the public from 2:00 PM until 2:30 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 2:30 PM to 5:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

March 15, 2021

June 21, 2021

September 20, 2021

December 20, 2021

The agenda is available at <https://dchealth.dc.gov/event/board-occupational-therapy-calendar-and-meeting>. For additional information, contact the Health Licensing Specialist at mavis.azariah@dc.gov or (202) 442-4782.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Optometry (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the third Thursday of each quarter starting on January 21, 2021. The meetings will held from 9:30 AM to 11:30 AM and will be open to the public from 9:30 AM until 10:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 10:30 AM until 11:30 AM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twelve-month period will be as follows:

January 21, 2021
April 15, 2021
July 15, 2021
October 21, 2021
January 20, 2022
April 21, 2022

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Physical Therapy (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2016 Repl.).

The Board meets monthly on the second Wednesday of each month from 3:30 PM to 5:30 PM. The meetings will be open to the public from 3:30 PM until 4:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 4:30 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

January 13, 2021
February 10, 2021
March 10, 2021
April 14, 2021
May 12, 2021
June 9, 2021
July 14, 2021
September 8, 2021
October 13, 2021
November 10, 2021
December 8, 2021

The agenda is available at <https://dchealth.dc.gov/node/1169761>. For additional information, contact the Health Licensing Specialist at ashley.balma@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Podiatry (“Board”) hereby gives notice of its regular meeting schedule pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b)) (2012 Repl.) (“Act”).

The Board’s regular meetings shall now be conducted on the first Wednesday of each quarter starting on January 6, 2021. The meetings will be held from 1:30 PM to 3:30 PM and will be open to the public from 1:30 PM until 2:30PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Amendment Act of 2010, D.C. Official Code § 2-574(b), the meetings will be closed from 2:30 PM until 3:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations. The schedule of the Board’s meetings during the next twenty four-month period will be as follows:

January 6, 2021
April 7, 2021
July 7, 2021
October 6, 2021
January 5, 2022

The meeting will be held at 899 North Capitol Street, NE, Second Floor, Washington, DC 20002. Visit the Department of Health Events link at <http://doh.dc.gov/events> for additional information.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Psychology (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a bi-monthly basis on the second Tuesday every other month. The meetings will be open to the public from 2:30 PM until 3:00 PM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 3:00 PM to 5:30 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

January 12, 2021
March 9, 2021
May 11, 2021
July 13, 2021
September 14, 2021
November 9, 2021

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Respiratory Care (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, effective March 25, 1986 (D.C. Law 6-99; D.C. Official Code § 3-1204.05 (b) (2016 Repl.)).

The Board holds its meetings on a quarterly basis. The meetings will be open to the public from 9:00 AM until 9:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with § 575(b) of the Open Meetings Act of 2010 (D.C. Official Code § 2-575(b) (2016 Repl.)), the meeting will be closed from 9:30 AM to 11:00 AM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

February 8, 2021

May 10, 2021

July 12, 2021

November 8, 2021

The agenda is available at <https://dchealth.dc.gov/node/1171773>. For additional information, contact the Health Licensing Specialist at kevin.waugh@dc.gov.

DEPARTMENT OF HEALTH

PUBLIC NOTICE

The District of Columbia Board of Social Work (“Board”) hereby gives notice of its upcoming meetings, pursuant to § 405 of the District of Columbia Health Occupation Revision Act of 1985, D.C. Official Code § 3-1204.05 (b)) (2016 Repl.).

The Board meets monthly on the fourth Monday of each month from 10:00 AM to 1:00 PM. The meetings will be open to the public from 10:00 AM until 10:30 AM to discuss various agenda items and any comments and/or concerns from the public. In accordance with Section 405(b) of the Open Meetings Act of 2010, D.C. Official Code § 2-574(b), the meeting will be closed from 10:30 AM to 1:00 PM to plan, discuss, or hear reports concerning licensing issues, ongoing or planned investigations of practice complaints, and or violations of law or regulations.

The upcoming meetings for the Board are:

January 25, 2021
February 22, 2021
March 22, 2021
April 26, 2021
May 24, 2021
June 28, 2021
July 26, 2021
September 27, 2021
October 25, 2021
November 22, 2021

The agenda is available at <https://dchealth.dc.gov/publication/board-social-work-agendas>. For additional information, contact the Health Licensing Specialist at mavis.azariah@dc.gov or (202) 442-4782.

DEPARTMENT OF HEALTH
NOTICE OF PUBLIC MEETING

Scientific Advisory Committee
Tuesday, January 12th, 2021
5:30 p.m.
Draft Agenda

On Tuesday, January 12th, 2021, the Department of Health will be hosting the next meeting of the Scientific Advisory Committee via Web-Based Conferencing (WebEx). The meeting will commence at 5:30 p.m. Any questions should be directed to Heather Burris at (202) 380-6934. Ms. Burris can also be reached at Heather.Burris@dc.gov.

Welcome from Director Nesbitt

COVID-19 Vaccine Group Update

Vaccine Allocation and Distribution

Communications Update

Member Discussion

Adjournment

Link to join the meeting:

<https://dcnet.webex.com/dcnet/onstage/g.php?MTID=ee78e144c39c1e6893f5850aa921b4c2c>

DISTRICT OF COLUMBIA COMMISSION ON HUMAN RIGHTS**PUBLIC NOTICE OF MEETING****WEDNESDAY, January 13, 2021**

In accordance with D.C. Code § 2-576(1), the Commission on Human Rights hereby gives notice that it will meet on **Wednesday, January 13, 2021 at 6:30 p.m.** Due to the public health emergency and pursuant to the Coronavirus Support Emergency Amendment Act of 2020, B23-0757, the meeting will be held virtually using WEBEX. The public may participate in the meeting online or by telephone using the following login information:

Wednesday, January 13, 2021 6:30 pm | 2 hours**<https://dcnet.webex.com/>****Meeting number: 172 034 7664****Password: 3EQpbsuFV45****Join by phone**

1-650-479-3208 Call-in toll number (US/Canada)

+1-202-860-2110 United States Toll (Washington D.C.)

Access code: 172 034 7664

For further information or if you require an interpreter, please contact Erika Pierson at Commission.COHR@dc.gov or (202) 727-0656.

DRAFT AGENDA

- I. CALL TO ORDER
- II. ROLL CALL
- III. ADOPTION OF THE AGENDA
- IV. ADOPTION OF THE MINUTES
- V. REPORT OF THE DIRECTOR, OFFICE OF HUMAN RIGHTS
- VI. REPORT OF THE CHIEF ADMINISTRATIVE LAW JUDGE
- VII. REPORT OF THE CHAIR OF THE COMMISSION
- VIII. OLD BUSINESS
- IX. NEW BUSINESS
- X. ANNOUNCEMENTS
- XI. ADJOURNMENT OF MEETING

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA

NOTICE OF PROPOSED TARIFF

FORMAL CASE NO. 1017, IN THE MATTER OF THE DEVELOPMENT AND DESIGNATION OF STANDARD OFFER SERVICE IN THE DISTRICT OF COLUMBIA,

1. The Public Service Commission of the District of Columbia (Commission) hereby gives notice, pursuant to Section 34-802 of the District of Columbia Official Code and in accordance with Section 2-505 of the District of Columbia Official Code,¹ of its intent to act upon the proposed tariff amendment of the Potomac Electric Power Company (Pepco)² in not less than thirty (30) days from the date of publication of this Notice of Proposed Tariff (NOPT) in the *D.C. Register*.

2. On December 14, 2020, Pepco filed its proposed update to its Rider Standard Offer Service (SOS) transmission retail rates. Pepco's proposed tariff amendment updates the retail transmission rates included in the Rider SOS "to reflect the current Federal Energy Regulatory Commission (FERC) approved wholesale transmission rates, which went into effect [on] June 1, 2020."³

3. Pepco states that the current FERC-approved wholesale transmission rates, for the period June 1, 2020, through May 31, 2021, include five items:

- (1) Pepco's and the Southern Maryland Electric Cooperative's FERC approved formula rates as delineated in Attachment H-9A and Attachment H-9C of the PJM Open Access Transmission Tariff (OATT);
- (2) Transmission Enhancement Charges pursuant to Schedule 12 of the PJM OATT;
- (3) The impact of changes to the PJM OATT pursuant to the Federal Energy Regulatory Commission Order issued on May 31, 2018, in FERC Docket No. EL05-121-009;
- (4) The impact of changes to the PJM OATT pursuant to the FERC Orders issued in FERC Docket Nos. ER15-1344-007 and ER15-1387-006 (Form 715) and ER18-680-001 (ER18-680); and

¹ D.C. Code § 2-505 (2019 Repl.) and § 34-802 (2019 Repl.).

² *Formal Case No. 1017, In the Matter of the Development and Designation of Standard Offer Service in the District of Columbia*, Letter from Dennis P. Jamouneau, Assistant General Counsel, Potomac Electric Power Company, to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, filed December 14, 2020 ("Pepco's December 14, 2020 Letter").

³ Pepco's December 14, 2020 Letter at 1.

- (5) Commission-Approved Procurement Cost Adjustment Related Transmission Retail Rate Adjustment.⁴

4. Pepco estimates that “the net impact... of its proposed change in transmission retail rates to a Residential SOS customer using 650 kWh per month is (\$1.16) per month.”⁵

5. Pepco proposes to amend the following sixteen (16) tariff pages which contain the revised retail transmission rates:

**ELECTRICITY TARIFF, P.S.C.-D.C. No. 1
One Hundred Thirteenth Revised Page No. R-1
Superseding One Hundred Twelfth Revised Page No. R-1**

**P.S.C.-D.C. No. 1
One Hundred-Thirteenth Revised Page No. R-2
Superseding One Hundred-Twelfth Revised Page No. R-2**

**P.S.C.-D.C. No. 1
One Hundred-Sixth Revised Page No. R-2.1
Superseding One Hundred-Fifth Revised Page No. R-2.1**

**P.S.C.-D.C. No. 1
One Hundred-Sixth Revised Page No. R-2.2
Superseding One Hundred-Fifth Revised Page No. R-2.2**

**P.S.C.-D.C. No. 1
Third Revised Page No. R-19
Superseding Second Revised Page No. R-19**

**P.S.C.-D.C. No. 1
Third Revised Page No. R-19.1
Superseding Second Revised Page No. R-19.1**

**P.S.C.-D.C. No. 1
Thirty-Fourth Revised Page No. R-41
Superseding Thirty-Third Revised Page No. R-41**

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.1
Superseding Thirty-Second Revised Page No. R-41.1**

⁴ Pepco’s December 14, 2020 Letter at 1-2.

⁵ Pepco’s December 14, 2020 Letter at 6.

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.2
Superseding Thirty-Second Revised Page No. R-41.2**

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.3
Superseding Thirty-Second Revised Page No. R-41.3**

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.4
Superseding Thirty-Second Revised Page No. R-41.4**

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.5
Superseding Thirty-Second Revised Page No. R-41.5**

**P.S.C.-D.C. No. 1
Fourth Revised Page No. R-41.5a
Superseding Third Revised Page No. R-41.5a**

**P.S.C.-D.C. No. 1
Thirty-Third Revised Page No. R-41.6
Superseding Thirty-Second Revised Page No. R-41.6**

**P.S.C.-D.C. No. 1
Thirty-Second Revised Page No. R-41.7
Superseding Thirty-First Revised Page No. R-41.7**

**P.S.C.-D.C. No. 1
Thirty-Second Revised Page No. R-41.8
Superseding Thirty-First Revised Page No. R-41.8**

6. All persons interested in commenting on Pepco's proposed tariff amendment may submit written comments no later than thirty (30) days after the publication of this NOPT in the *D.C. Register* addressed to Brinda Westbrook-Sedgwick, Commission Secretary, Public Service Commission of the District of Columbia, 1325 G Street, N.W., Suite 800, Washington, D.C. 20005 and sent electronically on the Commission's website at https://edocket.dcpsec.org/public/public_comments. Copies of the proposed tariff amendment may be obtained by visiting the Commission's website at www.dcpsec.org. Once at the website, open the "eDocket" tab, click on the "Searchable database" and input "FC1017" as the case number and "886" as the item number. Copies of the proposed tariff amendment may also be purchased, at cost, by contacting the Commission Secretary at the address provided above or by email at psc-commissionsecretary@dc.gov.

RENTAL HOUSING COMMISSION**NOTICE OF EXTENDED PUBLIC COMMENT PERIOD FOR PROPOSED
RULEMAKING**

On November 20, 2020, pursuant to the authority set forth in § 202(a)(1) of the Rental Housing Act of 1985, effective July 17, 1985 (D.C. Law 6-10; D.C. Official Code § 42-3502.02(a)(1) (2012 Repl.)) (“Act”), the Rental Housing Commission (“Commission”) gave public notice of the intent to adopt revised rules under the Act: 67 D.C.R. 13598 (“Second Proposed Rulemaking”). In the Second Proposed Rulemaking, the Commission set a public comment deadline of January 15, 2021. The Commission further stated its intent to hold public meetings during the public comment period.

Due to scheduling conflicts of requested participants, the Commission will be unable to hold public meetings prior to the January 15, 2021 written comment deadline. Accordingly, in order to provide greater opportunity for public input and consideration of all views, the Commission hereby extends the written comment deadline for the Second Proposed Rulemaking to February 16, 2021. Notice of public meetings will be forthcoming and published on the Commission’s website, <https://rhc.dc.gov>. All public meetings will be held virtually due to the ongoing COVID-19 state of emergency.

All persons desiring to comment on the Second Proposed Rulemaking should submit comments in writing to:

Daniel Mayer, General Counsel
Rental Housing Commission
441 Fourth Street, N.W., Suite 1140-B North
Washington, D.C. 20001

Or, via email to: daniel.mayer@dc.gov

Due to the ongoing COVID-19 state of emergency, prospective commenters are strongly encouraged to submit comments via email. Persons with questions concerning this Notice of Proposed Rulemaking should call (202) 442-8949. To be considered, all comments must be received or postmarked no later than February 16, 2021.

TWO RIVERS PUBLIC CHARTER SCHOOL**REQUEST FOR PROPOSALS****Architect Firm**

Two Rivers PCS is soliciting proposals from a licensed firm to develop design and engineering drawings in the renovation of existing spaces in school facilities. To request a copy of the RFP, email Gail Williams at procurement@tworiverspcs.org. Proposals are due by February 19, 2021.

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Audit Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Audit Committee will be holding a meeting on Thursday, January 28, 2021 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to the Board of Directors Calendar on DC Water’s website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | | |
|----|---|------------------|
| 1. | Call to Order | Chairperson |
| 2. | Summary of Internal Audit Activity -
Internal Audit Status | Internal Auditor |
| 2. | Executive Session | Chairperson |
| 3. | Adjournment | Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Environmental Quality and Operations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Environmental Quality and Operations Committee will be holding a meeting on Thursday, January 21, 2021 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water's website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | | |
|-----|-------------------------------|--|
| 1. | Call to Order | Committee Chairperson |
| 2. | AWTP Status Updates | Vice-President, Wastewater Ops |
| | 1. BPAWTP Performance | |
| 3. | Status Updates | Senior VP, CIP Project Delivery |
| 4. | Project Status Updates | Director, Engineering &
Technical Services |
| 5. | Action Items | Senior VP, CIP Project Delivery |
| | - Joint Use | |
| | - Non-Joint Use | |
| 6. | Water Quality Monitoring | Senior Director, Water Ops |
| 7. | Action Items | Senior VP, CIP Project Delivery
Senior Director, Water Ops
Director, Customer Care |
| 8. | Emerging Items/Other Business | |
| 9. | Executive Session | |
| 10. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY**BOARD OF DIRECTORS****NOTICE OF PUBLIC MEETING****Finance and Budget Committee**

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Finance and Budget Committee will be holding a meeting on Thursday, January 28, 2021 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 the Board of Directors Calendar on DC Water's website at www.dewater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dewater.com.

DRAFT AGENDA

- | | | |
|----|--|--------------------------------------|
| 1. | Call to Order | Committee Chairperson |
| 2. | December 2020 Financial Report | Director, Budget |
| 3. | Action Items | CFO and EVP, Finance and Procurement |
| 4. | Agenda for February 2021 Committee Meeting | Committee Chairperson |
| 5. | Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Governance Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Governance Committee will be holding a meeting on Wednesday, January 13, 2021 at 9:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or linda.manley@dcwater.com.

DRAFT AGENDA

- | | |
|--|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Emerging Issues | Committee Chairperson |
| 3. Agenda for Upcoming Committee Meeting | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

Human Resources and Labor Relations Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) Human Resources and Labor Relations Committee will be holding a meeting on Wednesday, January 13, 2021 at 11:00 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to DC Water’s website at www.dcwater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or lmanley@dcwater.com.

DRAFT AGENDA

- | | |
|----------------------|-----------------------|
| 1. Call to Order | Committee Chairperson |
| 2. Union Topics | Union Presidents |
| 3. Other Business | Committee Chairperson |
| 4. Executive Session | Committee Chairperson |
| 5. Adjournment | Committee Chairperson |

DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY

BOARD OF DIRECTORS

NOTICE OF PUBLIC MEETING

District of Columbia Retail Water and Sewer Rates Committee

The Board of Directors of the District of Columbia Water and Sewer Authority (DC Water) District of Columbia Retail Water and Sewer Rates Committee will be holding a meeting on Tuesday, January 26, 2021 at 9:30 a.m. The meeting will be held in the Board Room (2nd floor) at 1385 Canal Street, S.E. (use 125 O Street, S.E. for directions), Washington, D.C. 20003. Below is the draft agenda for this meeting. A final agenda will be posted to the Board of Directors Calendar on DC Water’s website at www.dewater.com. Due to COVID-19, the General Manager has suspended public access to DC Water facilities. Please see the website for remote access information for the meetings.

For additional information, please contact Linda R. Manley, Board Secretary at (202) 787-2332 or لمانley@dewater.com.

DRAFT AGENDA

- | | | |
|----|---------------------|--|
| 1. | Call to Order | Committee Chairperson |
| 2. | Monthly Updates | Executive VP,
Finance & Procurement |
| 3. | Committee Work Plan | Executive VP,
Finance & Procurement |
| 4. | Other Business | Executive VP,
Finance & Procurement |
| 5. | Adjournment | Committee Chairperson |

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20320 of 5900 Foote LLC pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use restrictions of Subtitle U § 421.1, to construct a new 16-unit apartment house in the RA-1 Zone at premises 5900 Foote Street, N.E. (Square 5256, Lot 805).

HEARING DATE: November 18, 2020
DECISION DATE: December 16, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 32 (Final Revised); Exhibit 12 (Revised); Exhibit 4 (Original).)¹

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.²

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 7C.

ANC Report. The ANC submitted two reports. The first report indicated that at a regularly scheduled, properly noticed public meeting on November 12, 2020, at which a quorum was present, the ANC voted to oppose the application due to lack of agreement with the community. (Exhibit 46.) The subsequent ANC report indicated that at a regularly scheduled, properly noticed public meeting on December 10, 2020, the ANC voted to support the application.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 43.)

¹ The original requested relief did not change, however, the table of calculations was revised to reflect updated plans.

² The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided in the *DC Register* less than 40 days. However, all other forms of notice were provided, and no prejudice resulted to any party.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 32.) DDOT recommended that the Board adopt one condition related to providing short-term bicycle parking.

Persons in Opposition. The Board received two letters from neighbors in opposition to the application. (Exhibits 45 and 47.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the use restrictions of Subtitle U § 421.1, to construct a new 16-unit apartment house in the RA-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 PLANS³** at **EXHIBIT 38 – Updated Architectural Plans and Elevations**, and **SUBJECT** to the following **CONDITION**:

1. The Applicant shall install one inverted U-rack on private property or in a public space near the building entrance to comply with short-term bicycle parking requirements.

VOTE: 3-0-2 (Frederick L. Hill, Chrishaun S. Smith, and Peter G. May to APPROVE; Lorna L. John not participating; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

³ Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

FINAL DATE OF ORDER: December 29, 2020

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE 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

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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. 20331 of Magdalena Acevedo nee Pryztulska, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception from the accessory building use requirements of Subtitle U § 301.1(e), to demolish an existing garage and to construct a two-story accessory building to be used as a second principal dwelling unit and a garage in the RF-1 Zone at premises 314 Varnum Street, N.W. (Square 3311, Lot 66).

HEARING DATE: December 16, 2020

DECISION DATE: December 16, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6.¹ (Exhibit 8 (Original Self-Certification) and Exhibit 27 (Revised (signed copy))).

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 10, 2020 at which a quorum was present, the ANC voted to support the application. (Exhibit 25.) ANC Commissioner Johan Goodman testified at the hearing in support of the application.

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 29.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 28.)

¹ The application was originally accompanied by a memorandum from the Zoning Administrator indicating that the relief required is a special exception under Subtitle U § 301.1(e). In the Applicant's self-certification forms, the relief was unchanged.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception from the accessory building use requirements of Subtitle U § 301.1(e), to demolish an existing garage and to construct a two-story accessory building to be used as a second principal dwelling unit and a garage 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 PLANS² AT EXHIBIT 4 - PROPOSED PLANS.**

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 24, 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.

² In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20332 of SCHF VEG LLC, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the use provisions of Subtitle U § 513.1(l), to permit a veterinary hospital in an existing mixed-use building in the MU-10 Zone at premises 2311 M Street N.W. (Square 36, Lot 51).

HEARING DATE: December 16, 2020

DECISION DATE: December 16, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 16.)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.¹

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 2A.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on July 15, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 19.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 41.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 42.)

Persons in Support. The Board received one letter from a neighbor in support of the application. (Exhibit 32.)

¹ The Board waived the requirements of Subtitle Y § 402.1(a) because notice was provided to lessees less than 40 days. However, the Applicant sent an additional mailing to lessees, all other forms of notice were provided, and no prejudice resulted to any party.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the use provisions of Subtitle U § 513.1(l), to permit a veterinary hospital in an existing mixed-use building in the MU-10 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED** and, pursuant to Subtitle Y § 604.10, **SUBJECT** to the **APPROVED PLANS**² at **EXHIBIT 6 - Architectural Plans and Elevations**.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; one Board seat vacant.)

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 29, 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

² Self-certification: In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20335 of Jeffrey Wagener, as amended, pursuant to 11 DCMR Subtitle X, Chapters 9, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.5, and from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition and an accessory building in the rear of an existing attached principal dwelling unit in the RF-1 Zone at premises 741 12th Street, S.E. (Square 995, Lot 55).

HEARING DATE: December 16, 2020
DECISION DATE: December 16, 2020

SUMMARY ORDER

Relief Requested. The zoning relief requested in this case was self-certified, pursuant to 11 DCMR Subtitle Y § 300.6. (Exhibit 29 (Updated Zoning Self-Certification); Exhibit 12 (Updated); Exhibit 4 (Original).)

Notice of the Application and Public Hearing. The Board of Zoning Adjustment ("Board" or "BZA") referred the application to the appropriate agencies and provided proper and timely notice of the public hearing in accordance with Subtitle Y § 402.1.

Parties. The parties to this case were the Applicant and Advisory Neighborhood Commission ("ANC") 6B.

ANC Report. The ANC's report indicated that at a regularly scheduled, properly noticed public meeting on December 8, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 37.)

OP Report. The Office of Planning submitted a report recommending approval of the application. (Exhibit 31.)

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 32.)

Persons in Support. Two letters were submitted from neighbors in support of the application. (Exhibits 34 and 35.)

Other Public Input. The Capitol Hill Restoration Society submitted a letter in opposition to the application. (Exhibit 38.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under Subtitle E § 5201 from the rear addition requirements of Subtitle E § 205.5, and from the lot occupancy requirements of Subtitle E § 304.1, to construct a two-story rear addition and an accessory building in the rear of an existing attached principal dwelling unit in the RF-1 Zone.

Based upon the record before the Board, and having given great weight to the appropriate reports and recommendations filed in this case, the Board concludes that the Applicant has met the burden of proof that the requested relief can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and that granting the requested relief will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Map. The Board further concludes that, pursuant to Subtitle X § 901.2(c), any other specified conditions for special exception relief have been met.

Pursuant to 11 DCMR Subtitle Y § 604.3, the order of the Board may be in summary form and need not be accompanied by findings of fact and conclusions of law where granting an application when there was no party in opposition.

It is therefore **ORDERED** that this application is hereby **GRANTED AND, PURSUANT TO SUBTITLE Y § 604.10, SUBJECT TO THE APPROVED PLANS¹ AT EXHIBIT 27 - UPDATED ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 30, 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.

¹ In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20337 of Ayanna C. Kelley, pursuant to 11 DCMR Subtitle X, Chapter 9, for a special exception under the R-use requirements of Subtitle U § 203.1(h), to permit the operation of a child development center for ages 2 to 12 years old in the R-1-B Zone at premises 4501 16th Street N.W. (Square 2702, Lot 805).

HEARING DATE: December 16, 2020

DECISION DATE: December 16, 2020

SUMMARY ORDER

Relief Requested. The application was accompanied by a memorandum from the Zoning Administrator, certifying the required relief. (Exhibit 8.)

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 10, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 24.)

OP Report. The Office of Planning submitted a report recommending approval of the application. OP recommended that the Board adopt three conditions related to operation of the center. (Exhibit 34.) The Board adopted these conditions as part of this order.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 32.)

Persons in Support. One witness testified at the hearing in support of the application.

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for a special exception under the R-use

requirements of Subtitle U § 203.1(h), to permit the operation of a child development center for ages 2 to 12 years old in the R-1-B 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 AT EXHIBIT 7 - ARCHITECTURAL PLANS AND ELEVATIONS;** and **SUBJECT to the FOLLOWING CONDITIONS:**

- 1) The child development center shall enroll no more than 31 students, two to 12 years of age.
- 2) The child development center's staff shall be limited to less than six persons.
- 3) The hours of operation shall be limited to 7:30 am – 6:00 pm, Monday through Friday.

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 30, 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

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STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

PURSUANT TO 11 DCMR SUBTITLE A § 303, THE PERSON WHO OWNS, CONTROLS, OCCUPIES, MAINTAINS, OR USES THE SUBJECT PROPERTY, OR ANY PART THERETO, SHALL COMPLY WITH THE CONDITIONS IN THIS ORDER, AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT. FAILURE TO ABIDE BY THE CONDITIONS IN THIS ORDER, IN WHOLE OR IN PART SHALL BE GROUNDS FOR THE REVOCATION OF ANY BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

**GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT**

Application No. 20376 of 210 Varnum Street NW, LLC, as amended, pursuant to 11 DCMR Subtitle X, Chapter 9, for special exceptions under the new residential development requirements of Subtitle U § 421.1, under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2(a), and under Subtitle C § 1504.1 from the penthouse requirements of Subtitle C §§ 1500.6-1500.10 and Subtitle C § 1502, to convert the existing principal dwelling unit into a four-unit apartment house in the RA-1 Zone at premises 210 Varnum Street, N.W. (Square 3317, Lot 104).

HEARING DATE: December 16, 2020

DECISION DATE: December 16, 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 (Original); Exhibit 44 (Revised)¹.)

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 9, 2020, at which a quorum was present, the ANC voted to support the application. (Exhibit 49, and Exhibit 52 (signed version).) The ANC's recommendation was conditioned on the Applicant's agreement to support affordable housing, provide a contact person, place dumpsters at the rear, provide notice of planned electrical or water shut offs, complete pest abatement prior to demolition, insulate between properties at 208 and 210 Varnum Street, coordinate with the neighbor on replacing the fence at the rear, provide at least two off-street parking spaces, test pipes for lead and arrange for replacement as necessary. The Board did not adopt the proposed conditions; however, the Applicant has nonetheless agreed to abide by these conditions.

OP Report. The Office of Planning submitted a report recommending approval of the application as amended. (Exhibit 47.)

¹ The application was amended to include special exception relief from side yard and penthouse setback requirements as captioned above.

DDOT Report. The District Department of Transportation submitted a report indicating that it had no objection to the application. (Exhibit 43.)

Special Exception Relief

The Applicant seeks relief under Subtitle X § 901.2, for special exceptions under the new residential development requirements of Subtitle U § 421.1, under Subtitle F § 5201 from the side yard requirements of Subtitle F § 306.2(a), and under Subtitle C § 1504.1 from the penthouse requirements of Subtitle C §§ 1500.6-1500.10 and Subtitle C § 1502, to convert the existing principal dwelling unit into a four-unit apartment house in the RA-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 PLANS² AT EXHIBIT 6 - ARCHITECTURAL PLANS AND ELEVATIONS.**

VOTE: 4-0-1 (Frederick L. Hill, Lorna L. John, Chrishaun S. Smith, and Michael G. Turnbull to APPROVE; one Board seat vacant).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

A majority of the Board members approved the issuance of this order.

FINAL DATE OF ORDER: December 24, 2020

² In granting the certified relief, the Board made no finding that the relief is either necessary or sufficient. Instead, the Board expects the Zoning Administrator to undertake a thorough and independent review of the building permit and certificate of occupancy applications filed for this project and to deny any application for which additional or different zoning relief is needed.

PURSUANT TO 11 DCMR SUBTITLE Y § 604.11, NO ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN (10) DAYS AFTER IT BECOMES FINAL PURSUANT TO SUBTITLE Y § 604.7.

PURSUANT TO 11 DCMR SUBTITLE Y § 702.1, THIS ORDER SHALL NOT BE VALID FOR MORE THAN TWO YEARS AFTER IT BECOMES EFFECTIVE UNLESS, WITHIN SUCH TWO-YEAR PERIOD, THE APPLICANT FILES PLANS FOR THE PROPOSED STRUCTURE WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS FOR THE PURPOSE OF SECURING A BUILDING PERMIT, OR THE APPLICANT FILES A REQUEST FOR A TIME EXTENSION PURSUANT TO SUBTITLE Y § 705 PRIOR TO THE EXPIRATION OF THE TWO-YEAR PERIOD AND THE REQUEST IS GRANTED. PURSUANT TO SUBTITLE Y § 703.14, NO OTHER ACTION, INCLUDING THE FILING OR GRANTING OF AN APPLICATION FOR A MODIFICATION PURSUANT TO SUBTITLE Y §§ 703 OR 704, SHALL TOLL OR EXTEND THE TIME PERIOD.

PURSUANT TO 11 DCMR SUBTITLE Y § 604, APPROVAL OF AN APPLICATION SHALL INCLUDE APPROVAL OF THE PLANS SUBMITTED WITH THE APPLICATION FOR THE CONSTRUCTION OF A BUILDING OR STRUCTURE (OR ADDITION THERETO) OR THE RENOVATION OR ALTERATION OF AN EXISTING BUILDING OR STRUCTURE. AN APPLICANT SHALL CARRY OUT THE CONSTRUCTION, RENOVATION, OR ALTERATION ONLY IN ACCORDANCE WITH THE PLANS APPROVED BY THE BOARD AS THE SAME MAY BE AMENDED AND/OR MODIFIED FROM TIME TO TIME BY THE BOARD OF ZONING ADJUSTMENT.

IN ACCORDANCE WITH THE D.C. HUMAN RIGHTS ACT OF 1977, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ. (ACT), THE DISTRICT OF COLUMBIA DOES NOT DISCRIMINATE ON THE BASIS OF ACTUAL OR PERCEIVED: RACE, COLOR, RELIGION, NATIONAL ORIGIN, SEX, AGE, MARITAL STATUS, PERSONAL APPEARANCE, SEXUAL ORIENTATION, GENDER IDENTITY OR EXPRESSION, FAMILIAL STATUS, FAMILY RESPONSIBILITIES, MATRICULATION, POLITICAL AFFILIATION, GENETIC INFORMATION, DISABILITY, SOURCE OF INCOME, OR PLACE OF RESIDENCE OR BUSINESS. SEXUAL HARASSMENT IS A FORM OF SEX DISCRIMINATION WHICH IS PROHIBITED BY THE ACT. IN ADDITION, HARASSMENT BASED ON ANY OF THE ABOVE PROTECTED CATEGORIES IS PROHIBITED BY THE ACT. DISCRIMINATION IN VIOLATION OF THE ACT WILL NOT BE TOLERATED. VIOLATORS WILL BE SUBJECT TO DISCIPLINARY ACTION.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 09-03F
Z.C. Case No. 09-03F
Skyland Holdings LLC
(Modification of Significance to an Approved Planned Unit Development
@ Skyland Town Center [Square 5633, Lot 22])
September 14, 2020

Pursuant to notice, at its July 23, 2020, public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered the application (the “Application”) of Skyland Holdings LLC (the “Applicant”) that requested approval of a Modification of Significance¹ pursuant to Subtitle Z § 704 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations, Zoning Regulations of 2016, to which all subsequent citations refer unless otherwise specified) to the Planned Unit Development (“PUD”) and related Map Amendment approved by the Commission in Z.C. Order No. 09-03 (the “Original Order”), as modified by Z.C. Order Nos. 09-03A and 09-03D, and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E (collectively with the Original Order, the “Order”), for Lot 22 in Square 5633,² known as Skyland Town Center (the “Property”). The Commission reviewed the Application pursuant to the Commission’s Rules of Practice and Procedures, which are codified in Subtitle Z, Chapter 4. For the reasons stated below, the Commission **APPROVES** the Application.

FINDINGS OF FACT

I. BACKGROUND

PRIOR APPROVALS

1. Pursuant to the Original Order, effective on September 10, 2010, the Commission approved a Consolidated PUD with a map amendment rezoning the Property’s 18.7 acres at the intersection of Naylor Road, Good Hope Road, and Alabama Avenue, S.E. from the R-1-B, R-5-A, and R-5-B zones to the C-3-A zone to construct a mixed-use town center anchored by a main street with:
 - Approximately 314,480 square feet (“sf”) of community-serving retail uses;
 - 20 townhomes and 450-500 residential units above the retail and service uses totaling approximately 538,110 square feet;
 - 1,698 parking spaces totaling approximately 400,038 square feet; and
 - A total floor area ratio (“FAR”) of 1.54, of which 0.88 FAR is dedicated to commercial uses (Exhibit [“Ex.”] 51 and 121A1 in Z.C. Case No. 09-03 at p. 18).
2. The Original Order divided the PUD, 1,252,628 sf of gross floor area (“GFA”) into five development parcels (“Blocks”) as follows:

¹ Pursuant to Subtitle A § 102.4, although the Original Order was vested under the 1958 Zoning Regulations under which it was evaluated and approved, the Application is subject to the current Zoning Regulations to the extent of the modifications.

² Lot 22 in Square 5633 consolidated all of the property subject to the PUD approved by Z.C. Order No. 09-03, as recorded by a plat recorded on November 17, 2014, in the Records of the District Surveyor at Subdivision Book 209, Page 39 (Z.C. Order No. 09-03 referred to Assessment and Taxation (“A&T”) Lots 800 and 801, which were created out of Lot 2 per the plat in A&T Book 3794, Page F, and A&T Lot 819, created out of A&T Lots 815 and 817, in turn created out of the remainder of Lots 8 and 9 per A&T Plats Book Page 2410).

- Block 1 – 242,600 sf;
 - Block 2 – 550,611 sf;
 - Block 3 – 256,230 sf;
 - Block 4 – 168,769 sf; and
 - Block 5 – 34,518 sf.
3. By Z.C. Order No. 09-03A, effective January 17, 2014, the Commission approved modifications of the Original Order in the following areas:
- Architectural design and site layout reducing the total GFA to 1,249,438 sf with a FAR of 1.75, of which 0.97 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 179,395 sf;
 - Block 2 – 744,486 sf;
 - Block 3 – 189,818 sf;
 - Block 4 – 117,595 sf; and
 - Block 5 – 18,144 sf;
 - Residential uses – replacing 12 townhomes with six carriage houses on Blocks 3 and 5;
 - Parking – allowing 1,774 parking spaces in a modified distribution across the Property;
 - Transportation network; and
 - PUD Zoning Map vesting – clarifying that the rezoning to the C-3-A zone vested for each Block upon the start of construction of that Block.
4. By Z.C. Order No. 09-03D³, effective June 30, 2017, the Commission approved modifications of the Original Order as it applies to Block 2 to remove 345 parking spaces on three levels of above-grade parking and architectural design and site layout, with a reduction in the square footage of Block 2 to 534,880 sf.⁴

PARTIES

5. In addition to the Applicant, the parties to the Order were:
- Advisory Neighborhood Commissions (“ANC”) 7B, which district includes the Property, and ANC 8B, which shares a boundary with the Property, the “affected ANCs” pursuant to Subtitle Z §§ 101.8 and 403.5(b); and
 - The Ft. Baker Drive Party (“FBDP”), granted party status in Z.C. Case No. 09-03.
6. The Commission received no additional requests for party status.

NOTICE

7. On June 28, 2019, the Applicant mailed a Notice of Intent to file the Application to:
- ANCs 7B and 8B; and

³ Z.C. Order Nos. 09-03B and 09-03C extended the deadlines for filing a building permit application and for commencing construction.

⁴ Z.C. Order No. 09-03D, and its approved plans and filings did not specify the changed square footage for Block 2, which was instead provided by Ex. 22C, p. G7 of Z.C. Case No. 09-03F.

- All property owners within 200 feet of the Property, including Joanne Harris on behalf of FBDP (Ex. 3C).
8. On May 27, 2020, the Office of Zoning (“OZ”) sent the notice of the July 23, 2020 virtual public hearing to:
 - Applicant;
 - ANCs 7B and 8B;
 - ANC Single Member District Commissioner 7B02, whose district includes the Property;
 - Office of the ANCs;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Energy and the Environment (“DOEE”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - District of Columbia Housing Authority (“DCHA”);
 - Council of the District of Columbia (“DC Council”); and
 - Property owners within 200 feet of the Property (“200-Footers”). (Ex. 17.)
 9. OZ also published notice of the July 23, 2020, virtual public hearing in the June 5, 2020, *D.C. Register* (67 DCR 006737) as well as on the calendar on OZ’s website. (Ex. 15.)
 10. The Applicant provided evidence that it had posted and maintained notice of the public hearing on the Property in compliance with Subtitle Z § 402.⁵ (Ex. 18, 18A, 28.)

COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)

Generalized Policy Map (“GPM”)

11. The CP’s GPM designates the Property in two categories: (Ex. 35B)
 - The southwestern portion along Naylor and Good Hope Roads and Alabama Avenue, S.E., as a Multi-Neighborhood Center, which the CP defines⁶ as centers located at major intersections and along key transit routes that might include supermarkets, general merchandise, drug, specialty, and apparel stores, restaurants, and sometimes offices, with redevelopment to provide new retail and service uses as well as housing and job opportunities; and (CP § 225.17.)
 - The northeastern portion as a Neighborhood Conservation Area, defined by the CP as areas with “little vacant or underutilized land ... [that] are generally residential in character. ... [N]ew development can support conservation of neighborhood character when guided by Comprehensive Plan policies and the Future Land Use Map. ... The guiding philosophy in Neighborhood Conservation Areas is to conserve and enhance established neighborhoods, but not preclude development, particularly to address city-

⁵ The Applicant requested a waiver from having to notarize the affidavits of posting and maintenance required by Subtitle Z §§ 402.8 and 402.10 due to the ongoing COVID-19 pandemic, which the Commission granted.

⁶ The CP’s Framework Element, which defines the GPM and FLUM designations, was revised effective August 27, 2020 (D.C. Law 23-0217); prior to the Commission’s vote and so applies to its decision in this case.

wide housing needs. ... New development should be compatible with the existing scale, natural features, and character of each area ..." (CP § 225.4-225.5.)

Future Land Use Map ("FLUM")

12. The CP's FLUM designates the Property into three categories:
 - Most of the Property for Moderate Density Commercial uses, which the CP defines as predominantly for retail, office and service businesses with density typically ranging between a 2.5 and 4.0 FAR, with the MU-5 and MU-7 zones identified as zones consistent with this designation;
 - The northeastern corner and the easternmost portion, approximately half of the GPM's Neighborhood Conservation Area, for Low Density Residential uses, which the CP defines as for single family neighborhoods with detached and semi-detached buildings with front, side, and rear yards; and
 - A tiny triangle between in the center of the northern edge, between the Low Density Residential and the Moderate Density Commercial areas, designated for Moderate Density Residential, which the CP defines as generally, but not exclusively for row houses and low-rise garden apartment complexes, with density ranging up to a 1.8 FAR. (Ex. 35B).

Far Northeast-Southeast Area Element

13. The CP's applicable Area Element specifically identifies the Property as targeted for revitalization as a community scale retail center. (Policy FNS-2.7.)
14. In issuing the Order, the Commission concluded that the PUD it approved was not inconsistent with the Comprehensive Plan.

II. THE APPLICATION

MODIFIED PROJECT

15. The Application did not include or modify Block 2, which is under construction as approved by the Order with occupancy expected in late 2020. (Ex. 3, 11.)
16. The Application proposed to modify the PUD approved by the Order by reconfiguring Block 1, 3, 4, and 5 into new Blocks 1, 3, and 4 by:
 - Dividing Block 1 into two, with the western portion remaining Block 1 and merging the eastern portion into Block 4; and
 - Merging Block 5, along with the southern portion of Block 4 into Block 3, with modifications as described below (the "Modified Project").
17. The Modified Project remains centered around Town Center Drive, providing a street-activated pedestrian experience and central thoroughfare through the Property with significant ground-floor retail and residential components within the following parameters (including Building 2):

- A reduced total GFA of 1,169,317 sf with a FAR of 1.63, of which 0.89 FAR is dedicated to commercial uses, allocated as follows:
 - Block 1 – 280,978 sf;
 - Block 2 – 534,880 sf;
 - Block 3 – 41,229 sf; and
 - Block 4 – 312,230 sf;
- The square footage shall be allocated to the following uses:
 - Retail – 533,170 sf;
 - Residential – 533,270 sf;
 - Office – 131,344 sf; and
 - Structured Parking – 351,354 sf;
- Building heights ranging from 30 to 62 feet; and
- 1,289 parking spaces. (Ex. 3, 13, 22, 22C, 29, 35.)

Block 1

18. Block 1 will include a Medical Office Building⁷ (“MOB”) and attached parking garage (“MOB Garage”).
19. The MOB, comprised of approximately 131,344 sf over four stories, reaching 60 feet in height, is the visual entrance to Skyland Town Center from Good Hope Road and Naylor Road, S.E. The building provides two main entrances on the first floor, with the main pedestrian entry located in the Naylor Road lobby, and the main vehicular entry located in the lobby on the opposite side of the MOB and accessible from the green, open courtyard on the interior Town Center Drive side. The two lobbies will be connected and will provide access to the upper levels. The façade includes a combination of brick and ground faced concrete masonry units at the base and composite aluminum panels, and glass on the façade. The façade design is simplified and consistent across all four sides so that it pairs with the adjacent parking garage. (Ex. 3, 22C, 35.)
20. The MOB Garage will provide approximately 465 spaces on six levels, reaching 52.5 feet in height, with the surface covered in solar panels to provide renewable energy and shading for the parking. The MOB Garage set back 24 feet from Naylor Road to accommodate a one-story Arts Walk consisting of shadow boxes housing rotating installations installed in partnership with Building Bridges Across the River and associated arts organizations. The shadow boxes will provide community art and showcases to activate the streetscape along Naylor Road, S.E. (Ex. 22, 22A, 22C, 35.)

⁷ The Applicant noted that it anticipated that the medical office building may include any uses that are defined in the Zoning Regulations as “Medical Care”, including primary and emergency care facilities, doctor and dentist offices, and/or clinics.

Block 3

21. Block 3 will be developed with three single-story retail buildings, all 30 feet in height or less – a Lidl grocery store, a Starbucks coffee shop, and another in-line retail building – along with a surface parking lot with a drive-through lane for the coffee shop.
22. The Lidl grocery store, approximately 29,436 sf in size, has an open façade fronting on Town Center Drive and the parking lot constructed with brick, spandrel panels, and split-face concrete masonry units. (Ex. 3, 22C, 35.)
23. The Starbucks coffee shop, approximately 2,973 sf in size, and the third in-line retail building, approximately 9,981 sf in size, which uses architectural motifs and masonry materials that echo the architectural character and language of Block 2. (Ex. 22C, 35.)
24. A surface parking lot of approximately 214 parking spaces, with associated landscaping compliant with zoning requirements and consistent with a traditional town center lot separates the Lidl grocery store from Alabama Avenue, S.E. This traditional plan will provide ease of access to the Lidl and is consistent with the grocer’s site layout requirements. A drive-through lane serving the Starbucks coffee shop winds across the edge of this parking area providing ample queuing area for the coffee shop. (Ex. 3, 22C.)
25. A green buffer with trees and landscape plantings on the perimeter of Block 3 connects to the significant landscaping around the Property forming a welcoming, green streetscape. (Ex. 3, 22, 22C.)

Block 4

26. Block 4 will be the site of a future mixed-use building with a maximum height of 60 feet and approximately 312,230 sf composed of:
 - Approximately 7,140 sf of ground-floor retail;
 - Approximately 252 multifamily residential units; and
 - Approximately 157 parking spaces in a partially below-grade garage. (Ex. 3, 3H, 13, 13D, 22, 22C, 35.)

RELIEF REQUESTED

27. The Applicant requested a Modification of Significance to the Order as follows:
 - No change to the Zoning Map amendment to the C-3-A zone or to the PUD for Block 2; and
 - Modifying the Consolidated PUD approval by:
 - Consolidating Blocks 1, 3, 4, and 5 into Blocks 1, 3, and 4;
 - Modifying the layout and uses of:
 - Block 1 for the MOB and MOB Garage;
 - Block 3 for the Lidl grocery store, the Starbucks coffee shop, and the in-line retail store with a surface parking lot with 201 spaces; and

- Converting the Consolidated PUD for Block 4 from to a First-Stage PUD and modifying its layout and uses for the mixed-use building;
- Adding zoning flexibility to that approved by the Order:
 - From Subtitle C § 1502.1 – to exempt the solar panels on the MOB Garage roof from the penthouse setback requirements;⁸
 - From Subtitle C § 901 to substitute one 12-foot by 55-foot loading berth and one 200 sf loading platform in place of the required three 10-foot by 30-foot loading berths, one 10-foot by 20 foot delivery space, and two 100 sf loading platforms for Block 3’s grocery store, in-line retail store, and coffee shop; and
 - From Subtitle C § 710.2(b)(2) for Block 3’s surface parking lot if the Commission determined the lot was in the Lidl grocery store’s “front yard”;
- Modifying the allocation, but not the amount, of public benefits imposed by Condition Nos. 2(c), (g), and (h) of the Order to reallocate \$375,000 to the Skyland Workforce Center job training, including construction job training, by removing:
 - \$300,000 no longer needed for construction funding from the Contractor Loan Fund; and
 - \$75,000 from homebuying and homeownership classes no longer needed as the Project no longer included for-sale residential units; and
- Modifying Condition No. 17 to change the phasing and extend the validity of the Order.⁹ (Ex. 3,22.)

JUSTIFICATION FOR RELIEF

28. The Application asserted that the Modified Project complied with the PUD modification requirements because it is (i) not inconsistent with the CP, (ii) not creating unacceptable impacts that are not mitigated or outweighed by public benefits, and (iii) includes public benefits as discussed below.

Not Inconsistent with the CP

29. The Application asserted that the Modified Project remains not inconsistent with the CP as a whole since the Modified Project remains a town center configured around a central drive with approximately 500 residential units, significant neighborhood-serving retail, and a full-service grocery store, but adds a medical office building that will include medical care uses that will help achieve additional CP policies and goals. (Ex. 3, 22, 29, 35.)

30. With regards to the potential inconsistencies of the Modified Project with the Property’s GPM and FLUM designations, the Application:

⁸ The Applicant also requested flexibility from the drive through queuing lane setback requirement and the bicycle shower and locker requirements for the Lidl grocery store, but subsequently withdrew those requests. (Ex. 3, 13, 29, 35.)

⁹ The Commission would ordinarily require the Applicant to file a separate application to extend the time limit of the PUD, but given the extensive nature of the changes to the Modified Project’s phasing, including sending part of the Project back to a first-stage PUD approval, the Commission concluded it was appropriate to consider the extension as part of this modification case.

- Noted that the CP’s Framework Element states that the FLUM is “generalized guidance” that is “soft-edged” and not parcel specific and that these designations should be interpreted “broadly” and “in conjunction with the text of the CP, including the Citywide Elements and the Area Elements;” and (CP § 228)
- Asserted that the Modified Project furthered other CP policies that outweighed any potential inconsistencies with the GPM and FLUM designations. (Ex. 35B.)

GPM

31. The Modified Project remains not inconsistent with the GPM’s designation of the majority of the Property as a Multi-Neighborhood Center project because the Modified Project maintains significant retail and service uses in addition to housing, as the Commission had approved in the Order. (Ex. 35B.)
32. The Modified Project remains not inconsistent with the GPM’s designation of the eastern portion of Block 3 and most of Block 4 as a Neighborhood Conservation Area, which “does not preclude development” but calls for new development to be “compatible with the existing scale, natural features, and character of each area.” (CP § 225.5.) The Modified Project maintains the transitional elements that the Commission approved in the Order including the step downs in intensity and density from the Multi-Neighborhood Center toward the adjacent residential neighborhood to the northeast, and the separation by a significant buffer area with a ravine and tree preserve. (Ex. 35B.)

FLUM

33. The Modified Project remains not inconsistent with the Moderate Density Commercial designation of the majority of the Property because that designation is appropriate for “shopping and service areas” and specifically identifies the C-3-A zone (the current MU-7 zone), to which the Order rezoned the Property, as zone generally corresponding to this designation. (Ex. 35B.)
34. The Modified Project remains not inconsistent with the Low Density Residential designation for the small portion of the Property including the northern portion of Block 4 because the portions of the mixed-use building that extend into the areas designated for Low and Moderate Density Residential uses are exclusively residential, with the building’s ground floor retail uses located only in the areas designated for Moderate Density Commercial uses.

Far Northeast-Southeast Area Element

35. The Modified Project furthers the explicit goals of the Far Northeast and Southeast Area Element by achieving the development of the Skyland Town Center with an appropriate mix of uses, including housing, retail, and health care facilities, and significant buffering of Ft. Baker Drive as further detailed in specific policies of this Element. (Ex. 35B.)

Land Use Element

36. The Modified Project furthers the policies of the Land Use Element by providing a Neighborhood Commercial District and Commercial Center project as a quintessential new town center focusing the higher-intensity uses along the external streets and providing housing in the area closest to adjacent residential uses as detailed in specific policies of this Element. (Ex. 35B.)

Housing Element

37. The Modified Project furthers the policies of the Housing Element by providing new housing and affordable housing in a mixed-use and mixed-income development where currently none exists as detailed in specific policies of this Element. (Ex. 35B.)

Economic Development Element

38. The Modified Project also furthers the Economic Development Element's focus on providing new grocery stores and medical office uses as detailed in specific policies of this Element. (Ex. 35B.)

Community Services and Facility Element

39. The Modified Project furthers the Community Services and Facility Element policies by providing new medical uses and facilities in an area where such use is desperately needed as detailed in specific policies of this Element. (Ex. 35B.)

Transportation Element

40. The Modified Project furthers the Transportation Element with its transportation infrastructure improvements and its transportation demand management plan as detailed in specific policies of this Element. (Ex. 35B.)

No Unacceptable Impacts

41. The Application asserted that the Modified Project would not create any unacceptable impacts because it maintained the town center concept approved by the Commission as not having unacceptable impacts and because the reduced parking would have a favorable impact in encouraging non-vehicular traffic that would reduce impacts on the surrounding transportation network.

Public Benefits

42. The Application asserted that the Modified Project maintained the same public benefits approved by the Order, with very minor changes to reallocate funds that were no longer needed for contractor funding and homeownership training to instead increase the funding for job training approved by the Order, and to which the Applicant had already paid over \$900,000 out of the total \$1,285,000 in financial contributions included in the Order's public benefits. The Applicant explained that it had contributed over \$600,000 to the job training at the Skyland Workforce Center, which has completed intake for more than 4,300 individuals, placing over 530 people in jobs, and providing services for over 1,000 individuals using the Center itself. (Ex. 22.)

APPLICANT'S SUBMISSIONS

43. The Application, as detailed above, was the result of a total of six (6) submissions to the record. In addition to the initial application, the Applicant provided the following submissions, as well as its testimony at the public hearing: (Ex. 1-3H.)
- A May 20, 2020, prehearing submission (the "Prehearing Submission") that responded to OP and the Commission's requests from setdown; (Ex. 13, 13A-D.)
 - A June 19, 2020, Comprehensive Traffic Review (the "CTR"); (Ex. 20, 20A.)
 - A July 2, 2020, supplemental submission (the "Supplemental Submission") addressing comments from OP, DDOT, DOEE, and the ANC; (Ex. 22, 22A-C.)
 - A July 22, 2020, submission (the "Hearing Submission") addressing comments raised in the OP and DDOT Reports, as defined below; and (Ex. 29.)
 - A September 1, 2020, post-hearing submission (the "Post-Hearing Submission") responding to issues raised at the public hearing. (Ex. 35.)

Responses to OP

44. The Applicant responded to OP's Setdown Report, as defined below, in the Prehearing Submission and in the Supplemental Submission by:
- Providing additional site-sections showing the Modified Project's relationship to the surrounding properties;
 - Providing additional details regarding the entry plaza materials;
 - Updating the MOB's facades;
 - Improving the public space treatment along Naylor Road, S.E.;
 - Incorporating the shadow boxes, and detailing their operation, in the Arts Walk along Naylor Road, S.E.;
 - Relocating the loading and trash facilities in Block 3 from the parking lot to the in-line retail building;
 - Relocating Block 3's drive-through queuing lane so that it no longer required relief from the 20-foot setback requirement; and
 - Enhancing the landscaping and screening around the Block 3 parking lot. (Ex. 13, 22.)
45. The Applicant responded to OP's Hearing Report, as defined below, in its Hearing Submission by:
- Providing plant size information for the landscaping along Alabama Avenue, S.E.; and
 - Providing the signage standard materials used for Block 2 that will also be used for the Modified Project. (Ex. 29, 29A.)

Responses to DDOT

46. The Applicant responded to DDOT's comments in the CTR, the Hearing Submission, the Post-Hearing Submission, and its public hearing testimony by:
- Providing the Transportation Demand Management Plan ("TDMP") and the Loading Demand Management Plan ("LDMP"), including reducing the number of parking spaces;

- Increasing the TDMP based on the DDOT Report, including increasing the Capital Bikeshare station and offering Capital Bikeshare memberships for residents and employees;
- Addressed DDOT’s concern that the Modified Project might require mitigations for overparked sites by asserting that these requirements did not apply to the Modified Project because it reduced the number of parking spaces previously approved by the Order as compliant with the Zoning Regulations;
- Including a comprehensive set of conditions detailing all of the TDMP and LDMP commitments for the Modified Project; and
- Confirming in its public hearing testimony that it had accepted all of the enhanced conditions requested in the DDOT Report. (Ex. 20A, 29, 32, 33, 35; July 23, 2020 Transcript [“Tr.”] at 35-36.)

Responses to DOEE

47. The Applicant responded to DOEE’s comments in the Prehearing Submission and in the Post-Hearing Submission by committing to:
- Comply with the Green Area Ratio (“GAR”) requirements and providing a GAR scorecard;
 - Provide 125,000 square feet of landscaped area, preserve 235 existing trees, and plant 387 new trees;
 - Include a 25,000 square foot solar array in the MOB Garage, which is designed to achieve the Green Business Certification Inc.’s “Parksmart” certification;
 - Design the MOB, Lidl grocery store building, and Block 4 mixed-use building to the LEED Silver standard; and
 - Install 18 electric vehicle charging stations across the Modified Project. (Ex. 13A, 35.)

Public Hearing Testimony

48. At the July 23, 2020, public hearing, the Applicant presented testimony of:
- Two witnesses on behalf of the Applicant; and
 - Three experts: Cheryl O’Neill as an expert in architecture, Dwight Fincher as an expert in architecture, and Erwin Andres as an expert in transportation analysis and engineering, all of whom had been previously accepted by the Commission as experts in their respective fields. (Ex. 31; Tr. at 7-40.)

Post-Hearing Submission

49. The Applicant responded to the questions and clarifications requested by the Commission, OP, and DDOT at the public hearing by:
- Clarifying which portions of the Property would remain subject to the Consolidated PUD and which would instead be reverted to a First-Stage PUD approval (Block 4);
 - Responding to the Commission’s request to consider increasing the additional affordable housing for Block 4 by asserting that:
 - Providing additional affordable housing would require additional financial support from the District; and

- The Order vested the approved 500 residential units prior to the adoption of the Inclusionary Zoning (“IZ”) program, which would therefore only apply if the Modified Project and Block 2 combined provide more than these 500 residential units;
- Noting that the original affordable housing proffer continues to apply, as long as the total number of residential units remains within the range (450-500 units) that was originally approved;
- Simplifying the MOB’s tower element;
- Revising the design and exterior appearance of the MOB Garage to minimize light emission, including underlighting of the solar array;
- Confirming the Arts Walk shadow boxes in Block 1 will be ventilated;
- Withdrawing its request for flexibility from bike parking shower and locker facilities in the Lidl building in Block 3;
- Responding to DOEE’s comments by reiterating the Modified Project’s sustainability features, including a commitment to 18 electric vehicle charging stations;
- Providing additional details regarding the loading and trash area for the Block 3 in-line retail building;
- Showing alternative materials for the fire access road around Block 4;
- Providing additional details regarding parking and loading in Block 4;
- Providing additional details of the retaining wall between Block 4 and Ft. Baker Drive;
- Reiterating its view that the Modified Project’s satisfied the PUD balancing required as part the Commission’s review of the Modified Project;
- Providing a comprehensive analysis of the Modified Project’s consistency with the CP; and
- Noting the continued dialogue regarding the Modified Project with the community. (Ex. 35.)

III. RESPONSES TO THE APPLICATION

OP

50.

OP submitted two reports to the record in addition to testimony at the public setdown meeting and at the public hearing:

- A February 28, 2020, setdown report (the “OP Setdown Report”) recommending that the Commission set down the Application for a public hearing and requesting additional information and changes to the Application; and (Ex. 11.)
- A July 13, 2020, hearing report (the “OP Hearing Report”) that recommended approval of the Modified Project and requested some clarification from the Applicant. (Ex. 25.)

51.

The OP Setdown Report concluded that the Modified Project remained not inconsistent with CP as a whole, generally supported the Application’s requested zoning flexibility and recommended the Commission set down the Application for a public hearing. However, the OP Setdown Report did raise several concerns and requested additional information regarding the Modified Project as follows:

- Objected to the location of the retail waste and loading area within the Block 3 parking lot and requesting it be moved;
 - Requested additional screening for the Block 3 parking lot; and
 - Requested additional information about the:
 - Operational details for the Arts Walk; and
 - Materials for Block 3. (Ex. 11.)
52. The OP Hearing Report:
- Reiterated that the Modified Project remained not inconsistent with CP as a whole;
 - Supported the final flexibility requested for the Modified Project;
 - Agreed that the Applicant had adequately addressed the concerns raised in the OP Setdown Report, including:
 - Relocating the retail loading and waste collection area out of the Block 3 parking lot;
 - Providing additional landscaping along Alabama Avenue; and
 - Provided additional information about hardscaping and material;
 - Requested:
 - Additional information on the signage standards for the Modified Project;
 - Responses to DOEE and DDOT's comments; and
 - An explanation for the reduced number of total residential units; and
 - Recommended the Commission approve the Modification Application without any additional conditions. (Ex. 25.)
53. At the July 23, 2020, public hearing, OP testified that it continued to recommend approval of the Modified Project and noting that the Applicant had addressed the issues raised in the OP Hearing Report, specifically by:
- Submitting signage information per OP's request;
 - Responding adequately to the issues raised; and
 - Clarifying that the Modified Project did not propose to decrease the residential units, as had been mistakenly stated in the OP Hearing Report. (Tr. 80-83.)

DDOT

54. DDOT filed a July 13, 2020, report (Ex. 26, the "DDOT Report") stating that DDOT:
- Supported the Modified Project's reduction of parking spaces, although it noted that the Property remained overparked and therefore might need additional mitigations, subject to a determination from the Zoning Administrator;
 - Determined that the Modified Project would have mixed-impacts on the transportation network that should be addressed by improving the TDMP;
 - Concluded that DDOT had no objections to the Application, subject to the following conditions design to mitigate the potential adverse impacts of the Modified Project:
 - Strengthening the TDMP by:
 - Installing eight (8) additional docks for the Capital Bikeshare station;
 - Providing Capital Bikeshare memberships to residents and employees of the Modified Project; and

- Providing the required bicycle parking and shower and locker facilities for each Block; and
 - Implementing the CTR’s proposed LDMP for Block 3 for the life of the Modified Project; and
 - Expected that the Applicant would coordinate during the public space permitting process.
55. DDOT testified at the July 23, 2020, public hearing that:
- The Applicant had:
 - Addressed the DDOT Report’s concern about overparking by reducing the parking in the Modified Project by 117 spaces;
 - Reduced the number of anticipated vehicle trips due to the Modified Project’s changed uses;
 - Constructed substantial roadway improvements;
 - Adequately addressed the concerns raised in the DDOT Report and accepted all of DDOT’s condition, including updating the TDMP; and
 - DDOT therefore had no objection to the Modified Project. (Tr. 82-84.)

DOEE

56. DOEE submitted a report (the “DOEE Report”) suggesting that the Application consider improving the Modified Project with additional sustainability efforts in: (Ex. 21.)
- Energy efficiency;
 - Solar panels;
 - Electric vehicle charging stations; and
 - Compliance with the GAR and Stormwater Management requirements.

ANCs

57. ANC 7B filed a June 18, 2020, report (the “ANC 7B Report”) in support of the Application, noting that at a regularly scheduled, properly noticed meeting, the ANC voted unanimously to support the Modified Project and had no issues or concerns. (Ex. 23.)
58. ANC 8B did not submit a report.

FBDP

59. FBDP did not submit any response to the Application.

CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act (June 20, 1938, 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Rep1.)), the Commission may approve a PUD and modifications to an approved PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 704.

2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*

3. Pursuant to Subtitle X § 304.3, in evaluating a proposed PUD, the Commission shall:
Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.

4. Pursuant to Subtitle X § 304.4, to approve a proposed PUD, the Commission must determine that the proposed development:
 - (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*

5. A PUD's proposed public benefits must comply with Subtitle X § 305.12:
"A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.

6. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
 - (1) *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (2) *To guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (3) *To promote economic growth and jobs for District residents;*
 - (4) *To guide private and public development in order to achieve District and community goals;*

- (5) *To maintain and enhance the natural and architectural assets of the District; and*
- (6) *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
7. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)):
- “The Comprehensive Plan is a ‘broad framework intended to guide the future land use planning decisions for the District. (*Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm’n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted).) ‘[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.’ (*Durant v. District of Columbia Zoning Comm’n*, 65 A.3d 1161, 1168 (D.C. 2013).) The Comprehensive Plan reflects numerous ‘occasionally competing policies and goals,’ and, ‘[e]xcept where specifically provided, the Plan is not binding.’ *Id.* at 1167, 1168 (internal quotation marks omitted). Thus ‘the Commission may balance competing priorities’ in determining whether a PUD is consistent with the Comprehensive Plan as a whole.’ (*D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm’n*, 73 A.3d 107, 126 (D.C. 2013).) ‘[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations.’” (*Friends of McMillan Park v. District of Columbia Zoning Comm’n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

MODIFICATION OF SIGNIFICANCE - SCOPE OF REVIEW

8. Pursuant to Subtitle Z §§ 704.3 and 704.4, the Commission shall evaluate an application to modify a second-stage PUD (including a Consolidated PUD that is a combined first- and second-stage PUD) based on the requirements for a new second-stage PUD, provided that the hearing “shall be limited to the impact of the modification on the subject of the original application, and shall not permit the Commission to revisit its original decision.”
9. Pursuant to Subtitle A § 102, the PUD approved by the Order is vested under the 1958 Zoning Regulations under which it was approved and is subject to those rules except that any modification shall be subject to the current Zoning Regulations.
10. Since the Application does not propose to change the PUD-related map amendment approved by the Order, it is vested and not subject to additional review by the Commission in this case.

11. 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 ANCs 7B and 8B and FBDP. (Finding of Fact (“FF”) 7.)
12. The Commission concludes that the Application is consistent with the PUD approved by the Order because the Modified Project maintains the redevelopment of Skyland Town Center into a pedestrian-oriented mixed-use town center concept with housing, neighborhood serving retail, and employment opportunities of the PUD approved by the Order while accommodating changes due to changing tenants and real estate market conditions.
13. The Commission concludes that the Application meets the requirements of Subtitle X §§ 304 and Subtitle Z § 704 because Modified Project – to the extent it modifies the PUD approved by the Order - is not inconsistent with the Comprehensive Plan, will not cause any new unacceptable impacts that are not mitigated or outweighed by the proffered public benefits, which balance out any additional requested zoning flexibility, as discussed below.

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (Subtitle X § 304.4(a))

14. The Commission concludes that the Modified Project is not inconsistent with the CP, when considered in its entirety, based on the analyses of the Applicant and OP, and as further discussed below. (FF 29-40, 51-53.)
15. The Commission acknowledges the following portions of the Property are potentially inconsistent with parts of the CP’s GPM and FLUM designations: (Ex. 35B at 8-9.)
 - **GPM’s Neighborhood Conservation Area:**
 - Block 3** - northeastern portion, including approximately 50% of the Lidl grocery store; and
 - Block 4** - approximately 90% of the mixed-use building;
 - **FLUM**
 - **Low Density Residential:**
 - Block 3** - eastern portion, which has no building; and
 - Block 4** - northeastern portion, including approximately 12% of the mixed-use building; and
 - **Moderate Density Residential:**
 - Block 4** - a tiny triangle in the northern portion, including approximately 4% of the mixed-use building.
16. In considering these potential GPM and FLUM inconsistencies, the Commission notes that:
 - The CP’s Framework Element directs the Commission to use these CP maps, particularly the FLUM, for “generalized guidance” that should be “interpreted broadly,” with the FLUM density ranges describing general character of the overall area within which individual buildings may be larger or smaller than these density ranges; and (CP § 228.1.)

- The GPM and FLUM boundaries between designations are “fuzzy,” tend to follow the contours of adjacent streets at a uniform depth, rather than follow the shape and size of the terrain or lot boundaries, and extend into the PUD Site in irregular patterns that do not correspond to the natural terrain or lot boundaries so that the GPM and FLUM shading lacks the granularity to track these areas precisely.
17. Based on the record, and the CP’s Framework Element’s guidelines for using the GPM and FLUM, and considering the irregular shapes of the GPM and FLUM shading and fuzzy edges, the Commission concludes that the Modified Project is not inconsistent with the GPM and FLUM in these areas for the reasons articulated by the Applicant and OP and specifically because:
- **GPM’s Neighborhood Conservation Area (NCA):**
 - ***Block 3***
 - The majority of the NCA-designated portion of Block 3 is undeveloped, most of which is a landscape buffer that screens and protects the neighboring residential areas to the east, with the portion that is a parking lot furthest away from the residential area along Fort Baker Drive, S.E.;
 - The part of the Lidl grocery store that extends into the NCA portion is the furthest removed from these adjacent residential areas and is shielded from the residential areas to the east by the transitional landscape buffer; and
 - The Lidl grocery store is only one story and 25 feet 8 inches tall and so will be easily screened by the intervening trees and so will not visually intrude into the adjacent residential neighborhoods; (Ex. 22C3.)
 - ***Block 4***
 - The entire eastern edge of Block 4 is a landscaped buffer along the ravine that screens the mixed-use building from the adjacent residential areas;
 - The eastern façade of the mixed-use building is broken up into four smaller wings separated by landscaped terraces that substantially reduces the visual impact to the adjacent residential neighborhood to the east; (Ex. 22C2.)
 - The eastern façade does not have any loading or exposed parking facilities facing the adjacent residential neighborhood;
 - All of the portions of the mixed-use building in the NCA area are exclusively dedicated to residential uses and so enhances the existing residential character; and
 - The definition of NCA in the CP’s Framework Element explicitly acknowledges that development is not precluded in an NCA “particularly to address city-wide housing needs” which this mostly-residential mixed-use building does;
 - **FLUM**
 - ***Low Density Residential:***
 - **Block 3** – eastern portion
 - All of the portion in this FLUM designation is used exclusively as a landscape buffer and so has no density;

- *FNS-2.7.B – Fort Baker Drive Buffering: Work with property owners to develop and maintain a suitable visual, sound and security buffer between Skyland Shopping Center and the adjacent residential areas along Fort Baker Drive; (CP § 6.)*
 - **Land Use Element**
 - *LU-2.4: Neighborhood Commercial Districts and Centers: Many District neighborhoods, particularly those on the east side of the city, lack well-defined centers or have centers that struggle with high vacancies and a limited range of neighborhood-serving businesses. Greater efforts must be made to attract new retail uses to these areas by improving business conditions, upgrading storefronts and the street environment, and improving parking and pedestrian safety and comfort. The location of new public facilities in such locations, and the development of mixed use projects that include upper story housing, can encourage their revival; and (CP § 312.2.)*
 - *LU-2.4.1: Promotion of Commercial Centers: Promote the vitality of the District's commercial centers and provide for the continued growth of commercial land uses to meet the needs of District residents, expand employment opportunities for District residents, and sustain the city's role as the center of the metropolitan area. Commercial centers should be inviting and attractive places, and should support social interaction and ease of access for nearby residents; and (CP § 312.5.)*
 - **Housing Element**
 - *H-1.1.3: Balanced Growth: Strongly encourage the development of new housing on surplus, vacant and underutilized land in all parts of the city. Ensure that a sufficient supply of land is planned and zoned to enable the city to meet its long-term housing needs, including the need for low- and moderate-density single family homes as well as the need for higher-density housing; and (CP § 503.4.)*
 - *H-1.1.4: Mixed Use Development: Promote mixed use development, including housing, on commercially zoned land, particularly in neighborhood commercial centers, along Main Street mixed use corridors, and around appropriate Metrorail stations. (CP § 503.5.)*
20. The Commission concludes that the CP, considered in its entirety including the GPM and FLUM as well as the Area and Citywide Elements, outweighs the potential inconsistency with the GPM and FLUM because the CP calls for the site to be developed as a commercial town center, including a significant housing component, with a suitable buffer to protect the adjacent residential neighborhoods to the north. The Commission approved the original PUD in the Order based on its conclusion that it had complied with these CP principles and concludes that the Modified Project also meets these same principles and provides adequate buffering.

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (Subtitle X § 304.4(b))

21. The Commission concludes that while the Modified Project may create the following potentially adverse impacts separate from those analyzed and determined to be acceptable by the Order (including the impacts on the Fort Baker and Akron Drives, S.E.), the

Modified Project mitigates these new potential impacts and renders them acceptable, as asserted by the Applicant and OP, based on the following measures, which have been incorporated in a comprehensive set of conditions in this Order: (FF 41, 46, 51-53.)

- The potential adverse impacts on traffic, loading and parking are mitigated by the Modified Project's TDMP and LDMP as well as the Applicant's reduction of parking by 117 spaces per DDOT's request, which DDOT agreed would address these potential adverse impacts; (FF 54-55.)
- The potential adverse impact of the large surface parking lot along Alabama Avenue, S.E., in Block 3 is mitigated with significant landscaping and screening; and (Ex. 3, 13.)
- The potential adverse impact of the MOB Garage's long blank wall along Naylor Road, S.E. in Block 1 is mitigated by the Arts Walk, which will break up and enliven this space. (Ex. 20.)

PUBLIC BENEFITS AND PROJECT AMENITIES BALANCED AGAINST DEVELOPMENT INCENTIVES AND POTENTIAL ADVERSE EFFECTS (Subtitle X §§ 304.4(c) and 304.3)

22. The Commission concludes that the Modified Project does not reduce the public benefits approved by the Order, as asserted by the Applicant and OP, because the Application only proposes to reallocate, without reducing the financial contribution, funds no longer needed to for the Contractor Loan Fund and the Homebuying and Homeownership classes to increase the original public benefit funding for Skyland Workforce Center's job training. (FF 42, 51-53.)
23. As stated above, the Commission concludes that the Modified Project's mitigations adequately address the potential adverse impacts to make them acceptable without requiring any public benefits to outweigh these potential adverse impacts.
24. The Commission concludes that the limited additional zoning flexibility/development incentives requested are sufficiently minor and improve the Modified Project that they are properly outweighed by the overall public benefits approved by the Order, as follows: (FF 27.)
- **Setback Requirements for the Block 1 MOB Garage's solar panels (Subtitle C § 1502.1);**
 - This relief allows the maximization of solar panels to further the sustainability of the Modified Project by shading the upper parking level in addition to generating renewable energy.
 - **Loading requirements for Block 3's in-line retail building (Subtitle C § 901);**
 - This relief, which was supported OP and approved by DDOT as not causing adverse impacts in coordination with the LDMP, reflects the Modified Project's providing a larger than required berth for the Lidl grocery store and the limited loading needs of the in-line retail building and Starbucks coffee shop, as well as the ample space in the adjacent surface parking lot.

- **Parking location limits for Block 3's surface lot (Subtitle C § 710.2(b)(2))**
 - This relief, supported by OP, allows the Lidl grocery store to face onto Town Center Drive, and as discussed above, the potential adverse visual effects of this surface parking lot are mitigated by the substantial landscaping that screens the parking from Alabama Avenue, S.E.

“GREAT WEIGHT” TO THE RECOMMENDATIONS OF OP

25. The Commission must give “great weight” to the recommendations of OP 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. (*Metropole Condo. Ass’n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
26. The Commission finds persuasive OP’s recommendation that the Commission approve the Application based on OP’s determination that the Modified Project is not inconsistent with the CP in its entirety, and concurs in that judgement.

“GREAT WEIGHT” TO THE WRITTEN REPORT OF THE ANC

27. 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).)
28. Although the ANC 7B Report did not identify any issues or concerns raised by the Application, the Commission notes ANC 7B Report’s support for the Application and concurs in that judgment.
29. Since ANC 8B did not file a written report in response to the Application, the Commission has nothing to which it can accord “great weight”.

DECISION

In consideration of the case record and the Findings of Fact and Conclusions of Law herein, the Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Modification of Significance pursuant to Subtitle Z § 704 to revise Z.C. Order No. 09-03, as modified by Z.C. Orders No. 09-03A and 09-03D and as extended by Z.C. Order Nos. 09-03B, 09-03C, and 09-03E, as follows:

- The Consolidated PUD shall remain in effect for Blocks 1-3, as defined in this Order No. 09-03F;
- The Consolidated PUD shall revert to only a First-Stage PUD approval for Block 4, as defined in this Order No. 09-03F; and
- The conditions in Z.C. Order No. 09-03, as amended by Z.C. Order Nos. 09-03A, and 09-03B, are replaced (former Condition Nos. 3-6, 9, 10, 12, 15, 16, 18, and 19 remain unchanged but renumbered; former Condition Nos. 1, 2, 7, 8, 11, 13, 14, and 17 are updated; and a new Condition No. 16 is added) to read as follows:
 1. The PUD project shall be developed as modified by the guidelines, conditions, and standards of this Order as follows:
 - For Block 2 - in accordance with the plans and materials submitted by the Applicant, marked as Exhibits 3A, 15A, 49A, and 52A of the record in Z.C. Case No. 09-03A, as modified by Exhibit 2C of the record in Z.C. Case No. 09-03D, (the “Block 2 Approved Plans”); and
 - For Blocks 1, 3, and 4, as defined in this Order No. 09-03F (the “Modified Project”) - in accordance with the plans and materials submitted by the Applicant, marked as Exhibit 22C and 35A of the record in Z.C. Case No. 09-03F, (the “Blocks 1, 3, and 4 Approved Plans,” and collectively with the Block 2 Approved Plans, the “Approved Plans”);
 2. (Former Condition No. 14) The Applicant shall have design flexibility from Condition No. 1’s requirement to develop the PUD project with the Approved Plans in the following areas:
 - For all Blocks –
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, signage, stairways, mechanical rooms, elevators, and toilet rooms, provided that the variations do not change the exterior configuration of the structures and that the shadow boxes along the Naylor Road façade in Block 1 are maintained;
 - b. To vary the final selection of the exterior materials within the color ranges of material types as proposed, based on availability at the time of construction without reducing the quality of the materials; and
 - c. To make minor refinements to exterior details, locations, and dimensions, including: window mullions and spandrels, window frames, doorways, glass types, belt courses, sills, bases, cornices, railings, balconies, canopies and trim, or any other changes to comply with Construction Codes or that are otherwise necessary to obtain a final building permit, such that the refinements do not substantially change the external configuration or appearance of the building;

- Blocks 1, 3, and 4 (the Modified Project) shall have the following additional design flexibility –
 - d. To reduce the overall size of the building in Block 1 based on the market demand for Medical Office use at the time of construction, provided the revised massing does not require additional zoning relief;
 - e. To vary the number of residential units and the residential unit types by plus or minus 10%, to be finalized at the second-stage review for Block 4;
 - f. To reduce the number of parking spaces, provided that no additional relief is required;
 - g. To vary the streetscaping and landscaping materials on private property within the Project based on availability and suitability at the time of construction or otherwise in order to satisfy any permitting requirements of applicable regulatory bodies;
 - h. To vary the amount, location, and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Project achieves the minimum GAR requirement and does not reduce the total solar coverage area;
 - i. To vary the final design and layout of the mechanical penthouses to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse setback requirements;
 - j. To vary the final design of the outdoor amenity spaces to reflect their final programming, provided that the use of space, character, and quality of the features and plantings remain in substantial conformance with the concept design shown on the Plans;
 - k. To vary the font, message, logo, and color of the approved signage, provided that the maximum overall dimensions and signage materials are consistent with the signage on the Approved Plans and are compliant with the DC signage regulations, and consistent with Exhibit 29A; and;
 - l. To modify the streetscape design and areas in public space in response to DDOT and the public space permitting process.
- 3. (Former Condition No. 2) The Applicant shall make the following financial, or in-kind service, contributions:
 - a. Financial Support to Schools (former Condition No. 2(a)): The Applicant shall make in-kind service or financial contributions, with a value of \$200,000, to support schools

- located within the geographic boundaries of ANCs 7B, 8B, and 8A for aesthetic improvements and to participate in initiatives such as “Buff and Scrub.” The Applicant expects that these in-kind service or financial contributions will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the Zoning Administrator (“ZA”) and the Office of Zoning (“OZ”) as to whether any in-kind service or financial contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 75% of the total amount of this contribution (\$150,000) (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments/services have not been provided. The full amount of this contribution (whether in the form of in-kind services, monetary contributions, or a combination of the two) shall be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;
- b. Sponsorship of local community events and programs (former Condition No. 2(b)): The Applicant shall establish and administer a \$35,000 fund to sponsor community events such as holiday food drives, community festivals, and other community-promoting activities for the area surrounding the project. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$17,500) shall be made by the Applicant within five years of the effective date of this Order. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner;
- c. Local retailer build-out subsidy (former Condition No. 2(d)): The Applicant shall establish and administer a \$500,000 fund to subsidize a portion of the build-out costs for Certified Business Enterprise and local retailers opening a store at the Skyland Town Center. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this fund. The annual amount of this contribution will be proportionate to the amount of construction activity which occurred in that year. If no

- construction activity occurred in any given year, the Applicant is not obligated to provide any financial contributions in that year. The full amount of this contribution must be made by the Applicant by December 31, 2030;
- d. Anacostia and Francis Gregory Libraries (former Condition No. 2(e)): The Applicant shall provide up to \$50,000 to perform capital improvements, upgrade computers, and provide other services for the Anacostia and Francis Gregory Libraries. The Applicant expects that this contribution will be made over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any contributions were made for this purpose, the recipient of those funds, and the outstanding balance of this contribution. Not less than 50% of the total amount of this contribution (\$25,000) shall be made by the Applicant by September 10, 2018. Notwithstanding Condition No. 19, this Order will expire as of that date if these payments have not been provided. The full amount of this contribution must be made by the Applicant no later than September 10, 2022, or the date the last application for a building permit is filed for the project, whichever is sooner;
- e. Pocket Park at 25th Street & Naylor Road (former Condition No. 2(f)): The Applicant shall improve and maintain, at a value of \$50,000, the existing triangular pocket park at 25th Street and Naylor Road. The maintenance of the pocket park be will be provided over the entire time period of the development of the project, as discussed in Condition No. 19. The maintenance obligation will commence immediately after the improvements are made. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to whether any improvements were made for this purpose. The work related to the installation of the right turn lane, new sidewalks, and utility improvements will be complete by September 10, 2018. The installation of hardscape and landscape improvements will be completed by May 1, 2020;
- f. Job Training (former Condition No. 2(g)): The Applicant shall provide job training programs, at a cost of \$450,000, for residents of Wards 7 and 8 so that they are prepared to apply and interview for jobs with the future retailers at the Skyland Town Center or elsewhere. The Applicant shall maintain a list of trained and qualified job candidates and shall provide that list to all new retailers. The Applicant expects that this program will be conducted over the entire time period of the development of the project, as discussed in Condition No. 19. Starting from the date that is one year after the effective date of this Order, and on an annual basis thereafter, the Applicant will provide evidence to the ZA and OZ as to the job training programs that were conducted in the prior year, if any. The extent of the training provided will be proportionate to the amount of construction activity which occurred in that year. If no construction activity occurred in any given year, the Applicant is not obligated to provide job training programs in that year; however, the Applicant must expend \$450,000 for the purpose

of providing job training programs prior to 10 years after the effective date of this Order, or the date the last application for a building permit is filed for the project, whichever is sooner.

4. (Former Condition No. 3) The failure of the Applicant to make any contribution or provide any service by the time specified in Condition No. 3 shall result in the denial of any pending application for a building permit or certificate of occupancy and shall be grounds for the revocation of any building permit.
5. (Former Condition No. 4) In consultation with DDOT, and contingent upon its approval, the Applicant shall construct and provide space for an 800-1,000 square-foot commuter store adjacent to, or located in, the building on Block 2. The commuter store will offer transit riders SmarTrip cards and Metrobus/Metrorail fare cards, maps, real-time schedules, and transportation options in the Metro Washington area. DDOT will provide for the operation of the store. The Applicant will deliver the commuter store space to DDOT as a warm white shell, with a finished floor, ceiling, lights, etc. The Applicant will not be responsible for the purchase or installation of any equipment or specialty items needed for the operation of the commuter store. The Applicant shall provide the same security and maintenance for the commuter store as it will for the other retail tenants in the project. In the event that DDOT determines that the store is not necessary, the Applicant will not be required to provide or construct such space. DDOT must make this decision by the time of the issuance of a building permit for Block 2.
6. (Former Condition No. 5) The Applicant shall make the transportation infrastructure and traffic improvements to the area around Skyland Town Center, as provided for in the approved plans and materials: modified traffic signals; reconfiguring existing traffic lanes; restriping; new signs; and the widening of 25th Street. These transportation infrastructure and traffic improvements will be completed prior to the issuance of a Certificate of Occupancy for the Building on Block 1, in accordance with DDOT standards and contingent on DDOT issuing a permit for such improvements.
7. The Applicant shall make the following public space improvements to Naylor Road and Alabama Avenue, as provided for in the approved plans and materials; new DC standard sidewalks, granite curbs, and gutters; paver crosswalks; street trees; irrigation; special pavers; benches; receptacles; bollards; and 16' Washington Globe lighting. The Applicant will provide a landscape buffer on the east side of the Property to screen the project from Hillcrest residents. These public space improvements must be made by the completion of the last phase of development of the project.
8. LEED Requirements (former Condition No. 7):
 - a. For Block 2, the project shall be designed to obtain a certified level in the LEED-for-Homes, or other equivalent standard, for mixed-use retail and residential projects (including, but not limited to Green Communities). The Applicant shall provide

- evidence to the ZA, from a LEED-certified professional, of the satisfaction of this condition in the building permit application materials submitted for each building;
- b. The Applicant will provide two green roofs in the Project on the Property; and
 - c. For Blocks 1, 3, and 4:
 - i. **Prior to the issuance of a certificate of occupancy for the Medical Office Building in Block 1**, the Applicant shall provide the ZA with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level for the office building and evidence that the garage has or will achieve the Green Business Certification Inc.'s "Parksmart" certification;
 - ii. **Prior to the issuance of a certificate of occupancy for the Lidl grocery store in Block 3**, the Applicant shall provide with evidence that the building has or will achieve the requisite number of prerequisites and points necessary to achieve LEED Silver v4 level; and
 - iii. The building to be constructed on Block 4 shall be designed to achieve a LEED Silver v4 level of certification.
9. **Transportation Management** (Former Condition No. 8):
- a. For Block 2, The Applicant shall establish a transportation management program ("TMP") that includes the following:
 - i. A transportation services coordinator, through the property management office, who will develop and administer the TMP strategies;
 - ii. Rerouting of Metrobuses, placement of bus stops at more convenient locations, and enhancement of passenger access and safety to encourage the use of public transit. This shall be done in collaboration with DDOT and WMATA;
 - iii. Request employers at Skyland Town Center to provide employees with Metro checks or SmarTrip cards;
 - iv. Provide designated parking locations along the internal street system for shared vehicles (i.e., ZipCar). The number of cars and locations will be determined by the Applicant and the shared vehicle company;
 - v. Provide landscaped and lit shared pedestrian and bicycle paths between key locations within the project and Metrobus stops;
 - vi. Provide traffic calming features, such as special pavers and sidewalk bump-outs, on internal streets;
 - vii. Provide bicycle parking in the amount of at least five percent of the required automobile off-street parking (the amount required by DDOT);
 - viii. Establish and maintain a ridesharing and ride-matching program for residents and employees of Skyland Town Center; and
 - ix. Monitor and regularly evaluate the TMP;

- b. For Blocks 1, 3, and 4, **for the life of Modified Project**, the Applicant shall establish a transportation management program (“TMP”) and a Loading Management Plan (“LMP”) that includes the following:

Transportation Demand Management Plan

a. *Overall Site*

- i. The Applicant will install eight (8) additional docks (two expansion plates) to the existing 11-dock Capital Bikeshare station at the corner of Alabama Avenue and Good Hope Road and ensure it is designed to remain in place;
- ii. The Applicant will provide reserved parking locations for carshare and carpool vehicles;
- iii. The Applicant will establish a ride-matching program;
- iv. The Applicant will implement strategies to evaluate the effectiveness of the transportation management program (TMP);
- v. The Applicant will provide dedicated parking spaces for car-sharing vehicles;
- vi. The enhancement of Metrobus service in and around the site which will help encourage residents of the project and the surrounding areas to utilize public transportation; and
- vii. The Applicant will establish the position of a Transportation Services Coordinator in the property management office who will be responsible for administering and advancing TMP strategies and also monitoring loading and parking practices in the project;

b. *Block 1*

- i. The Applicant will unbundle the cost of parking from the cost to lease an office unit;
- ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
- iii. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents);
- iv. At the initial opening of the building, the Applicant will offer each new employee of a tenant in Block 1 a Capital Bikeshare Bronze Level membership upon their initial employment;
- v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00;
- vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
- vii. The Applicant will install a Transportation Information Center Display (electronic screen) within the lobby containing information related to local transportation alternatives. At a minimum the display should include information about nearby Metrorail stations and schedules, Metrobus stops and schedules, car-sharing locations, and nearby Capital Bikeshare locations indicating the availability of bicycles;

- viii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
 - ix. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
 - x. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees; and
 - xi. The Applicant will meet ZR16 requirements for shower and locker facilities;
- c. *Block 3*
- i. The Applicant will unbundle the cost of parking from the cost to lease the building or unit;
 - ii. The Applicant will provide a free parking space for all vehicles that employees use to vanpool to work;
 - iii. The Applicant will not lease unused parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents);
 - iv. At the initial opening of the buildings, the Applicant will offer each new employee of a tenant in Block 3 a Capital Bikeshare Bronze Level membership upon their initial employment;
 - v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00;
 - vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
 - vii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
 - viii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five (5) years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order; and

- ix. The Applicant will meet ZR16 short- and long-term bicycle parking requirements. Long-term bicycle parking will be provided free of charge to all employees.
- d. *Block 4*
- i. The Applicant will unbundle the cost of vehicle parking from the lease or purchase agreement for each residential unit and charge a minimum rate based on the average market rate within a quarter mile;
 - ii. The Applicant will designate two parking spaces for vans to be used by District residents who vanpool to work;
 - iii. The Applicant will not lease unused residential parking spaces to anyone aside from tenants of the building (e.g., will not lease to other nearby office employees, single-family home residents, or sporting events);
 - iv. At the initial opening of the building, the Applicant will provide each new residential tenant, upon their move-in, a SmarTrip card and one complimentary Capital Bikeshare coupon good for a free ride;
 - v. At the initial opening of the building, the Applicant will offer each new employee a Metrocheck or SmartTrip Card with the value of \$20.00; (DDOT Report 09-03A.)
 - vi. The Applicant will provide a bicycle repair station in each long-term bicycle parking storage room;
 - vii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator shall submit documentation summarizing compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Office of the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS case record of the case;
 - viii. Following the issuance of a certificate of occupancy for the Block, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo every five years (as measured from the final certificate of occupancy for the Project) summarizing continued compliance with the transportation and TDM conditions in the Order;
 - ix. The Applicant will meet the short- and long-term bicycle parking requirements of the Zoning Regulation in effect as of the effective date of this Order No. 09-03F;
 - x. Long-term bicycle parking will be provided free of charge to all employees; and
 - xi. The Applicant will meet the shower and locker facilities required by the Zoning Regulations as of the effective date of this Order No. 09-03F, if applicable;

Loading Management Plan

- e. *Block 3 – Grocery Store*
- i. A loading manager will be designated by the grocery store who will be on duty during delivery hours. The dock manager will be responsible for coordinating

- with vendors to schedule deliveries and will work with the community and neighbors to resolve any conflicts should they arise;
- ii. The loading manager will monitor inbound and outbound truck maneuvers and will ensure that trucks accessing the loading dock do not block vehicular, bike, or pedestrian traffic along the internal driveways except during those times when a truck is actively entering or exiting loading berth;
 - iii. The loading manager will schedule deliveries using the berths such that the dock's capacity is not exceeded. In the event that an unscheduled delivery vehicle arrives while the dock is full, that driver will be directed to at a later time when the berth will be available so as to not compromise safety or impede circulation through the Site;
 - iv. Trucks using the loading dock will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the goDCgo Motorcoach Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and
 - v. The loading manager will be responsible for disseminating suggested truck routing maps to the building's tenants and to drivers from delivery services that frequently utilize the development's loading dock as well as notifying all drivers of any access or egress restrictions. The dock manager will also distribute flyer materials, such as the Metropolitan Washington Council of Governments (MWCOG) Turn Your Engine Off brochure, to drivers as needed to encourage compliance with idling laws. The dock manager will also post these materials and other relevant notices in a prominent location within the loading area; and
- f. *Block 3 – In-Line Retail*
- i. A loading manager will be designated by property management who will be reachable during delivery hours. The loading manager will be responsible for coordinating with retail tenants to ensure scheduled deliveries do not exceed loading area capacity and will work with the community and neighbors to resolve any conflicts should they arise;
 - ii. The loading manager will ensure truck maneuvers are monitored and vehicular, bike, or pedestrian traffic within the surface lot is not blocked except during those times when a truck is actively entering or exiting the loading area;
 - iii. All retail tenants will be required to coordinate and schedule deliveries that utilize the loading area (any loading operation conducted using a truck 20-feet in length or larger);
 - iv. In the event that an unscheduled delivery vehicle arrives while the loading space is occupied, that driver will be directed to return at a later time when the space will be available so as to not compromise safety or impede circulation;
 - v. Trucks using the loading area will not be allowed to idle and must follow all District guidelines for heavy vehicle operation including but not limited to DCMR 20 – Chapter 9, § 900 (Engine Idling), the goDCgo Motorcoach

- Operators Guide, and the primary access routes shown on the DDOT Truck and Bus Route Map (godcgo.com/freight); and
- vi. The loading manager will be responsible for disseminating suggested truck routing maps to the retail tenants as well as notifying all retail tenants of any access or egress restrictions. The loading manager will also post MWCOG's Turn Your Engine Off information and other relevant notices in a prominent location available to retail tenants overseeing deliveries.
10. (Former Condition No. 9) The Applicant shall enter into a First Source Employment Agreement with the D.C. Department of Employment Services ("DOES") in conformance with the Agreement included as Exhibit F of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed First Source Employment Agreement between the Applicant and DOES must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
 11. (Former Condition No. 10) The Applicant shall enter into a Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development ("DSLBD") in conformance with the Agreement included as Exhibit G of the Applicant's Pre-Hearing Statement submitted into the record. A fully-signed Certified Business Enterprise Utilization Agreement between the Applicant and DSLBD must be filed with the ZA prior to the issuance of the first above grade building permit for the project.
 12. (Former Condition No. 11) **For the life of the Project**, the Applicant shall reserve a total of 20% of the residential units as affordable for households having an income not exceeding 80% of the Area Median Income ("AMI") for the Washington, D.C. Metropolitan Statistical Area (adjusted for family size). The Applicant shall reserve an additional 10% of the residential units as affordable for households having an income not exceeding 120% of AMI. A proportionate amount of affordable housing will be distributed throughout Blocks 2 and 4 except for the two upper stories of each building. These affordable units will be reserved for a term that is consistent with the affordability covenant that will be recorded in the D.C. Land Records against the Skyland Property, as required by the land disposition agreement signed by the Applicant and the District of Columbia. Any residential units provided on the Property in excess of the 500 residential units approved by Z.C. Order No. 09-03F shall be subject to the Inclusionary Zoning requirements in effect at the time of building permit issuance for those residential units in excess of 500.
 13. (Former Condition No. 12) The Applicant shall undertake the construction mitigation measures as stated in Exhibits 112 and 120 of the record in Z.C. Case No. 09-03. These measures include monitoring construction activity impacts; monitoring of vibrations from construction activity; the Applicant agreeing to take responsibility for damage to adjacent properties and pay for damage caused by the Applicant's construction activities (note that neither the Commission, nor the ZA, will have any responsibility

- or duty to determine whether any damage has occurred); providing site management, including fencing and barricades, erosion control measures, continuous rubbish removal, and directing of construction traffic; and provision of an on-site construction representative to hear and respond to concerns from the Ft. Baker Drive residents during construction.
14. (Former Condition No. 13) **For the life of the Modified Project**, the number of parking spaces permitted in the PUD project shall be a total of 1,289.
 15. (Former Condition No. 19) The Applicant shall provide a 10-foot wide clear sidewalk along the building face of Block 1 and Block 2 on the Naylor/Good Hope Road frontage on public space or through a combination of public and private space.
 16. **Prior to the issuance of a Certificate of Occupancy for parking structure in Block 1**, the Applicant shall construct the Arts Walk with shadow boxes. **For the life of the Project**, the Applicant shall maintain the Arts Walk with community art and showcases.

Phasing and Expiration

17. (Former Condition No. 15) The ZA shall not approve a permit application for the PUD until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia, that is satisfactory to OAG and the Zoning Administrator. Such covenant shall bind the Applicant and all successors in title to construct and use the Property in accordance with the Order No. 09-03, or amendment thereof approved by the Commission. The Applicant shall file a certified copy of the covenant with OZ for the case record.
18. (Former Condition No. 16 and 17) The change of zoning from the R-5-A, R-5-B, and R-1-B Zone to the C-3-A Zone District shall be effective upon the recordation of the covenant discussed in Condition No. 17, pursuant to § 3028.9 of the 1958 Zoning Regulations, after which the applicable map amendment for each block shall vest upon the start of construction of the block and shall not revert to the underlying zone district for so long as the PUD improvements on the block remain.
19. Validity of Order (former Condition No. 17):
 - a. A building permit for the construction of the buildings on Block 3 shall be filed within one year of the effective date of this Order No. 09-03F and construction will start within two years of the effective date of this Order No. 09-03F.
 - b. A building permit for the construction of the building on Block 1 shall be filed within two years of the effective date of this Order No. 09-03F and construction will start within three years of the effective date of this Order No. 09-03F.

- c. A second-stage PUD application for the development of the mixed-use building on Block 4 shall be filed with the Zoning Commission by December 31, 2025, and a building permit application for Block 4 shall be filed within one year of the Zoning Commission's approval of the second-stage PUD application and construction will start within two years of the Zoning Commission's approval of the second stage PUD. The first-stage PUD for Block 4 will expire if the second-stage PUD application has not received Commission approval by December 31, 2027.

VOTE (September 14, 2020): 5-0-0 (Peter A. Shapiro, Michael G. Turnbull, Robert E. Miller, Anthony J. Hood, and Peter G. May to **APPROVE**)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 09-03F shall become final and effective upon publication in the *DC Register*; that is, on January 8, 2021.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA
ZONING COMMISSION ORDER NO. 19-16
Z.C. Case No. 19-16
MCF WALP Phase 1, LLC
(Consolidated Planned Unit Development @ Square 481)
April 27, 2020

At its properly noticed January 16, 2020 public hearing, the Zoning Commission for the District of Columbia (the “Commission”) considered an application (the “Application”) from MCF WALP Phase 1, LLC (the “Applicant”) that requested approval of a consolidated planned unit development (“PUD”) to construct a new multi-family residential building in Lot 23 in Square 481 at 1200 5th Street, N.W. (the “Property”).

The Commission considered the Application pursuant to Subtitles X and Z of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations (“DCMR”), Zoning Regulations of 2016, to which all citations to regulations herein are made unless otherwise specified). For the reasons stated below, the Commission hereby **APPROVES** the Application.

FINDINGS OF FACT
I. BACKGROUND

PARTIES

1. In addition to the Applicant, Advisory Neighborhood Commission (“ANC”) 6E, the “affected ANC” pursuant to Subtitle Z § 101.8, was automatically a party pursuant to Subtitle Z § 403.5.
2. The Metropolitan Community Church of DC (“MCCDC”) submitted a December 24, 2019 request for Party Status in opposition to the PUD application, but it withdrew that request on January 15, 2020. (Exhibit [“Ex.”] 24, 24A.)
3. The Commission received no other requests for party status.

NOTICE

4. On August 7, 2019, the Office of Zoning (“OZ”) sent notice of the public hearing to: (Ex. 15, 15A.)
 - ANC 6E;
 - ANC Single Member District 6E03;
 - Office of Planning (“OP”);
 - District Department of Transportation (“DDOT”);
 - Department of Consumer and Regulatory Affairs (“DCRA”);
 - District Department of Energy and Environment (“DOEE”);
 - District of Columbia Housing Authority (“DCHA”) Relocation Committee;
 - DC Councilmember Allen and the At-Large DC Councilmembers; and
 - All property owners owning property within 200 feet of the Property.

5. OZ also published notice of the January 16, 2020 public hearing in the October 25, 2019 *D.C. Register* as well as through the calendar on OZ's website. (66 DCR 13369.)

THE PROPERTY

6. The Property consists of approximately 92,394 square feet of land area on a single record lot comprising an entire city block. (Ex. 2.)
7. The Property is currently improved with:
 - Sixty-three vacant garden apartment-style rental units constructed in the late 1960s and early 1970s, which are slated for demolition; and
 - Approximately an acre of surface parking exclusively serving the residential units.
8. The Property is bounded by N, M, 5th, and 6th Streets, N.W., and is located at the boundary of the Shaw and Mount Vernon Square neighborhoods.
9. The Mount Vernon Square Historic District includes the blocks immediately to the east and south of the Property, but not the Property itself.
10. The blocks immediately surrounding the Property contain primarily residential, religious-affiliated, and low-density commercial land uses:
 - North of the Property are a pair of two- to three-story residential buildings and the Miles Memorial CME Church ("Miles Memorial");
 - East of the Property are rowhouses, the Kingdom Hall of Jehovah's Witnesses, MCCDC, and two corner stores;
 - South of the Property are rowhouses; and
 - West of the Property are a mix of garden apartment-style units and associated surface parking, First Rising Mt. Zion Baptist Church ("First Rising") and the United House of Prayer for All People, with the Convention Center and the associated commercial corridor located one block further west along 7th Street, N.W. (Ex. 2.)
11. The Property is located near multiple transportation options:
 - The Mt. Vernon Sq./7th Street/Convention Center Metrorail Station is located one block away;
 - Metrobus route 70 has stops along 7th Street, N.W., one block to the west of the Property;
 - A Capital BikeShare station is located at 7th and M Streets, N.W.; and
 - 5th Street, N.W. has a dedicated bicycle lane running north-south and east-west bicycle lanes are provided on Q and R Streets, N.W. (Ex. 2.)

ZONING

12. The Property is currently in the RA-2 zone, which is intended to provide for "areas developed with predominantly moderate-density residential" uses. (Subtitle F § 300.3.)
13. The RA-2 zone has the following development standards:
 - A maximum height of 50 feet with no limit on stories, with 60 feet permitted for a PUD; (Subtitle F § 303.1, Subtitle X § 303.7.)

- A maximum penthouse height of 12 feet, with 15 feet permitted for mechanical space; (Subtitle F § 303.2.);
 - A maximum floor area ratio (“FAR”) of 1.8, with 2.16 FAR permitted for developments with inclusionary zoning (“IZ”), and 2.59 FAR permitted for a PUD (Subtitle F §§ 302.1, 302.3; Subtitle X § 303.4) that could be increased by five percent (to 2.72) per Subtitle § 303.10(b)); and
 - A maximum lot occupancy of 60%. (Subtitle F § 304.1.)
14. The blocks surrounding the Property are all in the RA-2 zone except for the north and east, which are in the RF-1 zone.

COMPREHENSIVE PLAN (Title 10A DCMR, the “CP”)

Generalized Policy Map (the “GPM”)

15. The CP’s GPM designates the Property in a Neighborhood Enhancement Area, which the CP describes as:

... primarily residential in character.... These areas present opportunities for compatible small-scale infill development, including new single-family homes, townhomes, and other density housing types. Land uses that reflect the historical mixture and diversity of each community should be encouraged. The guiding philosophy in Neighborhood Enhancement Areas is to ensure that new development “fits-in” and responds to the existing character, natural features, and existing/planned infrastructure capacity. New housing should be encouraged to improve the neighborhood and must be consistent with the land use designation on the Future Land Use Map. The unique and special qualities of each area should be maintained and conserved, and overall neighborhood character should be protected as development takes place. (CP § 223.7.)

Future Land Use Map (the “FLUM”)

16. The FLUM designates the Property for Moderate-Density Residential which the CP describes as:

...the District's row house neighborhoods, as well as its low-rise garden apartment complexes. The designation also applies to areas characterized by a mix of single-family homes, 2-4 unit buildings, row houses, and low-rise apartment buildings. In some of the older inner-city neighborhoods with this designation, there may also be existing multi-story apartments, many built decades ago when the areas were zoned for more dense uses (or were not zoned at all). The R-3, R-4, R-5-A Zone districts are generally consistent with the Moderate Density Residential category; the R-5-B district [now the RA-2 zone] and other zones may also apply in some locations. (CP § 225.4.)

Area Element

17. The Property is subject to the CP’s Near Northwest Area Element, which encompasses the area directly north and west of central Washington and includes a diverse mix of

development given its proximity to downtown areas and transportation options. (CP § 2100.) The Near Northwest Area Element notes the following as planning priorities:

- *“Improved public safety, a strong economy, and rising confidence in the real estate market have fueled demand for housing across the area...Economic diversity must be protected, and programs to retain and add affordable housing are urgently needed.”* (CP § 2107.1(a).)
- *“Maintaining the quality and scale of development continues to be a top priority for the community. Residents expressed the opinion that new infill development should avoid creating monotonous or repetitive building designs, and strive for a mix of building types and scales.”* (CP § 2107.1(c).)

Small Area Plan

18. The Property is subject to the Convention Center Area Small Area Plan (the “SAP”) and within the SAP’s “Transit Oriented Housing” sub-area. The SAP encourages:
- “[M]ixed-income residential development with underground parking on surface parking lots adjacent to Metro stations”;
 - “[R]enewal of project-based Section 8 contracts; alternatively, redevelop with equivalent/increased number of affordable residential units”;
 - “[A]dditional new construction of mixed-income housing at and near Metro stations that are compatible with adjacent residential areas”; and
 - “Infill developments built to property line on street frontage with open space oriented to the interior of the block.”

II. APPLICATION

APPLICANT’S SUBMISSIONS

19. In addition to its testimony at the public hearing, the Applicant submitted a total of six filings to the record in support of the Application:
- The August 2, 2019, initial application; (Ex. 1-2G9.)
 - An October 9, 2019, prehearing statement (the “First Prehearing Statement”); (Ex. 13-13G2.)
 - A December 2, 2019, CTR prepared by Gorove Slade (the “CTR”); (Ex. 21-21A.)
 - A December 20, 2019, supplemental prehearing statement (the “Second Prehearing Statement”); (Ex. 23-23D.)
 - A January 26, 2020, PowerPoint slide show presented at the public hearing (the “PowerPoint”); (Ex. 65A.)
 - A February 3, 2020, post-hearing submission (the “Post-Hearing Submission - Response to Commission and UFD Report”); and (Ex. 72-72G.)
 - A March 23, 2020, second post-hearing submission (the “Second Post-Hearing Submission - Meeting with the Churches”). (Ex. 78.)
20. The Application proposes to redevelop the Property with a new, all residential building providing 360 apartments, on-site parking, and various resident amenity spaces (the “Building”). (Ex. 2.)

21. The Building is proposed to have:
- A maximum height of 50 feet (three to four stories) plus a habitable penthouse (within maximum height permitted in the RA-2 zone);
 - Approximately 246,222 square feet of gross floor area (“GFA”) for an overall FAR of approximately 2.66 (0.07 over the FAR permitted for a PUD in the RA-2 zone); and
 - A lot occupancy of 81.7% (21.7% over the lot occupancy permitted in the RA-2 zone).
22. The Building is composed of two residential wings, each centered around a closed court, joined by a connection that is recessed from the lot lines on 5th and 6th Streets, N.W. by open courts that break down the apparent scale of the block-long Building, which responds to the surrounding neighborhood context as follows:
- The three-story north wing that corresponds to the two-story rowhouses to the east of the Property and to the two-to-three-story residences and the two-story church immediately to the north;
 - The four-story south wing that reflects the greater height of the row houses to the south of the Property and the United House of Prayer at the southern end of block to the west; and
 - The two-story connection housing the Building’s residential support and amenity areas, flanked by:
 - The larger eastern court, landscaped to serve as the terminus of Ridge Street, N.W., and to correspond to the greater number of street trees and the lower-density residential character to the east of the Property; and
 - The shallower western court, designed to signal the Building’s western side as the primary pedestrian entrance and create a more urban condition consistent with the increasing density of the neighborhood moving west toward 7th Street, N.W. and the Convention Center area.
23. Both wings include:
- Double-loaded corridors that provide efficient overall floorplates accommodating a mix of unit sizes, ranging from studios to three-bedrooms;
 - Independent stair and elevator cores that optimize the distance for each unit to internal vertical circulation;
 - Direct street access for many of the exterior units on the lower level of the Building; and
 - Direct access to terraces along the interior courts for certain interior units on the lower level of the Building.
24. The Building’s residential program includes:
- A relatively even distribution of studio, junior one-bedroom, one-bedroom, junior two-bedroom, two-bedroom, and three-bedroom units, with no unit type comprising more than one third of the units and family-sized units (two- and three-bedroom units) comprising approximately 25% of the units; and
 - An area equal to 12% of the total GFA devoted to residential use, including enclosed projections in public space, the residential portions of the cellars, and the habitable penthouse space (in total, approximately 41,153 gross square feet) will be reserved for IZ units for the life of the Building, with the approximately 4,280 square feet of GFA

resulting from the non-communal penthouse habitable space provided for households earning no more than 50% of the Median Family Income (“MFI”) with the remainder set aside for households earning no more than 60% MFI.

25. The Building’s materials and detailing are intended to reflect the surrounding neighborhood architectural conditions and details:
- The Building’s masonry façade continues the predominant use of masonry on residential buildings in the Shaw neighborhood;
 - The south elevation has seven bay elements that correspond to an approximately equal number on the historic rowhouses on the south side of M Street, N.W.; and
 - The north elevation has only four total bays, three of which are clustered opposite the existing rowhouses on the north side of N Street, N.W. It is comparatively less articulated and more modern to correspond to the modern-style church on the north side of N Street, N.W.
- (Ex. 2, 65A1.)
26. The Building features landscaping improvements at the street level, in the courts, and on the rooftop areas of the building:
- The street-level landscape improvements are intended to enhance the pedestrian experience and preserve existing street trees;
 - The two open courts on either side of the connective bar introduce ornamental landscaping, and with the eastern court, providing a water feature, tall shade trees, and a small lawn elevated above street level;
 - The interior courts will be open to building residents for passive recreation and include trees and a mix of hardscape and landscape;
 - The northern court is expected to be the more active and playful courtyard with outdoor games, grills, and various seating areas; and
 - The southern court is intended to be much more tranquil, with abundant plantings and a small area appropriate for outdoor yoga. (Ex. 2.)
27. The Building will achieve LEED-Silver v4 (the functional equivalent of LEED Gold 2009) certification from the United States Green Building Council (“USGBC”), with the sustainable design features including:
- Energy modeling for the residential portion of the Building in order to optimize energy use and implement a number of efficiency strategies;
 - Incorporation of environmentally preferred design materials;
 - Inclusion of green roof and rooftop bio-retention that will help satisfy the Green Area Ratio (“GAR”) and stormwater regulatory requirements;
 - Approximately 1,382 square feet of rooftop solar panels; and
 - Three electric vehicle charging stations and power outlets for e-bicycles in the Building’s garage. (Ex. 2.)
28. The Building will include the following transportation and loading improvements:

- Approximately 103 vehicle parking spaces in a one-level below-grade parking garage - 40 more spaces than required by the Zoning Regulations – which results in a ratio of 0.3 spaces per unit;
 - Long- and short-term bicycle parking, in the garage and in the public space surrounding the Building;
 - Numerous pedestrian entrances along the Building’s 5th, 6th, and M Streets, N.W., façades in order to generate pedestrian activity and create a strong relationship between the building and public space;
 - Parking garage access and loading for the north wing provided from N Street, N.W., opposite a church (rather than opposite any existing residences), in the same approximate location as the existing curb cut;
 - Loading for the southern wing of the Building from 5th Street, N.W., opposite the existing commercial uses, rather than opposite any existing residences; and
 - Individual loading facilities for each residential wing which are large enough to accommodate all necessary vehicle turns.
29. The Application requested the design flexibility approved by the Commission in recent PUD cases from the requirement to build in complete compliance with the final plans approved by the Commission. (Ex. 2, 76.)

RELIEF REQUESTED

PUD Development Incentives

30. The Application requested the following flexibility from zoning requirements in order to attain the desired amount of residential density pursuant to the PUD and IZ bonuses while remaining within the matter-of-right height limit:
- To increase the maximum lot occupancy to 81.7% from the 60% limit of Subtitle F § 304.1; and
 - To increase the maximum FAR to 2.66, using slightly more than half of the 5% increase permitted by Subtitle X § 303.10(b) above the 2.59 FAR limit allowed for an IZ development in the RA-2 zone per Subtitle F § 302.3 including the 20% bonus PUD density permitted by Subtitle X §§ 303.3 and 303.4.

JUSTIFICATION FOR RELIEF

Consistency with the Comprehensive Plan and Public Policies (Subtitle X § 304.4(a))

31. The Application asserted that the Building is not inconsistent with the CP when reviewed as a whole and is not inconsistent with any other adopted public policies or active programs related to the subject site, including the SAP and Mayor’s Housing Order, for the reasons discussed below. (Ex. 2F.)

GPM

32. The Building is not inconsistent with the Property’s Neighborhood Enhancement Area designation because the Building:
- “Fits-in” with, and responds to, the existing character of the surrounding area;
 - Is exclusively residential in character, and will replace outdated market-rate housing stock with new, mixed-income housing;

- Qualifies as one of the “other density housing types” permitted by the GPM; and
- Will “attract complementary new uses and services” to serve the needs of the Building’s increased number of new housing residents, with these new uses and services also serving the surrounding community.

FLUM

33. The Building is not inconsistent with the Property’s Moderate-Density Residential designation because:
- The existing RA-2 zone designation is “expressly contemplated” in the Moderate-Density Residential category; and
 - The three-to-four story Building qualifies as a “low-rise apartment building” within the meaning of the FLUM.

Near Northwest Area Element

34. The Application would further this element by revitalizing a currently underdeveloped block in the eastern side of the planning area with a new mixed-income residential building, with access to mass transit and both the downtown core and lower-density residential neighborhoods in the near Northwest, in addition to furthering multiple specified Near Northwest Area Element policies.

Land Use Element

35. The Application would further this element by redeveloping an underutilized property near major commercial corridors and a Metrorail station with a mixed-income residential building that would revitalize the area while respecting the character of the surrounding lower density development, in addition to furthering multiple specified Land Use Element policies.

Transportation Element

36. The Application would further this Element by redeveloping a property in a transit-oriented location in a pedestrian and bike friendly way that would minimize impacts to the surrounding street network, in addition to furthering multiple specified Transportation Element policies.

Housing Element

37. The Application would further this element by providing a significant amount of market-rate and permanently affordable housing in a downtown adjacent neighborhood with ready access to transit, including more affordable housing units than could be provided in a matter of right development, in addition to furthering multiple specified Housing Element policies.

Environmental Protection Element

38. The Application would further this element by redeveloping the Property with a building that incorporates multiple sustainable elements in both the building and in the surrounding public space, in addition to furthering multiple specified Environmental Protection policies.

Parks, Recreation, and Open Space Element

39. The Application would further this element by including open public spaces in the design of the Building in order to enliven the streetscape and provide space for passive and active recreational activities, in addition to furthering multiple specified Parks, Recreation, and Open Space Element policies.

Urban Design Element

40. The Application furthers this element by using high quality architectural elements and materials to construct an attractive and engaging building, particularly at the street level; by employing variations in height, architecture, and articulation to harmonize with the existing development pattern of the Shaw neighborhood and facilitate the density transition between Downtown areas and Shaw, in addition to furthering multiple specified Urban Design policies.

Other CP Elements

41. The Application asserted that the Building would also advance specific policies in the CP's Economic Development, Community Service and Facilities, Educational Facilities, Infrastructure, and Arts and Culture Elements. (Ex. 2F.)

SAP

42. The Building will advance the SAP's general goals because:
- It will create a mixed-income residential development with approximately 41,153 square feet of affordable units on a site where none currently exist;
 - It does not propose to change the existing zoning but rather respects the existing patterns of development, including existing open spaces;
 - It will advance the specific goals of the "Transit Oriented Housing" sub-area of the SAP by redeveloping the existing site with surface parking with a mixed-income development with underground parking near a Metrorail station; and
 - It advances a number of the design recommendations of the SAP sub-area including providing prominent building entrances, animating the street through projections and openings, and use of high quality design materials. (Ex. 2F, 13D.)

Mayor's Housing Order

43. The Building furthers the goal of Mayor's Order 2019-036 to create 36,000 new residential units by 2025 by:
- Providing one percent of that goal (360 units), a significant contribution from a single site;
 - Providing the units as part of a transit-oriented, contextually-designed, and mixed-income development;
 - Providing permanent affordable housing units equivalent to 12% of the residential GFA that will be essential to achieving the Mayor's housing objectives. (Ex. 2, 2F.)

No Unacceptable Project Impacts on the Surrounding Area (Subtitle X § 304.4(b))***Zoning and Land Use Impacts***

44. The Application will create no unacceptable zoning or land use impacts because:
- The Application maintains the Property’s existing RA-2 zoning that is consistent with the Property’s CP designations and compatible with the zoning for surrounding Shaw neighborhood;
 - The Building’s multifamily residential use fulfills the RA-2 zone’s purpose for areas developed with predominantly moderate-density residential uses and is appropriate given the Property’s proximity to transit, major commercial corridors, and other surrounding multifamily residential uses; and
 - The Building’s design and the Application’s public benefits, in particular the amount of new mixed-income housing, mitigate or outweigh any potential adverse impacts arising from the Building’s land uses. (Ex. 2.)

Transportation Impacts

45. The Building will not create any unacceptable transportation impacts, as further discussed below in the CTR (Finding of Fact [“FF”] 64), because:
- The Building’s vehicular traffic impacts are strongly mitigated by its nearby transit options including, the Mt. Vernon Sq./7th St./Convention Center Metrorail station, a Metrobus stop, and a Capital Bikeshare station, all of which are approximately one block away;
 - The Property has a WalkScore of 95, a TransitScore of 97 (indicating “daily errands do not require a car”), and a BikeScore of 92 (indicating “excellent bike lanes”); and
 - The Building contains approximately 103 below-grade vehicle parking spaces, long-term bicycle spaces in a dedicated storage room, and short-term bicycle spaces provided in public space. (Ex. 2.)

Housing Market Impacts

46. The Building will not cause any unacceptable impacts, but instead will have a positive impact on the housing market because:
- The Building creates new, high quality, transit-accessible housing units on an underutilized parcel;
 - The creation of new housing units helps buffer increasing housing costs, by increasing the supply of housing stock;
 - The Property is currently vacant so there will be no adverse impacts in terms of displacing current residents of the Property; and
 - The inclusion of permanently affordable units helps address the District’s ongoing affordable housing shortage in an inclusive, mixed-income community.¹ (Ex. 2.)

¹ “In short, mitigation of the potential displacement of low-income residents through gentrification and market pressures is taken into account in the Zoning Commission’s IZ regulations” and “the proposed PUD’s compatibility with the [Area Element] development policy and with the [Small Area Plan] enable us to discern the agency’s path: a recognition that the pressures of gentrification are inevitable, but can be mitigated through IZ and through the types of programs discussed in [the Small Area Plan], rather than avoided by having underutilized property remain as it is.” (*Cole v. District of Columbia Zoning Comm’n.*, No. 17-AA-360 (D.C. Jun. 27, 2019).)

Environmental Impacts

47. The Building will not cause any unacceptable environmental impacts, but instead will have favorable impacts because the Building:
- Is designed to the LEED-Silver v4 design standards;
 - Utilizes environmentally preferred materials;
 - Provides 1,382 square feet of rooftop solar panels;
 - Proposes bio-retention basin planters, green roofs, and permeable pavement are designed to meet or exceed DOEE stormwater management retention and detention requirements; and
 - Is designed to retain all storm water from a 1.2-inch rainfall event. (Ex. 2.)

Parks/Recreation Centers/Library Services/Emergency and Health Services

48. The Building will not result in any unacceptable impacts on District facilities and services, such as parks, recreation centers, public libraries, and emergency and health services because:
- The Building includes four court spaces, pool, and numerous terraces and balconies, which provide sufficient outdoor and recreation spaces to mitigate any potential adverse effects on nearby public outdoor spaces or District recreation centers; and
 - Nearby library branches include Northwest One and Watha T. Daniel, both of which have been renovated or constructed in recent years and will be able to handle the increase in residents. (Ex. 2.)

Open Space, Urban Design and Massing Impacts

49. The Building will not have unacceptable impacts, but instead will have favorable impacts on open space, urban design, and massing because the Building:
- Removes the existing surface parking lot and replaces it with a high quality building and usable open space;
 - Creates a strong presence along M, N, 5th and 6th Streets, N.W., largely avoiding blank walls, relocating all parking below grade, providing high quality landscaping and streetscaping, and creating a pedestrian-first condition; and
 - Serves as a keystone linking the emerging projects elsewhere in the neighborhood and serving as a transitional development between the lower-density areas to the east and the higher-density development surrounding the Convention Center to the west. (Ex. 2.)

Design and Aesthetic Impacts

50. The Building will not have unacceptable impacts, but instead will have favorable design and architecture impacts because:
- The contemporary building replaces tired and dated garden apartments and is emblematic of new investment without appearing out of place among the mix of historical, mid-century, and faith-oriented buildings surrounding the site; and
 - The Building's landscaping and public realm detailing will help create a sense of place in the neighborhood. (Ex. 2.)

Economic Impacts

51. The Building will not have unacceptable impacts, but instead will have favorable economic impacts on the neighborhood, and the District more generally, through the introduction of a new residential use that contributes patrons for the existing businesses and increased tax revenue effects for the District. (Ex. 2.)

Public Schools

52. The Building will not cause unacceptable impacts on District schools given the size of the Building, its mix and type of units, and the capacity for the District's nearby schools to take on additional students:
- DCPS data shows that all nearby neighborhood public schools are below capacity; and
 - Several private and charter schools near the Building offer educational options to residents who may seek alternatives to the neighborhood public schools. (Ex. 2.)

Utility Demand

53. The Building will not result in any unacceptable impacts to utility demand in the surrounding area because the Building's:
- Electrical needs will be provided by the Potomac Electric Power Company in accordance with its usual terms and conditions of service in compliance with the D.C. Energy Code;
 - Solid waste and recycling output will be collected regularly by a private trash collection contractor; and
 - Water and sanitary sewer needs will be met by the existing District water and sanitary systems or through upgrades coordinated with DC Water during the building permitting process. (Ex. 2.)

Historic District Impacts

54. The Application will not create unacceptable impacts on the Mount Vernon Historic District located immediately east and south of the Property because the Building:
- Has an overall height and density that are sympathetic to the existing historic structures and the Building is only one story taller than a cluster of contributing structures along 5th and M Streets, N.W.;
 - Avoids placing any vehicular entrances opposite historic structures; and
 - Features a primarily brick façade, the predominant cladding in the historic district, along with bay-like articulation patterns along both its M and 5th Streets, N.W., together making façades that match the scale and rhythm of the existing historic bays. (Ex. 2.)

Cultural and Public Safety Impacts

55. The Building will have favorable impacts on the culture of the surrounding area and on public safety because:
- The infilling of the currently vacant property helps complete the neighborhood and signifies investment and stewardship of the neighborhood; and
 - The design of the Building adds street activity, promotes "eyes on the street," adds quality lighting, and makes other improvements all of which have positive effects on crime deterrence. (Ex. 2.)

Construction-Period Impacts

56. The Building's construction-period impacts will be mitigated because:
- The Applicant has experience successfully completing construction projects in infill locations while ensuring minimal disturbance to any neighbors;
 - There are no existing occupied residential units on the Property and all nearby residential properties are separated from the Property by public streets;
 - During excavation and construction, erosion on the Property will be controlled in accordance with District law and will be managed so as to not adversely affect neighboring properties, the environment, or District services and facilities; and
 - The Applicant submitted a Construction Management Plan into the record and compliance with the Construction Management Plan is a condition of approval of this application. (Ex. 2.)

***Requested Zoning Flexibility (To Be Balanced Against Public Benefits (Subtitle X § 304.4(c)))
Increased Lot Occupancy***

57. The Application asserts that this flexibility is needed to:
- Allow the Building to balance its housing production goals while respecting the prevailing building heights on surrounding blocks by permitting a shorter building that is spread out over a greater portion of the Property in order to provide the maximum number of residential units; and
 - Incorporate the feedback received from ANC 6E and neighbors that a three- to four-story building (i.e., up to 50 feet) would be acceptable, but a 60-foot building would be too tall.

Increased FAR (Subtitle X § 303.10(b))

58. The Application asserts that this flexibility is essential to the successful function and design of the Building because:
- Without the additional FAR, the Building would require either a setback from one side or an expansion of a court that would likely result in losing an entire "stack" of units, given the need to maintain units of a minimum size and with usable dimensions; and
 - The additional requested density allows the Building to be constructed to a logical floorplate and to maintain levels of efficiency on each floor that are necessary for the Building to function successfully. (Ex. 2.)

Public Benefits***Superior urban design, architecture, and landscaping per Subtitle X § 305.5(a) and (b)***

59. The Application asserts that the Building's urban design, architecture, landscaping, and provision of open space are superior public benefits because:
- The bifurcation of the massing into two wings breaks down the apparent scale of the building, and the articulation carries forward the existing rhythms and overall "feel" of the existing rowhouses;
 - The open court on 5th Street, N.W., is an attractive and appropriate terminus for Ridge Street, N.W.;

- The Building’s urban design addresses the surrounding streets by creating strong street walls which “enclose” the pedestrian space;
- The Building’s ground-floor design, including direct street access from certain units, integrates it into the surrounding residential context;
- The Building’s differentiated massing, articulation, and design responds to its context on all sides, while its high quality materials and finishes create a cohesive design; and
- The Building’s landscape and site improvements create a range of vegetation and outdoor spaces that “green” the Property while also providing functional services to building residents.

Site planning, and efficient and economical land utilization per Subtitle X § 305.5(c)

60. The Application asserts that the site plan proposed for the Building provides efficient land utilization benefits as follows:
- The Building introduces an increased number of residential units, including permanent affordable units, on a now-vacant lot located near transit and major commercial corridors;
 - The Building’s 2.66 FAR is an efficient and economic utilization of the Property, and increases the efficient and economical use of land in the Shaw neighborhood as a whole, given the proximity to transit options, commercial corridors near the Convention Center, and prevailing densities nearby; and
 - The Building proposes an efficient land utilization strategy with respect to parking by locating parking below grade.

Housing and affordable housing per Subtitle X § 305.5(f) and (g)

61. The Building includes three specific types of housing-related public benefits:
- Approximately 52,000 additional square feet of GFA dedicated to residential and accessory uses above the matter-of-right GFA permitted in the RA-2 zone; (Subtitle X § 305.5(f)(1.))
 - 18 units will be three-bedroom units; and (Subtitle X § 305.5(f)(3).)
 - The Building will reserve 12% of its gross residential square footage for permanently affordable housing units representing a 20% increase in affordable housing above the matter-of-right requirements. (Subtitle X § 305.5(g).)

Environmental and sustainable benefits per Subtitle X § 305.5(k)

62. The Building includes the following environmental benefits:
- The Building has been designed to exceed environmental design standards at the LEED Silver v4 level (i.e., equivalent of LEED Gold 2009);
 - The Building will use environmentally-preferred materials;
 - The incorporation of a green roof and rooftop bio-retention; and
 - 1,382 square feet of rooftop photovoltaic solar panels.

First Prehearing Statement

63. The First Prehearing Statement responded to OP Setdown Report (FF 74-75) and the Commission’s comments at the public meeting, at which the Commission set the Application down for a public hearing including:

- Details on the parameters of the affordable housing proffer; (Ex. 13A.)
- Additional information regarding the environmental features and benefits; (Ex. 13B.)
- A materials exhibit, including revised façade materials; (Ex. 13C.)
- Revised courtyard design; (Ex. 13C.)
- A further analysis of the Building’s consistency with the SAP’s Design Guidelines; (Ex. 13D.)
- Further analysis of the Building’s consistency with the CP and additional explanation as to how the Building’s requested development incentives are balanced by the proffered benefits; (Ex. 13E.)
- An update as to public outreach efforts; and
- Resumes and outlines of testimony for the Applicant’s expert witnesses. (Ex. 13F.)

CTR

64. The Applicant’s CTR concluded that the Building would not have a detrimental impact on the surrounding transportation network due to the incorporation of positive design elements including:

- The Property’s proximity to transit and existing bicycle infrastructure;
- The inclusion of secure long-term bicycle parking and short-term bicycle parking spaces that meet or exceed zoning requirements;
- The creation of new pedestrian sidewalks that meet or exceed DDOT and ADA requirements, this includes a curb extension and crosswalk connecting the site with Ridge Street, N.W.;
- A parking ratio that is within DDOT’s guidelines, meaning that the parking supply will meet the practical needs of the site while not promoting vehicles as a mode of transportation; and
- A Transportation Demand Management (“TDM”) plan that includes the following elements to reduce the demand of single-occupancy, private vehicles during peak period travel times or shifts single-occupancy vehicular demand to off-peak periods:
 - Unbundling of residential parking costs;
 - Appointment of a TDM Coordinator (who will receive TDM training from goDCgo) as a point of contact with DDOT, goDCgo, and the Zoning Administrator;
 - The TDM Coordinator will provide information to goDCgo annually and will conduct an annual commuter survey of employees on site;
 - Provide 121 long-term bicycle parking spaces and bicycle storage rooms that will accommodate non-traditional sized bikes;
 - The Applicant will post all TDM commitments on the Building’s website and will publicize the commitments; and
 - The Applicant will provide all new residents welcome packets with information on transportation options, including the Metrorail pocket guide, brochures of local bus lines, carpool and vanpool information, Guaranteed Ride Home brochure, and the most recent DC Bike Map. (Ex. 21A.)

Second Prehearing Statement

65. The Second Prehearing Statement included:

- Additional responses to the comments of OP (FF 75) and the Commission at the public meeting in which it set down the Application for a public hearing as well as responses to the comments from DHCD, DC Water, DOEE, DHCD, DDOT, and DDOT's Urban Forestry Division ("UFD") received at OP's Interagency Meeting; (FF 78; Ex. 23C.)
- A unit summary for the Building that detailed the MFI levels by apartment type, the unit type breakdown for both IZ and market-rate units, and a comparison between the number and unit types in the existing building and that which is proposed for the Building; and (Ex. 23C, 23A2.)
- The Applicant's initial community benefits package, created with significant input from ANC 6E and community stakeholders, which consisted of the following financial contributions:
 - **\$75,000 to the Greater Washington Community Foundation** – to be used by The Partnership to End Homelessness Grantmaking Fund ("Partnership Fund") to provide support for nonprofit providers in DC to help obtain and maintain permanent housing and reduce the amount of time spent in the homeless services system;
 - **\$20,000 to New Endeavors for Women** – for the purchase of computer equipment and funding of supportive programs for women and families in the transitional housing program located at 611 N Street, N.W. The supportive programs include; transportation subsidies, tuition assistance, and transitional housing supplies for clients;
 - **\$30,000 to Shaw Main Streets** – in support of the Shaw Main Street Clean & Safe Team, which hires, trains, and employs citizens to maintain the public space along the 7th and 9th Street, N.W., commercial corridors. Funds will be used to pay for salaries, benefits, uniforms, equipment, and supplies for crew members;
 - **\$15,000 to the Kennedy Recreation Center** – for the purchase of new computers, furniture, equipment, and supplies for the technology lab for the Kennedy Recreation Center;
 - **\$15,000 to Boolean Girl** – to provide one year of funding of Boolean Girl's operations at the Kennedy Recreation Center. Boolean Girl provides a curriculum, equipment, materials, and instructors to teach coding to disadvantaged children. The program can serve 75 children over the course of one year, and participants will be recruited from the Shaw neighborhood;
 - **\$20,000 to DC Public Library Foundation** – for the benefit of Shaw Watha T. Daniel Neighborhood Library to support improvements to the children's section including furniture, supplies, and children's educational programming; and
 - **\$30,000 to the Mount Vernon Triangle Community Improvement District** – to support the Mount Vernon Triangle Clean Team's hiring of one additional Clean Team Ambassador.

Public Hearing Testimony

66. The Applicant presented the following witnesses at the January 16, 2020, public hearing:
- Mr. Jamie Weinbaum, Executive Vice President of Mid-City Financial Corporation;
 - Ms. Sarah Alexander as an expert in architecture; and
 - Mr. Robert Schiesel as an expert in transportation analysis and engineering. (January 16, 2020, Public Hearing Transcript ["Tr."] at 8-9.)

67. Ms. Alexander testified to the Building's design elements as follows:
- The Building actively sought to “reknit” the Property into the surrounding neighborhood by extending the north and south wings to the property lines and incorporating bays, pavilions, and balconies to match and complement the surrounding residential development;
 - The height of the Building had been deliberately kept below the PUD maximum in order to respect the heights of the adjacent buildings and the wishes of the community; (Tr. at 19-23.)
 - The plans had been revised to respond to the Commission's comments at setdown, including the following: changing the color palette of the building, darkening the upper panels from white to dark gray and the windows from white to dark grey; and providing elevations of the internal courtyards; and
 - The majority of the additional density requested for the Building resulted from:
 - Ample exterior balconies (included per the Zoning Administrator's interpretation that these be included in the calculation of gross floor area) provided throughout the Building (approximately 5,400 square feet of the 6,700 square feet of additional density) both as a residential amenity and as design feature; and
 - The provision of separate loading facilities (designed for front-in and front-out truck turning maneuvers) for each residential wing accounting for approximately 4,500 square feet of gross floor area, which are essential to making the loading work at grade with minimal impacts to the surrounding neighborhood streets. (Tr. at 11-12, 19-23, 30-31.)
68. The Applicant responded to the DDOT Report and Testimony (FF 82-83) by incorporating all recommended additions to the TDM Plan with the limitation to DDOT's proposed free SmarTrip card and complimentary Capital Bikeshare coupon good for one free ride be limited to the first resident of each dwelling unit at initial lease-up. (Ex. 65A2; Tr. at 24-25).
69. The Applicant also provided testimony regarding the Building's housing program and affordable housing proffer as follows:
- In response to DHCD's recommendation of a 15% IZ proffer, the Applicant stated it believed the 12% IZ set aside was commensurate with approvals of other similar PUDs and appropriate given the minimal requested flexibility and the public benefits package that was sufficient to satisfy the PUD balancing test without the additional IZ; (Tr. at 13-14.);
 - The Applicant studied the ability to increase the IZ proffer and had determined that a 12% IZ set aside was the maximum amount that the Building could sustain economically;
 - The Applicant reiterated that the Building provides nearly 12,000 square feet of IZ above the amount required in a matter-of-right building that utilizes the IZ bonus density; and (Tr. at 50-51.)
 - The 360-unit Building will provide a full one percent of the Mayor's goal of producing 36,000 new housing units by 2025 while maintaining the matter-of-right height, but

seeking the additional residential density allowed through the PUD process in order to provide more market-rate and affordable housing. (Tr. at 15-18.)

70. In response to questions from the Commission regarding the relocation of the tenants that formerly occupied the 63 units on the Property, Mr. Weinbaum noted that:
- The Applicant stopped leasing the 63 existing units three years earlier, and that the tenants subsequently moved to other parts of the District or other parts of Washington Apartments, which includes two other parcels near the Property; and
 - The Applicant had covered the costs of the moves for tenants relocating to the other, renovated units in the other Washington Apartments buildings. (Tr. at 34-35.)

First Post-Hearing Submission – Response to Commission and UFD Report

71. The First Post-Hearing Submission addressed the Commission’s requests for additional information at the public hearing as follows:
- ***Vents on the Building’s Front Bay Projections*** – The Applicant removed the vents that were initially proposed on the front bay projections and agreed not to locate any vents through the façade’s white metal panels. The venting instead will be located internally through the residential units;
 - ***Location of the IZ Units*** – The Applicant revised the locations of the IZ units so that only one unit is located near a loading dock. This unit will be a three-bedroom unit that mainly fronts on 5th Street, N.W and is a prominent corner unit;
 - ***Views of the Building in the Winter Months*** – The Applicant provided views of the Building in the winter months when the street trees do not have any leaves;
 - ***Appearance and Treatment of the Interior Courts*** – The Applicant added the following façade enhancements to the interior courts, although it noted that landscaping remained the primary focus of the interior courts, particularly the south courtyard:
 - Addition of trim and banding to the façades;
 - Incorporation of different accent shades of the façade color; and
 - Variation of the material types provided on the façades of the interior courts;
 - ***Updated Construction Management Plan*** – The Applicant submitted an updated Construction Management Plan requiring the Applicant to commence all repairs within 60 days of the Applicant and the Adjacent Owner agreeing upon any necessary and appropriate repairs;
 - ***Proposed Unit Count Flexibility*** – The Applicant revised its request for design flexibility from the approved plans for the number of units:

“To provide a range in the number of residential units in the Building of plus or minus five percent (5%) relative to the number depicted in the Final Plans, with no reduction in the number of three-bedroom units (18) and maintaining the percentage range of units noted on page G05 of the Final Plans[;]”and
 - ***Potential Parking Impacts*** - Gorove Slade Associates submitted an additional technical memorandum (the “Parking Memorandum”) analyzing the sufficiency of the parking provided in the Building and information regarding RPP restrictions immediately adjacent to the Property, which noted that:
 - The Building’s proposed 103 parking spaces exceeds the 61 parking spaces required by the Zoning Regulations;

- The Park Right DC Tool created by DDOT to help determine residential parking demand estimates the number of utilized parking spaces for the Building to be in a range of 72-115, and the 103 on-site parking spaces falls within this range;
- The existing RPP restrictions on the streets around the Property do not include restrictions on Sunday so that preventing residents of the Building from seeking RPP would not address parking concerns raised by members of the Churches (FF 95); and
- The Applicant's final request for design flexibility for the number of parking spaces reads as follows:
"To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus ten percent (10%), provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit."

72. The Applicant's First Post-Hearing Submission responded to the issues raised in the UFD Report as follows: (FF 85; Ex. 22.)
- The Applicant met with UFD representatives for a second site visit on January 9, 2020, to review the street trees referenced in the UFD Report;
 - The Applicant agreed to prepare and submit a tree preservation plan as part of its public space permitting process; and
 - The Applicant agreed that it would need to obtain permits for the removal of any Special Trees on both public and private property.

Second Post-Hearing Submission – Meeting with the Churches

73. The Second Post-Hearing Submission detailed the Applicant's second meeting with representatives of First Rising and Miles Memorial (together, the "Churches") on March 17, 2020:
- The Applicant proposed several accommodations to address the Churches' concerns regarding parking including covering the cost of off-site parking for the Churches, use of on-site parking on the Property prior to the start of construction, and financial contributions to help the Churches cover alternative transportation services;
 - The Churches' counter proposal requested 40 permanent parking spaces in the Building for use by the Churches and an increase of the affordable housing proffer to dedicate 22% of the units as permanently affordable with rents capped at 20% MFI;
 - The Applicant stated that it was unable to accommodate the Churches' proposals and noted that:
 - While the Applicant was sympathetic to the Churches' concerns regarding parking, that the CTR, Parking Memorandum, and DDOT Report had all concluded that the Building would not result in any adverse parking impacts and the Applicant was only required to mitigate potential parking impacts resulting from the Building; and
 - That the affordable housing proffer suggested by the Churches was not financially feasible for the Applicant without significant government subsidies; and
 - The Applicant concluded that it had been unable to come to a final agreement with the Churches on their current concerns but would continue to work with them throughout the construction process.

III. RESPONSES TO THE APPLICATION

OP REPORTS AND TESTIMONY

OP Setdown Report

74. OP submitted a September 13, 2019, report (the “OP Setdown Report”) recommending that the Commission set down the Application for a public hearing based on OP’s determination that: (Ex. 11.)

On balance, the proposed PUD would not be inconsistent with the Comprehensive Plan. The policies cited in this report complement and support redevelopment of an underutilized site with a new apartment building without displacing existing residents. The proposed project would be an improvement over the existing building, including architectural design, sustainability, and open green space. The proposed building would increase density at the site to provide more housing within the scale, density and design context of the existing neighborhood;” and respond to specific CP aspects as follows:

- **GPM** – The Building is consistent with the GPM’s emphasis on context-appropriate, residential infill development, particularly given the amount of proposed affordable housing which OP concluded would be a benefit to the surrounding neighborhood;
 - **FLUM** - the Building is mostly consistent with the requirements of the RA-2 zone which permits moderate-density development, and that the increased height and density would allow the Building to “provide an appropriate buffer between the medium density residential uses west of 6th Street and the moderate density residential uses to the east;”
 - **Near Northwest Element** – The Building would contribute to the community’s positive physical identity, provide significant green open space on the Property, and improve the public realm around the Property; and
 - **Citywide Elements** – The Building is consistent with, and furthers, individual policies of the Land Use; Transportation; Housing; Environmental Protection; Parks, Recreation and Open Space; and Urban Design Elements.
75. The OP Setdown Report requested that the Applicant submit the following additional information prior to the public hearing:
- The parameters of the affordable housing component, including the anticipated MFI level for apartment type and the bedroom count of apartments in the existing building compared to the proposed building; and
 - Additional information regarding the benefits and amenities including environmental and sustainable benefits and superior landscaping or creation of preservation of open spaces.
76. The Applicant responded to the OP Setdown Report’s requests for additional information in its Prehearing Statements. (FF 63, 65.)

OP Hearing Report

77. OP submitted a January 6, 2020, report (the “OP Hearing Report”) recommending that the Commission approve the Application provided that (Ex. 25.)
- The Application’s requested design flexibility be limited as follows:
 - Flexibility in the number of residential units only for the number of studios and one-bedroom units; and
 - Flexibility in the number of parking spaces only to provide less parking; and
 - The Applicant submitted prior to final action:
 - Additional information about how the requested additional density is essential to the successful functioning of the Building; and
 - Additional information on the timing of the payments of the proffers and how those contributions are consistent with § X § 305.3(d).
78. The OP Hearing Report included comments from DC Water, DOEE, DHCD, DDOT, and UFD on the Application made at a December 10, 2019, interagency meeting with the Applicant and noted OP’s support for DHCD’s recommendation that the Applicant increase the affordable housing commitment from 12% dedicated IZ units to 15% dedicated IZ units.
79. The Applicant responded to the comments of DHCD, DC Water, and DOEE in its Second Pre-Hearing Statement and to OP’s requests for additional information in its Prehearing Statements, Testimony, and the First Post-Hearing Submission. (FF 63, 65, 66-67, 71; Ex. 13, 23, 72;Tr. 2 at 11-12, 30-31, 50-51.)

OP Public Hearing Testimony

80. OP testified that it supported the Application and rested on the record, but requested the ability to file a post-hearing comment on the Applicant’s request for design flexibility from the approved plans for the number of residential units provided in the Building. (Tr. at 61.)

OP Post Hearing Report

81. OP submitted a February 5, 2020, report (the “OP Post Hearing Report”) opposing the Applicant’s request for design flexibility for the number of residential units unless it was limited to studios and one-bedroom units and so did not change the number of two- and three-bedroom units shown on the approved plans. (Ex. 75.)

DDOT REPORTS AND TESTIMONY**DDOT Report**

82. DDOT filed a January 6, 2020, report (the “DDOT Report”) that analyzed the Building’s site design, the travel assumptions of the CTR, the sufficiency of the provided parking and loading, and the proposed transportation mitigations. (Ex. 26.) The DDOT Report concluded:
- The proposed 103 vehicle parking spaces provided in the Building exceed the 61 spaces required by the Zoning Regulations;

- The proposed parking supply also falls within DDOT’s preferred maximum parking ratio (less than 0.30 space per residential unit) for sites within a quarter mile of a Metrorail station;
- The CTR did not identify any traffic impacts at study area intersections, therefore no additional mitigation beyond a TDM Plan is required; and
- The TDM Plan, in conjunction with a low parking ratio and close proximity to a Metrorail station, is mostly sufficient to encourage usage of non-auto modes, but DDOT requested the TDM Plan be supplemented by adding the following elements:
 - Provide a free SmarTrip card to every new resident and a complimentary Capital Bikeshare coupon good for one ride;
 - Long-Term bicycle parking spaces will be provided free of charge to residents
 - Following the issuance of a Certificate of Occupancy for the Building, the Transportation Coordinator shall submit documentation used to summarize compliance with the transportation and TDM conditions of the Order (including, if made available, any written confirmation from the Zoning Administrator) to the Office of Zoning for inclusion in the IZIS record of the case; and
 - Following the issuance of a certificate of occupancy for the Building, the Transportation Coordinator will submit a letter to the Zoning Administrator, DDOT, and goDCgo for every five years (as measured from the final certificate of occupancy for the Building) summarizing compliance with the transportation and TDM conditions in the Order (Ex. 26).

DDOT Public Hearing Testimony

83. At the public hearing, DDOT testified that:
- It had conducted a thorough review of the site plans and the CTR and that it concurred with that there would not be any impacts to roadway operations that would necessitate mitigations at intersections in the vicinity of the Building; and
 - It was very supportive of the Building due to the number of positive transportation design elements including a low parking ratio and a robust TDM Plan. (TR. at 61-61.)
84. The Applicant addressed the DDOT Report and Testimony in the Applicant’s Testimony. (FF 68.)

OTHER AGENCIES

Urban Forestry Division (DDOT) Report

85. UFD submitted a December 17, 2019, report (the “UFD Report”) stating that: (Ex. 22.)
- The Ward Arborist met on-site with representatives of the Applicant on June 11, 2019, to assess the existing street trees on 5th, 6th, M, and N Streets, N.W.;
 - UFD recommended that the Applicant conduct a second walk-through with UFD to confirm which street trees are to be removed and which street trees are to be preserved;
 - UFD requested the Applicant prepare a Tree Preservation Plan for the street trees; and
 - UFD will require tree removal permits prior to the removal of special trees on private property.
86. The Applicant addressed the UFD Report in the First Post-Hearing Submission. (FF 72.)

87. Since the Application did not include a map amendment, no referral to the National Capital Planning Commission was required. (Subtitle Z §§ 603.1(b), 603.4(a).)
88. No other agency filed written comments or testified in response to the Application.

ANC 6E REPORT AND TESTIMONY

89. ANC 6E submitted a December 31, 2019, resolution (the “ANC Report”), stating that at a duly noticed December 19, 2019, public meeting with a quorum present, the ANC voted to support the Application because it addressed the following issues and concerns of the ANC: (Ex. 47.)
- The negative effects of the current vacant state of the Property;
 - The Building’s:
 - Lower size – 50 feet instead of the 60 feet permitted;
 - Additional affordable housing;
 - Mix of unit sizes;
 - All residential uses with no retail uses;
 - Parking access – located off of N Street, N.W., with the egress moved from M to 5th Street, N.W.; and
 - Courtyard accessible to the public; and
 - The Application’s proffered financial contributions for neighborhood community entities and services. (FF 65; Ex. 23.)
90. Anthony Brown, Chairman of the ANC 6E Development and Zoning Committee (the “ANC Zoning Committee”), along with Bob Williams, a member of the ANC Zoning Committee, testified in support that:
- The Building had been successfully integrated into the neighborhood by limiting the building height to 50 feet, the successful architectural treatment of the building; and
 - The ANC Zoning Committee concluded that the 103 parking spaces provided in the Building would be sufficient due to the site’s proximity to the Mount Vernon Metro Station, one block away. (Tr. at 67-74.)

PERSONS IN SUPPORT

91. The Commission received approximately 34 letters in support of the Building including:
- Letters from members of the public supporting the Building’s design, the appropriateness of its size and scale, its incorporation into the surrounding neighborhood, the IZ component, and the Applicant’s efforts to respond to community input; and (Ex. 28-46, 49-61, 63-64.)
 - A letter from Ward 6 Councilmember Charles Allen in support of the Building’s creation of housing and affordable housing on a transit-oriented site and the incorporation of high quality architecture – including a green roof and solar panels – on a site that currently includes outdated buildings and a surface parking lot. (Ex. 27.)
92. Seven individuals testified in support, noting the need to improve the current appearance of the Property and that the Building will improve the surrounding area. (Tr. at 65-74.)

PERSONS IN OPPOSITION

93. ANC 6E04 Commissioner Richelle Nigro testified in opposition, in her individual capacity and not on behalf of the ANC, to express her constituents' concerns that the Building:
- Is too large for the neighborhood; and
 - Will cause traffic and parking impacts.
- However, Commissioner Nigro noted that she looked forward to working with the Applicant on issues related to the TDM and Construction Management Plans as the Building progresses. (Ex. 67; Tr. at 83-85.)
94. Five other individuals testified in opposition raising concerns regarding the amount of affordable housing, displacement, the sufficiency of the parking, and the impacts of the Building on the nearby churches. (Tr. at 76-85.).

The Churches

95. Pastor Oran Young of First Rising and Pastor Juliano A. Andujo of Miles Memorial testified in opposition on behalf of their congregations about the Building's impacts on the Churches:
- Pastor Young raised the following concerns:
 - The Building does not include enough parking;
 - The location of construction staging and parking;
 - That 10% or 15% affordable housing set asides are not enough; and
 - The Building will result in infrastructure problems – such as backflow – for other properties; and (Tr. at 76-77.)
 - Pastor Andujo raised the following concerns:
 - The relocation of former tenants of the existing buildings on the Property;
 - The overall racial integration of the neighborhood;
 - The levels of affordability provided in the Building; and
 - Parking and construction impacts. (Tr. at 77-79.)
96. The Churches submitted letters after the public hearing, describing the results of the January 22, 2020, meeting held with the Applicant's representatives and noting:
- Potential construction issues, the affordable housing proffer, displacement concerns, infrastructure issues, the Building's scale, and parking had all been discussed;
 - The Applicant offered to provide parking spaces for the Pastors in another development, to provide a total of 30 spaces (15 per church) in a nearby parking lot for use on Sundays through 2022, and \$200 per week in transportation funding through 2022;
 - The Applicant did not agree to the Churches' requests to provide 50 additional on-site parking spaces, provide underground parking under Miles Memorial, and reduce the size of the Building; and
 - Pastors Young and Andujo ultimately decided that none of the Applicant's suggestions provided adequate long-term solutions and decided not to meet further. (Ex. 73-74.)
97. The Churches submitted additional letters following their March 17, 2020, meeting with the Applicant noting that:

- The Churches and the Applicant had been unable to reach a final agreement on the issues of concern; and
- The Applicant’s proposals did not provide long-term solutions to the Churches’ concerns regarding parking and affordable housing. (Ex. 79-79A.)

CONCLUSIONS OF LAW

1. Pursuant to the authority granted by the Zoning Act of 1938 (approved June 20, 1938; 52 Stat. 797, as amended; D.C. Official Code § 6-641.01 (2018 Repl.)), the Commission may approve a Consolidated PUD consistent with the requirements of Subtitle X, Chapter 3, and Subtitle Z § 300.
2. Pursuant to Subtitle X § 300.1, the purpose of the PUD process is to provide for higher quality development through flexibility in building controls, including building height and density, provided that a PUD:
 - (a) *Results in a project superior to what would result from the matter-of-right standards;*
 - (b) *Offers a commendable number or quality of meaningful public benefits; and*
 - (c) *Protects and advances the public health, safety, welfare, and convenience, and is not inconsistent with the Comprehensive Plan.*
3. Pursuant to Subtitle X §§ 304.3 and 304.4, in reviewing a PUD application, the Commission must:

“Judge, balance, and reconcile the relative value of the public benefits and project amenities offered, the degree of development incentives requested, and any potential adverse effects according to the specific circumstances of the case.”

and must find that the proposed development:

- (a) *Is not inconsistent with the Comprehensive Plan and with other adopted public policies and active programs related to the subject site;*
 - (b) *Does not result in unacceptable project impacts on the surrounding area or on the operation of city services and facilities but instead shall be found to be either favorable, capable of being mitigated, or acceptable given the quality of public benefits in the project; and*
 - (c) *Includes specific public benefits and project amenities of the proposed development that are not inconsistent with the Comprehensive Plan or with other adopted public policies and active programs related to the subject site.*
4. A PUD’s proposed public benefits must comply with Subtitle X § 305.12:

“A project may qualify for approval by being particularly strong in only one or a few categories of public benefits but must be acceptable in all proffered categories and superior in many.”

5. The Comprehensive Plan Act of 1984 (D.C. Law 5-75; D.C. Official Code § 1-306.01(b)) established the CP's purposes as:
- (a) *To define the requirements and aspirations of District residents, and accordingly influence social, economic and physical development;*
 - (b) *To guide executive and legislative decisions on matters affecting the District and its citizens;*
 - (c) *To promote economic growth and jobs for District residents;*
 - (d) *To guide private and public development in order to achieve District and community goals;*
 - (e) *To maintain and enhance the natural and architectural assets of the District; and*
 - (f) *To assist in conservation, stabilization, and improvement of each neighborhood and community in the District.*
6. In determining whether a PUD is not inconsistent with the CP, the Commission shall balance the various elements of the CP. The D.C. Court of Appeals discussed this balancing test in its review of the PUD and related Zoning Map amendment for the redevelopment of the McMillan Reservoir Slow Sand Filtration Site (Z.C. Order No. 13-14(6)) (the "McMillan PUD"). In its decision affirming the Commission's approval of the McMillan PUD, the Court stated the following:

The Comprehensive Plan is a 'broad framework intended to guide the future land use planning decisions for the District. *Wisconsin-Newark Neighborhood Coal. v. District of Columbia Zoning Comm'n*, 33 A.3d 382, 394 (D.C. 2011) (internal quotation marks omitted). '[E]ven if a proposal conflicts with one or more individual policies associated with the Comprehensive Plan, this does not, in and of itself, preclude the Commission from concluding that the action would be consistent with the Comprehensive Plan as a whole.' *Durant v. District of Columbia Zoning Comm'n*, 65 A.3d 1161, 1168 (D.C. 2013). The Comprehensive Plan reflects numerous 'occasionally competing policies and goals,' and, '[e]xcept where specifically provided, the Plan is not binding.' *Id.* at 1167, 1168 (internal quotation marks omitted). Thus 'the Commission may balance competing priorities' in determining whether a PUD is consistent with the Comprehensive Plan as a whole.' *D.C. Library Renaissance Building/West End Library Advisory Grp. v. District of Columbia Zoning Comm'n*, 73 A.3d 107, 126 (D.C. 2013). '[I]f the Commission approves a PUD that is inconsistent with one or more policies reflected in the Comprehensive Plan, the Commission must recognize these policies and explain why they are outweighed by other, competing considerations. (*Friends of McMillan Park v. District of Columbia Zoning Comm'n*, 149 A.3d 1027, 1035 (D.C. 2016) (internal quotation marks and references omitted).)

COMPLIANCE WITH PUD ELIGIBILITY STANDARDS

7. The Commission concludes that the Application meets the minimum 15,000 square feet of land area for a PUD in the MU-4 zone because the Property consists of approximately 92,394 square feet of land area. (Subtitle X § 301.1.)

CONSISTENCY WITH THE CP AND PUBLIC POLICIES (SUBTITLE X § 304.4(A))

8. The Commission concludes that the Building is not inconsistent with the CP, when considered in its entirety, because the Building will further the following CP map designations and elements.

GPM

9. The Commission concludes that the Application is not inconsistent with the Property's Neighborhood Enhancement Area designation, but instead will further this GPM designation for the reasons advanced by the Applicant and OP, and specifically because:
- The Building's residential use will "fit in" with the residential character of the surrounding neighborhood; and
 - The Building responds to the "existing character, natural features, and existing/planned infrastructure capacity" of the surrounding area by configuring the Building's massing and height to respond to the surrounding row dwellings, places of worship and nearby historic district. (FF 22, 25-26, 32, 40, 50, 54.)

FLUM

10. The Commission concludes that the Application is not inconsistent with the Property's designation for Moderate Density Residential uses for the reasons advanced by the Applicant and OP and specifically because:
- The FLUM designation specifically includes the current RA-2 zone, which the Application will maintain, as a potentially compatible zone;
 - The Building conforms to the development standards of the RA-2 zone except for the requested zoning flexibility for increased lot occupancy and FAR needed for the Building to successfully function and to accommodate the desires of the ANC and community to keep the Building within the 50-foot matter-of-right height for the RA-2 zone while still providing the residential GFA; and
 - Although the Moderate-Density Residential designation focuses on slightly lower-density development than that contemplated by the Application, the increase in density will allow the Building to serve as a transitional development between the higher density development surrounding the Convention Center to the west and the lower density residential areas to the east. (FF 16, 21-22, 33, 40, 49.)

Near Northwest Area Element

11. The Commission concludes that the Building is not inconsistent with the Near Northwest Area Element for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will develop an underutilized site in the eastern side of the planning area which has a greater need for reinvestment and redevelopment;

- Will provide new affordable and market rate housing in the Shaw neighborhood on an underutilized site;
- Will help serve as a transitional development between the higher density development near the Convention Center and the lower residential areas farther east; and
- Has been designed as an infill development that respects the surrounding character and scale of residential development and seeks to complement it. (FF 22, 24-25,34, 44, 49-50.)

Citywide Elements

12. The Commission concludes that the Application furthers the Land Use, Transportation, Housing, Environmental, Parks, Recreation and Open Space, and Urban Design Elements for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will redevelop an underutilized property near major commercial corridors and a Metrorail station with a mixed-income residential Building that would revitalize the area while still respecting the character of the surrounding lower-density development;
 - Capitalizes on its proximity to multiple transit options, is designed to enhance pedestrian and bicycle facilities and safety, and provides all on-site parking in a below-grade garage;
 - Will provide approximately 360 new, high quality housing units with 12% being permanent affordable at 50% and 60% MFI;
 - Utilizes environmentally sustainable materials and features including green roofs, rooftop solar panels, sustainable landscaping, and has been designed to achieve LEED-Silver v4 certification;
 - Incorporates open and closed courts to provide both public and private accessible open space; and
 - Utilizes variations in height, massing, and other architectural elements to correspond to the surrounding development and architectural patterns of the Shaw neighborhood and provide a transition from areas of higher-density to lower-density residential neighborhoods. (FF 35-41.)

SAP

13. The Commission concludes that the Building is not inconsistent with the SAP for the reasons advanced by the Applicant and OP and specifically because the Building:
- Will advance the specific goals of the “Transit Oriented Housing” sub-area by redeveloping the existing, underutilized site that includes surface parking with a new mixed-income development, including underground parking, near a Metrorail station; and
 - Advances a number of the design recommendations of the SAP sub-area including providing prominent building entrances, animating the street through projections and openings, and use of high quality design materials. (FF 42.)

Mayor’s Housing Order

14. The Commission concludes that the Building will further the housing goals of Mayor’s Order 2019-036 by providing one percent of that goal on a single site. (FF 24, 43.)

POTENTIAL ADVERSE IMPACTS – HOW MITIGATED OR OUTWEIGHED (SUBTITLE X § 304.4(B))

15. The Commission concludes that the Building will not result in any unacceptable impacts that are not capable of being mitigated or outweighed by the Building's proffered public benefits as detailed below.

Scale of the Building

16. The Commission concludes that the Building will not result in any unacceptable impacts, even though it is somewhat larger in scale than most of the immediately surrounding buildings, for the reasons advanced by the Applicant and OP and specifically because:
- The Building has been designed to remain below the 50-foot matter-of-right height limit in the RA-2 zone (and below the 63-foot height allowed for a PUD in the RA-2 zone per Subtitle X §§ 303.7 and 303.10) in direct response to feedback received from the ANC and surrounding community;
 - The Building's use of bays, façade configuration that mirrors surrounding buildings, and the incorporation of two open courts serve to break down and mitigate the scale of the Building and render it more compatible with the surrounding development;
 - The individual heights of the two residential wings differ in order to better match the height of the surrounding buildings with the north wing being only three stories, and the south wing being four stories; and
 - The testimony in support from OP, ANC 6E, and numerous members of the public that emphasized the Building's compatibility with the surrounding neighborhood and the importance of the increased density and scale to allow for additional housing to be constructed on the Property. (FF 22, 25, 49-50, 51, 67, 74, 89-90.)

Housing and Displacement

17. The Commission concludes that the Building will not result in any unacceptable impacts with regards to housing or displacement for the reasons advanced by the Applicant and OP and specifically because:
- The Applicant began the process of ending the leasing of the existing 63 market-rate units on the Property well in advance of the filing of the Application;
 - The Applicant covered the moving costs for former tenants that relocated to the other Washington Apartments buildings in close proximity to the Property; and
 - The Building's new housing, both affordable and market rate, outweighs any potential additional displacement impacts in the surrounding neighborhood. (FF 24, 37, 46, 69-70.)

Parking and Loading

18. The Commission concludes that the Building will not result in any unacceptable parking and loading impacts for the reasons advanced by the Applicant and OP and specifically because:
- The CTR, Parking Memorandum, and the DDOT Report all concluded that the amount of parking provided in the Building is greater than what is required by the zoning regulations and sufficient to meet the demands of the Building at a ratio of no more than 0.3 parking spaces per residential unit (including the design flexibility from the number of parking spaces shown in the approved plans);

- The Building's central location and access to multiple transit options including Metrorail, Metrobus, and significant bicycle infrastructure reduce the need for residents of the Building to have personal vehicles; and
 - The Building's loading facilities are designed to allow all loading activities to take place on the Property without impacting the parking or traffic on the adjacent streets. (FF 28, 36, 45, 64, 68, 71, 82.)
19. With regard to the Churches' parking concerns, the Commission concludes that the Building will not result in unacceptable parking impacts for the reasons advanced by the Applicant and OP and specifically because:
- The technical analyses of the Building's transportation impacts (CTR, Parking Memorandum, and DDOT Report and Testimony (FF 64, 71, 82, 83)) did not identify any parking impacts that would require mitigations;
 - The Building provides more than the required parking, especially as it is located in an area of the District well served by multiple transit options; and
 - The Building is designed to ensure that site circulation and loading activities will not negatively impact the surrounding residential and religious uses.

Construction Impacts

20. The Commission concludes that the Applicant's Construction Management Plan, as amended in response to the Commission's comments, and included as a condition of approval of this Order, will mitigate the potential construction related impacts on surrounding property owners. (FF 56, 71.)

PUD FLEXIBILITY BALANCED AGAINST PUBLIC BENEFITS (SUBTITLE X § 304.4(C))

21. The Commission concludes that the Application's requested zoning flexibility is outweighed by the Application's proposed public benefits as discussed below.

Requested Flexibility

Increased Lot Occupancy

22. The Commission concludes that the Applicant's requested 21.7% increase in lot occupancy to 81.7% is appropriate given the reduction in height to accommodate the concerns of the neighborhood, and to render the Building more compatible with the height of the surrounding buildings. As discussed below, the Commission also concludes that the flexibility is balanced by the proffered benefits and amenities. (FF 57, 67.)

Increased Density

23. The Commission concludes that the Application has satisfied the requirements of Subtitle X § 303.10(b), which authorizes a five percent increase in FAR if the applicant demonstrates that the increased density is essential to the successful functioning of the Building and consistent with the purpose and PUD evaluation standards, to allow an approximately 2.7% increase in FAR, because:
- The extra density allows the Applicant to provide balconies for certain units;
 - The extra density permits loading facilities in each wing which are large enough to accommodate all loading activities without impacting street traffic;

- The extra density allows the Building to maximize its residential GFA while remaining within the matter-of-right height limits prescribed by the RA-2 zone and requested by the ANC and community; and
- Without the additional density the Applicant would be required to eliminate a “stack” of residential units given the double-loaded design of the residential wings. (FF 58, 67.)

Public Benefits

24. The Commission concludes that the Application satisfies the balancing test required in Subtitle X § 304.3 because it provides a high level of public benefits and amenities sufficient to balance out the requested zoning flexibility from the density and lot occupancy limits, as well as to outweigh any potential adverse impacts that are not capable of being mitigated, for the reasons advanced by the Applicant and OP, and as further specifically addressed below.

Housing and Affordable Housing

25. The Commission concludes that the Building will provide superior housing and affordable housing benefits because:
- The Building will provide approximately 360 new dwelling units and will advance the Mayor’s housing goals by creating approximately one percent of the target of 36,000 new housing units;
 - The housing provided by the Building will be high quality and located near multiple transit options and key commercial corridors;
 - The Building will contain 20% more affordable housing GFA than would otherwise be required under matter-of-right development on the Property resulting in approximately 41 dedicated affordable housing units devoted to households earning up to 50% and 60% of the MFI; and
 - The Applicant has provided sufficient evidence that 12% is the highest percentage of affordable housing that the Building can economically sustain. (FF 24, 43, 61, 63, 69.)

Environmental and Sustainability

26. The Commission concludes that the Building will provide the following meaningful environmental benefits, as recognized by DOEE and OP:
- Achieve LEED-Silver v4 Certification;
 - Provide 1,382 square feet of rooftop solar panels;
 - Provide green roof features and rooftop bioretention features; and
 - Provide electric charging facilities for vehicles and bicycles. (FF 27, 47, 62, 74.)

Urban Design, Architecture, and Landscaping

27. The Commission concludes that the Building’s urban design, architecture, and landscaping, for the reasons advanced by the Applicant and OP, qualify as public benefits that will improve the surrounding neighborhood to a significantly greater extent than would likely result from matter-of-right development. (FF 59, 67, 74.)

Site Planning and Efficient Land Utilization

28. The Commission concludes that the Building's site planning and land utilization qualifies as a public benefit because:
- It replaces a vacant and underutilized property with a new, multi-family, mixed-income building;
 - The Property is located close to transit options and the downtown business and commercial districts; and
 - It replaces a surface level parking lot with below-grade parking and off-street loading. (FF 60, 74.)

GREAT WEIGHT TO RECOMMENDATIONS OF OP

29. The Commission must give "great weight" to the recommendation of OP pursuant to § 5 of the Office of Zoning Independence Act of 1990, effective September 20, 1990 (D.C. Law 8-163; D.C. Official Code § 6-623.04 (2018 Repl.)) and Subtitle Z § 405.8 (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).)
30. The Commission concludes that the OP Reports, which provided an in-depth analysis of the Application, are persuasive and concurs with:
- OP's recommendations to approve the Application; and (FF 77, 80.)
 - OP's recommendation that the Application's requested flexibility from the number of residential units be limited to only studios and one-bedroom units and adopts OP's recommended language as a condition of this Order. (FF 77, 81.)
31. The Commission notes OP's support for DHCD's suggestion that the Applicant consider increasing its IZ proffer to 15% but finds that neither agency included this proposed increase as a condition of support for the Application. (FF 78.) The Commission concludes that the Applicant has provided sufficient evidence that the 12% IZ proffer is the maximum that the Building can support and that the proffer is sufficient to qualify as a public benefit when considered against the flexibility requested by the Application.

GREAT WEIGHT TO WRITTEN REPORT OF THE ANC

32. The Commission must give "great weight" to the issues and concerns raised in the written report of the affected ANC pursuant to § 13(d) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d) (2012 Repl.)) and Subtitle Z § 406.2. To satisfy the great weight requirement, the Commission must articulate with particularity and precision the reasons why an affected ANC does or does not offer persuasive advice under the circumstances. (*Metropole Condo. Ass'n v. D.C. Bd. of Zoning Adjustment*, 141 A.3d 1079, 1087 (D.C. 2016).) The District of Columbia Court of Appeals has interpreted the phrase "issues and concerns" to "encompass only legally relevant issues and concerns." (*Wheeler v. District of Columbia Board of Zoning Adjustment*, 395 A.2d 85, 91 n.10 (1978) (citation omitted).)
33. The Commission finds persuasive the ANC Report's concerns with the Property's current vacant status, the Building's lower size, affordable housing contribution, unit mix, all-residential uses, parking access, and publicly accessible courtyard, and that the zoning

flexibility and potential adverse impacts are outweighed by the Application's public benefits including the Application's financial support of neighborhood-serving entities. The Commission therefore concurs with the ANC Report's support of the Application that indicates that the Application has satisfactorily addressed the ANC's concerns, as confirmed by the testimony of the ANC's representatives. (FF 89, 90.)

DECISION

In consideration of the record and the Findings of Fact and Conclusions of Law herein, the Zoning Commission concludes that the Applicant has satisfied its burden of proof and therefore **APPROVES** the Application for a Consolidated PUD subject to the following guidelines, conditions, and standards:

A. BUILDING DEVELOPMENT

1. The Building and landscaping (the "Approved PUD") shall be constructed as modified by the guidelines, conditions, and standards herein in accordance with:
 - The plans prepared by Torti Gallas and Studio 39, dated December 20, 2019 (Ex. 23A1-23A9); and
 - As modified in the post-hearing submission dated February 3, 2020 (Ex. 72A, 72B, 72D) including the revised IZ Unit Location Plan and Courtyard Design Plans (Ex. 72B, 72D) (collectively, the "Approved Plans").
2. The Applicant shall have design flexibility from the Approved Plans in the following areas:
 - a. To vary the location and design of all interior components, including but not limited to partitions, structural slabs, doors, hallways, columns, stairways, and mechanical rooms, provided that the variations do not change the exterior configuration of the Building as shown on the Approved Plans;
 - b. To vary the final selection of the colors of the exterior materials within the color ranges of the material types as proposed, based on availability at the time of construction, without reducing the quality of the materials, provided such colors are within the color ranges shown on the Approved Plans; and to make minor refinements to exterior details, dimensions and locations, including curtain wall mullions and spandrels, window frames and mullions, glass types, belt courses, sills, bases, cornices, balconies, railings and trim, or any other changes to comply with the District of Columbia Building Code or that are otherwise necessary to obtain a final building permit or to address the structural, mechanical, design, or operational needs of the building uses or systems;
 - c. To make minor refinements to the locations and dimensions of exterior details that do not substantially alter the exterior configuration of the

Building as shown on the Approved Plans; examples of exterior details include, without limitation, doorways, canopies, railings, and skylights;

- d. To provide a range in the number of residential units in the Building of plus or minus five percent relative to the number depicted on the Approved Plans, subject to the housing requirements of Condition No. E.2. with no reduction in the number of two- and three-bedroom units (101) and maintaining the percentage range of unit sizes noted on page G05 of the Approved Plans and maintaining no less than the number of IZ units and percentage of unit mix shown in the column "IZ Required" on page of the Table on page G10;
- e. To make refinements to the approved parking configuration, including layout and number of parking spaces of plus or minus 10%, provided the number of parking spaces maintains a ratio of no more than 0.3 spaces per residential unit;
- f. To make minor refinements to the floor-to-floor heights, so long as the maximum height and total number of stories as shown on the Approved Plans do not change;
- g. To vary the design of the public space surrounding the Property and/or the selection of plantings in the landscape plan depending on seasonal availability within the range and quality as proposed in the Approved Plans or otherwise in order to satisfy any permitting requirements of DC Water, DDOT, DOEE, DCRA, or other applicable regulatory bodies and/or service to the Property from utilities;
- h. To vary the amount, location and type of green roof, solar panels, and paver areas to meet stormwater requirements and sustainability goals or otherwise satisfy permitting requirements, so long as the Building achieves a minimum GAR required by the Zoning Regulations and provides a minimum of approximately 1,380 square feet of roof area containing solar panels and related equipment;
- i. To vary the approved sustainable features of the Building, provided the total number of LEED points achievable for the Building does not decrease below the minimum required for the LEED standard specified by the order;
- j. To vary the final design and layout of the mechanical penthouse to accommodate changes to comply with Construction Codes or address the structural, mechanical, or operational needs of the building uses or systems, so long as such changes do not substantially alter the exterior dimensions shown on the Approved Plans and remain compliant with all applicable penthouse dimensional requirements of the Zoning Regulations; and

- k. To vary the final design and layout of the indoor and outdoor amenity and plaza spaces to reflect their final design and programming and to accommodate special events and programming needs of those areas from time to time.
3. In accordance with the Approved Plans, the Approved PUD shall have:
 - a. A maximum building height of 50 feet (not including penthouse);
 - b. Approximately 214,094 square feet of GFA devoted to residential use, and additional GFA devoted to parking, loading, and building service areas;
 - c. Flexibility to increase the FAR for the Building to a maximum of 2.66;
 - d. Flexibility from the lot occupancy requirements to occupy 81.7% of the lot;
 - e. Approximately 360 residential units with 12% designated for Inclusionary Zoning; and
 - f. Approximately 103 on-site parking spaces.

B. VALIDITY

1. The PUD shall be valid for a period of two years from the effective date of this Order. Within such time an application shall be filed for a building permit, with construction to commence within three years of the effective date of this Order.
2. No building permit shall be issued for the Building until the Applicant has recorded a covenant in the land records of the District of Columbia, between the Applicant and the District of Columbia that is satisfactory to the Office of the Attorney General and the Zoning Division, DCRA (the "PUD Covenant"). The PUD Covenant shall bind the Applicant and all successors in title to construct and use the Site in accordance with this Order, or amendment thereof by the Commission. The Applicant shall file a certified copy of the covenant with the records of OZ.

C. BUILDING PERMIT REQUIREMENTS – Prior to the issuance of a building permit for the Building, the Applicant shall demonstrate to the Zoning Administrator that:

1. The building permit application indicates that the Building has been designed to achieve at least the minimum number of points necessary to achieve Silver certification under the USGBC's LEED v.4 standards.
2. The Applicant shall construct the Building in accordance with the provisions of the Construction Management Plan included as Exhibit 72E.

D. CERTIFICATE OF OCCUPANCY REQUIREMENTS – Prior to the issuance of a certificate of occupancy for the Building, the Applicant shall demonstrate to the Zoning Administrator the following:

1. ***LEED*** –
 - a. The Building has been registered with the USGBC to commence the LEED certification process by furnishing a copy of its LEED-certification application to the Zoning Administrator; and
 - b. The updated status of its LEED Certification, including all credits obtained, and demonstrating that it is reasonable likely to achieve certification within two years.
2. ***Sustainability*** –
 - a. The solar panel systems and associated equipment installed on the Building by the Applicant occupy approximately 1,380 square feet of roof area;
 - b. The Applicant has installed three electric vehicle charging stations within the garage that can accommodate a minimum of six vehicles at any given time; and
 - c. The Applicant has installed at least five electrical outlets in the long-term bicycle storage to supply power to electric bicycles.
3. ***Financial contributions*** – the Applicant has made the following financial contributions:
 - a. \$75,000.00 to the Greater Washington Community Foundation – to be used by The Partnership to End Homelessness Grantmaking Fund (“Partnership Fund”). The Partnership Fund awards grants to nonprofits working with individuals, youth, and families experiencing homelessness. Specific grants are made to nonprofits for the following purposes: (1) to fill funding gaps to assist people exiting homelessness to obtain and maintain stable housing; (2) to support the development of innovative homelessness services solutions that can be evaluated and potentially scaled; (3) to help providers address emerging needs in homelessness services and to support targeted services to address those needs; (4) to support service providers and developers in helping people to access permanent housing and increase the supply of affordable housing; and (5) to support advocacy efforts focused on strengthening policies that impact housing and homelessness and/or increase public funding. The Partnership Fund shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
 - b. \$20,000.00 to New Endeavors for Women – for the purchase of computer equipment and funding of supportive programs for women and families in

the transitional housing program located at 611 N Street, N.W. The supportive programs include; transportation subsidies, tuition assistance, and transitional housing supplies for clients. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;

- c. \$30,000.00 to Shaw Main Streets – in support of the Shaw Main Street Clean & Safe Team, which hires, trains, and employs returning citizens to maintain the public space along the 7th and 9th commercial corridors. Funds will be used to pay for salaries, benefits, uniforms, equipment, and supplies for crew members. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- d. \$15,000.00 to the Kennedy Recreation Center – for the purchase of new computers, furniture, equipment, and supplies for the technology lab for the Kennedy Recreation Center. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- e. \$15,000.00 to Boolean Girl – which will provide one year of funding of the nonprofit organization Boolean Girl’s operations at the Kennedy Recreation Center. Boolean Girl provides a curriculum, equipment, materials and instructors to teach coding to disadvantaged children. Participants will be recruited from the Shaw neighborhood. Programs funded shall be in operation at the time of the issuance of the Certificate of Occupancy for the Building;
- f. \$20,000.00 to DC Public Library Foundation (for the benefit of Shaw Watha T. Daniel Neighborhood Library) – to support improvements to the children’s section and children’s programming at the Shaw Watha T. Daniel Library, including furniture, supplies, and children’s educational programming. Programs funded shall be in operation at the time of Certificate of Occupancy for the Building; and
- g. \$30,000.00 to the Mount Vernon Triangle Community Improvement District – to support the Mount Vernon Triangle Clean Team’s hiring of one additional Clean Team Ambassador. Programs funded shall be in operation at the time of Certificate of Occupancy for the Building.

E. REQUIREMENTS FOR THE LIFE OF THE BUILDING – For the life of the Building, the Applicant shall perform the following:

- 1. ***Sustainability*** – maintain the solar panels and electric vehicle accommodations described in Condition No. D.2.

2. **Housing** – provide housing in excess of a matter-of-right development of the Property, including affordable housing as set forth in the following chart and in accordance with the location and proportional mix of units (by bedroom count) as shown on Sheet G10 of the Approved Plans, subject to design flexibility granted by the Commission in Condition No. A.2, provided that:
 - a. The affordable housing shall be no less than 12% of the total of the residential GFA, cellar floor area dedicated to dwelling units, enclosed building projections that extend into public space, and habitable penthouse space as determined by the Zoning Administrator at permit issuance;
 - b. The Building shall provide no fewer than 18 three-bedroom units; and
 - c. The covenant required by the Inclusionary Zoning Implementation Amendment Act of 2006 (D.C. Law 16-275, as amended; D.C. Official Code §§ 6-1041.05(a)(2) (2012 Repl.)) shall include a provision or provisions requiring compliance with this Condition E.2.

Residential Unit Type	Total Residential Gross Floor Area (“GFA”)	Units	Reserved for households earning equal to or less than:	Affordability Control Period	Tenure (rental or sale)
Total	246,222 square feet (sf) of GFA	360	N/A	N/A	N/A
Penthouse	35,644 sf	N/A	N/A	N/A	N/A
Market Rate	261,652 sf of GFA	319	N/A	N/A	N/A
Affordable Housing	4,280 sf of GFA (12% of non-communal penthouse habitable space)	3	50% MFI	Life of Building	Rental
	36,873 sf of GFA (12% of residential GFA + 12% of cellar dwelling unit floor area + 12% of residential projection area)	38	60% MFI	Life of Building	Rental

3. **Transportation Demand Management (“TDM”)** – implement the following TDM program:
 - a. The Applicant will unbundle the cost of residential parking from the cost of lease of each unit and charge a minimum rate based on the average market rate within a quarter mile of the Property;
 - b. The Applicant will identify Transportation Coordinator(s) for the planning, construction, and operations phases of development. The Transportation Coordinators will act as points of contact with DDOT, goDCgo, and Zoning Enforcement. The Transportation Coordinator(s) will subscribe to goDCgo’s residential newsletter. The Transportation Coordinator(s) will

receive TDM training from goDCgo to learn about the TDM conditions for this Building and available options for implementing the TDM plan;

- c. The Transportation Coordinator(s) will provide their contact information to goDCgo, conduct an annual commuter survey of employees on site, and report TDM activities and data collection efforts to goDCgo once per year;
- d. The Transportation Coordinator(s) will develop, distribute, and market various transportation alternatives and options to the residents, including promoting transportation events (i.e. Bike to Work Day, National Walking Day, Car Free Day) on the Building's website and in any internal building newsletters or communications;
- e. The Applicant will provide welcome packets to all new residents that will, at a minimum, include the Metrorail pocket guide, brochures of local bus lines (Circulator and Metrobus), carpool and vanpool information, Guaranteed Ride Home (GRH) brochure, and the most recent DC Bike Map. The Applicant will provide one free SmarTrip Card and one complimentary Capital Bikeshare coupon with the initial lease up of each unit;
- f. Brochures can be ordered from DDOT's goDCgo program by emailing;
- g. The Applicant will provide residents who wish to carpool with detailed carpooling information and will be referred to other carpool matching services sponsored by the Metropolitan Council of Governments (MWCOC) or other comparable service if MWCOC does not offer this in the future;
- h. The Applicant will post all TDM commitments on the Building's website, publicize availability, and allow the public to see what commitments have been promised;
- i. The Applicant will satisfy the Zoning Regulations by providing 121 long-term bicycle parking spaces in the Building garage;
- j. Long-term bicycle storage rooms will accommodate non-traditional sized bikes including cargo, tandem, and kid's bikes. The long-term bicycle space will be provided free of charge to residents; and
- k. The Applicant shall submit to the Office of Zoning for inclusion in the record for this proceeding, documentation summarizing compliance with the preceding TDM commitments, as applicable, upon the issuance of the first Certificate of Occupancy for the Building and shall, every five years thereafter, submit to the Zoning Administrator, DDOT, and goDCgo, a

letter summarizing compliance with the transportation and TDM Conditions of this Order, as applicable.

VOTE (April 27, 2020): 4-1-0 (Peter G. May, Peter A. Shapiro, Robert E. Miller, and Michael G. Turnbull to **APPROVE**; Anthony J. Hood opposed)

In accordance with the provisions of Subtitle Z § 604.9, this Order No. 19-16 shall become final and effective upon publication in the *D.C. Register*; that is, on January 8, 2021.

THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS THE D.C. HUMAN RIGHTS ACT OF 1977, D.C. LAW 2-38, AS AMENDED, D.C. OFFICIAL CODE § 2-1401.01 ET SEQ., (THE "ACT"). THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. IN ACCORDANCE WITH THE 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. THE FAILURE OR REFUSAL OF THE APPLICANT TO COMPLY SHALL FURNISH GROUNDS FOR DENIAL OR, IF ISSUED, REVOCATION OF ANY BUILDING PERMITS OR CERTIFICATES OF OCCUPANCY ISSUED PURSUANT TO THIS ORDER.

ZONING COMMISSION FOR THE DISTRICT OF COLUMBIA**Revised Schedule of Monthly Meeting Dates for Remainder of 2021**

The Zoning Commission of the District of Columbia, in accordance with § 103.1 of the District of Columbia Municipal Regulations, Title 11-Z, Zoning, hereby gives notice that it has scheduled the following meetings. Meetings are held virtually via WebEx at 4:00 p.m. Information on viewing a meeting can be found on the Office of Zoning's website at: <https://dcoz.dc.gov/>

Regular Monthly Meeting	Second Monthly Meeting
January 14, 2021	January 28, 2021
February 11, 2021	February 25, 2021
March 11, 2021	March 25, 2021
April 8, 2021	April 29, 2021
May 13, 2021	May 27, 2021
June 10, 2021	June 24, 2021
July 8, 2021	July 29, 2021
September 9, 2021	September 30, 2021
October 14, 2021	October 28, 2021
November 18, 2021	--
December 16, 2021	--

Please note that these dates are subject to change.

Additional meetings as needed may be called by the presiding officer or by three (3) members.

The proposed agenda for each meeting is posted on the Office of Zoning's website five (5) days prior to the meeting.

For additional information, please contact Sharon S. Schellin, Secretary to the Zoning Commission at (202) 727-6311.

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